IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 505 OF 2017

Mahdoom Bava Bahrudeen ...Applicant
Versus
Central Bureau of Investigation & Anr. ...Respondents

Mr. A. P. Mundargi, Sr. Counsel with Mr. Dinesh Tiwari and Mr. Swapnil Ambure I/b Dinesh Tiwari & Associates for the Applicant

Mr. H. S. Venegavkar for the Respondent No.1-CBI

Ms. P. P. Shinde, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 15th SEPTEMBER, 2017

P.C. :

1. Learned Senior Counsel for the applicant seeks leave to amend. Leave granted. Amendment to be carried out forthwith.

2. Heard learned Counsel for the parties.

3. By this application, the applicant seeks modification/relaxation of condition No.3 of the order dated 4th September, 2017 passed by the

Additional Sessions Judge, Greater Mumbai. The relevant part of the condition of which, modification/relaxation is sought, reads thus (underlined):

> *"3. The prayer regarding deposit of security amount is modified as follows :*
>
> *The clause No. (1) in order dated 21.08.2017 in BA 30/BA/2017 be modified as follows:-*
>
> *Accused no.1 Mahadoom Bava Bahrudeen S/o. Noorul Ameen be released on PB and SB of Rs. 5,00,000/- (Rs. Five lakh only) with liberty to deposit cash bail in the like amount in lieu of solvent surety subject to condition that he should deposit 5% of alleged fraud amount and take note that such security amount is subject to forfeiture in the event of causing intentional delay for trial."*

4. The applicant further prays that the condition No.3 imposed by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, vide order dated 21st August, 2017, also be quashed and set-aside. The said condition reads thus :

> *"3. He should furnish names and addresses, mobile numbers of his two close friends and two blood relatives or close relatives."*

5. Learned Senior Counsel for the applicant submits that the applicant was never arrested after the registration of the case, against him,

by the CBI. He submits that at the time of filing of the charge-sheet, when the applicant appeared before the trial Court, the applicant was taken into custody, by the learned Special Judge. He submits that it is a case, arising out of breach of contractual obligations between the applicant company and the ONGC. He submitted that the applicant is alleged to have caused wrongful loss to the ONGC to the tune of Rs. 114.76 crores. He further submitted that Bank guarantee submitted by the applicant of Rs. 80 crores has been encashed by ONGC and physical assets worth Rs. 56 crores have also been taken over. He further submitted that such an onerous condition ought not to have been imposed whilst granting bail to the applicant.

6. Learned Special P.P. for the CBI opposed the application.

7. Perused the papers. An FIR being No. RC BA1/2014/A0032 was registered as against the applicant, for the alleged offences punishable under Sections 420, 468 and 471 of the Indian Penal Code, by the CBI, Mumbai. Admittedly, the applicant was not arrested pursuant to the registration of the said case. It appears that when the applicant appeared before the trial Court, at the time of the filing of the charge-sheet, the

applicant was taken into custody. Pursuant thereto, the applicant filed an application seeking his enlargement on bail. The learned Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, vide order dated 21st August, 2017 enlarged the applicant on bail on certain terms and conditions. The applicant was directed to be released on P.B. and S.B. of Rs. 5 lakhs with liberty to deposit cash bail in the like amount in lieu of the solvent surety, subject to the condition that he should deposit 10% of the alleged fraud amount. It was also noted that such security amount was subject to forfeiture in the event of causing intentional delay in the trial. It appears that the said order directing the applicant to deposit 10% of the alleged fraud amount was challenged by the applicant in Revision, in