IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1651 OF 2017

RAJESH TULSIDAS NAKHUA)...APPLICANT

V/s.

THE SENIOR INSPECTOR OF POLICE&ANR.)...RESPONDENTS

WITH

CRIMINAL APPLICATION NO.722 OF 2017
IN
CRIMINAL BAIL APPLICATION NO.1651 OF 2017

MRS.NUTAN LALIT MANGE)...INTERVENOR

IN THE MATTER BETWEEN

RAJESH TULSIDAS NAKHUA)...APPLICANT

V/s.

THE SENIOR INSPECTOR OF POLICE&ANR.)...RESPONDENTS

Mr.Rizwan Merchant with Mr.Swapnil, Mr.Ramiz Shaikh i/b. Rizwan Merchant and Associates, Advocate for the Applicant.

Mr.A.H.H.Ponda i/b.Roshan Sawant, Advocate for the Intervenor.

Mr.V.V.Gangurde, APP for the Respondent – State.

Mr.Ghag, A.P.I., DCB CID Unit VI.

CORAM : A. M. BADAR, J.

DATE : 5th OCTOBER 2017

P.C. :

1 The applicant who is an accused in Crime No.62 of 2016 for offences punishable under Sections 420, 385, 465, 467, 468, 506 and 120B of the Indian Penal Code (IPC) registered with Police Station Powai, at the instance of First Informant Nutan Mange, by this application is seeking his release on bail, after filing of the charge-sheet against him.

2 I have heard the learned advocate appearing for the applicant / accused. He argued that so called First Information Report (FIR) dated 18th August 2016 lodged by First Informant Nutan cannot be construed as a report lodged under Section 154 of the Code of Criminal Procedure (Cr.P.C.) in the wake of her earlier lodged complaint with Joint Commissioner of Police, Mumbai, on 19th January 2016. Her FIR statement can, at the most be considered as statement under Section 161 of the Cr.P.C. recorded by the police. It is further argued that cognizance of the

complaint dated 19th January 2016 lodged by Nutan Mange was taken by Joint Commissioner of Police, Mumbai, on 21st January 2016, by ordering in-charge of Unit No.VII of Crime Branch, Ghatkopar, to look into the complaint, take necessary action and report. The learned advocate further drew my attention to next endorsement on the said complaint dated 19th January 2016 which is figuring in the charge-sheet to point out that on 21st January 2016 itself, the Senior Police Inspector of Unit No.VII of Crime Branch at Ghatkopar, had entrusted the said complaint to Police Inspector Sable for further action. With this, it is argued that from January 2016 to 17th March 2016 the said complaint depicting commission of cognizable offence was under inquiry with Unit No.VII of Crime Branch of Ghatkopar. Ultimately, on 17th March 2016, Crime Branch Unit No.VII had issued a letter to complainant / First Informant Nutan Mange asking her to submit details about weight, description and information regarding ownership of allegedly misappropriated jewellery. With this, it is argued that during the period from January 2016 to 17th March 2016, the applicant / accused had attended Unit No.VII of the

Crime Branch, Ghatkopar, in response to this summons on several occasions and he had even submitted acknowledgment issued by the complainant / First Informant Nutan Mange, acknowledging receipt of jewellery from the present applicant / accused by her.

3 The learned advocate for the applicant / accused further argued that as soon as letter dated 17th March 2016 was issued calling paper particulars from the complainant/ First Informant Nutan Mange, the entire scenario changed and abruptly, inquiry was entrusted to Unit No.VI of the Crime Branch of Mumbai Police. This resulted in lodging purported FIR on 18th August 2016, registration of the crime against the present applicant / accused and consequent taking over the investigation by Unit No.VI of the Crime Branch of Mumbai Police. With this, it is argued that, investigation was not done impartially and honestly.

4 The learned advocate for the applicant / accused further argued that from 23rd August 2016 to 24th March 2017,

there were judicial orders protecting liberty of the applicant / accused passed by the learned Additional Sessions Judge as well as this court. During this period, the applicant / accused attended Investigating Officer for 303 days. It is submitted that right from 19th January 2016 till date applicant / accused was enjoying liberty in pursuant to judicial orders. There are no allegations of tampering of evidence by the applicant / accused.

5 It is further argued that after rejection of anticipatory bail application moved by the present applicant / accused by this court on 24th March 2017, husband of First Informant Nutan pasted posters containing photographs of the applicant / accused as wanted accused in the locality as well as in the vicinity of the work place of the applicant / accused and therefore, the applicant / accused was constrained to approach police station Pant Nagar on 23rd February 2017 to lodge report against husband of First Informant Nutan Mange and at that point of time, he came to be arrested in the instant crime. Therefore, the applicant / accused never absconded or evaded his arrest in the instant crime.

6 It is further argued that report of handwriting expert in respect of acknowledgment of ornaments coming on record through the said examiner of documents is against the applicant / accused but when the applicant / accused got the receipt examined issued by First Informant Nutan from private handwriting expert, the report is in favour of the applicant / accused. It is further argued that jewellers Arvind Soni and Satish Gada have not deposed that the applicant / accused had shown them jewellery for the purpose of pledging it. Witness Pravin Mange is not saying that the empty jewellery boxes allegedly seen in the office of the present applicant / accused, where infact, boxes of jewellery of his sister-in-law Nutan Mange.

7 With these submissions, according to the learned advocate for the applicant / accused, as offences alleged against the applicant / accused are triable by the Magistrate, his pre-trial detention is not warranted.

8 As against this, the learned APP argued that the jewellery in question was handed over to the present applicant / accused by First Informant Nutan in presence of a witness named Divyang Mehta and statement of this witness establishes entrustment of jewellery by First Informant to the applicant / accused. By drawing my attention to statement of Arvind Soni, the learned APP argued that the applicant / accused had shown willingness to pledge 2 or 3 kgs gold jewellery with Arvind Soni and this demonstrates that the applicant / accused is in possession of the jewellery in question. My attention is drawn to the statement of Kamlesh Jain to demonstrate that the applicant / accused was in need of money right from the year 2012.

9 I have also heard the learned advocate appearing for First Informant. He submitted that First Informant is five years older than her husband and as such, she was a vulnerable lady who was frightened by alleged affair of her husband with his employee. Existence of jewellery and its quantum is not disputed by the applicant / accused. If really the applicant / accused had

returned the jewellery, there was no question of lodging report against him in the facts of the case, wherein, First Informant had shown blind faith on the applicant / accused. The alleged receipt pressed in service by the applicant / accused is not containing any date and though the applicant / accused has stated before this court that the jewellery was returned in the month of August, whatsapp conversation between the applicant / accused and the First Informant shows that in the month of September also, the applicant / accused was assuring First Informant Nutan of return of the jewellery.

10 I have carefully considered the rival submissions and also perused the charge-sheet. I have also perused following judgments relied by the learned advocate appearing for the First Informant :-

a) Gajanan Agarwal vs. State of Orissa[1]

b) Kumari Suman Pandey vs. The State of Uttar Pradesh[2]

c) Deepak Singhchi vs. State of Rajasthan[3]

1 2007 Cri.L.J. 2752
2 (2007) 12 SCC 364
3 2007 SC 3064

d) Sudha Verma vs. State of Uttar Pradesh[4]

e) Gobarbhai Naranbhai Singla vs. State of Gujrat[5]

f) Bhuvaneshwar Yadav vs. State of Bihar[6]

g) Dhanendra Sriram Bhule vs. State of Maharashtra[7]

h) Masroor vs. State of Uttar Pradesh[8]

i) Deepak Subhaschandra Mehta vs. CBI[9]

j) Ash Mohammad vs. Raj Singh @ Lal Babu[10]

k) Gulabrao Deokar vs. State of Maharashtra[11]

l) Nimmagadda Prasad vs. CBI[12]

m) Y S Jagan Mohan Reddy vs. CBI[13]

n) Virupakshappa Gounda and Others vs. State of Karnataka[14]

These judgments deal with factors which are to be taken into consideration while releasing the accused on bail. Nature of accusation, severity of punishment, reasonable apprehension of tampering of witnesses, apprehension of threat, prima facie

4 2007 (12) SCC 507
5 AIR 2008 SC 1134
6 AIR 2009 SC 1452
7 (2009) 11 SCC 541
8 2009 (14) SCC 286
9 (2011) 14 SCC 737
10 (2012) 9 SCC 446
11 (2014) Cr.L.J. 845
12 2013 SC 2821
13 2013 SC 1933
14 AIR 2017 SC 1685

satisfaction of the court in support of charge are some of such factors.

11 This court is considering the matter in order to determine whether after filing of the charge-sheet in a Magistrate triable case, whether pre-trial detention of the applicant / accused is warranted or whether he deserves liberty till the charge is proved against him. It is trite that the accused is innocent till the offence alleged against him is proved before the court of law. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention at pre-trial stage is not supposed to be punitive or preventive. Seriousness of charge or availability of material in support of the charge are not the only criteria which govern the matter for grant of bail.

12 With this settled position in law, let us examine whether the applicant / accused in the instant case is entitled for

release on bail. During the course of lengthy arguments advanced by all parties, and particularly by the learned APP on behalf of the prosecution, no apprehension is expressed by contending that if released on bail during pendency of the trial before the court of the Metropolitan Magistrate, the applicant / accused will abscond or he will not be available for either facing the trial or receiving the sentence. On the contrary, it is seen that in pursuance to summons received by him from Unit No.VII of the Crime Branch, Mumbai, during the period when the complaint lodged by First Informant Nutan was pending for inquiry, the applicant / accused had time and again visited the office of Unit No.VII for the purpose of inquiry. This period is from January 2016 to 17th March 2016. The learned APP has not disputed the fact that the applicant / accused was on pre-arrest bail for the period from 23rd August 2016 to 24th March 2017 and during this period, in all for 303 days, he has attended the concerned police station for the purpose of investigation. With this, I conclude that the applicant / accused, who has deep roots in the society and who has time and again co-operated the Investigator in the inquiry as well as the investigation of the offence, will be available for the trial or for receiving the sentence, if any imposed on him, in pursuant thereof.

13 Averments in the FIR lodged against the present applicant / accused are to the effect that First Informant Nutan suspected fidelity of her husband on the basis of the material shown to her by the present applicant / accused. It is averred by First Informant Nutan that at the house of her mother, the applicant / accused had shown photographs of her husband with an employee in his firm. Some video clips are also allegedly shown by the applicant / accused to First Informant Nutan. First Informant Nutan further averred that then on 17th February 2015 the applicant / accused had shown her husband in the company of a female employee of his firm at Shanmukhanand Hall, Matunga. These instances resulted in reposing trust by First Informant on the present applicant / accused. It is averred that this trust was breached by the applicant / accused by informing her that there is likelihood of raid by the Income Tax department at her house.

With this, on 20th July 2015, it is alleged that First Informant had handed over two boxes containing jewellery worth Rs.3 Crore to the present applicant / accused and the present applicant / accused misappropriated the same. Prima facie, it appears that the defence of the applicant / accused is to the effect that under receipt from the First Informant, he had returned whatever he was having with him. The FIR contains averments that on about seven blank papers, the applicant / accused had obtained signatures of First Informant Nutan but had returned only five papers. This implies that two blank papers having signatures of First Informant Nutan were with the applicant / accused himself. On this backdrop, during trial, the effect of alleged acknowledgment will have to be seen. Suffice to note at this stage that neither during the course of inquiry nor during the course of investigation, any jewellery allegedly entrusted by First Informant Nutan to the applicant / accused came to be recovered from him. The learned advocate appearing for the applicant / accused submitted that on the first date of remand, the applicant / accused had informed the learned Metropolitan Magistrate that he has nothing to recover or discover.

14 It is argued that the applicant / accused is holding a licensed revolver and he may threaten First Informant in future and therefore, he is not entitled for bail. This argument does not impress this court and particularly looking to the fact that the applicant / accused as well as the First Informant are relatives. Moreover, nothing tangible is pointed out in support of this argument. It is not pointed out that the applicant / accused has misused his licensed revolver at any point of time nor it is shown that the applicant / accused has history of some IPC offence against him. In the wake of evidence available against the present applicant / accused, as discussed in foregoing paragraphs, as well as the fact that there is nothing to infer that the applicant / accused will abscond or evade trial of the offence alleged against him, I am of the considered opinion that his pre-trial detention after filing of charge-sheet in a Magistrate triable offence, is not warranted. As such the order :

ORDER

i) The application is allowed.

ii) The applicant / accused in Crime No.62 of 2016, registered with DCB, CID, Unit No.VI, for the offences punishable under Sections 420, 385, 465, 467, 468, 506 and 120B of the Indian Penal Code, be released on bail on his executing P.R.Bond in the sum of Rs.50,000/-, and on furnishing 1 or 2 solvent surety in like amount.

iii) As a condition of this order the applicant / accused shall not contact either First Informant Nutan Mange or her relative in any manner.

iv) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.

v) The applicant / accused shall not leave India without the prior permission of the Court and he shall surrender his passport to the Court where his trial is pending.

vi) The applicant / accused should not commit any offence in future till conclusion of his trial.

15 In view of disposal of bail application, pending Criminal Application No.722 of 2017 stands disposed of.

16 At this stage, the learned advocate appearing for the applicant / accused requests for initial release of the applicant / accused on cash bail in order to enable the applicant / accused to arrange for sureties. Therefore, initially, for a period of four weeks, the applicant / accused be released on furnishing cash security of Rs.50,000/-.

17 Parties to act on authenticated copy of this order.

(A. M. BADAR, J.)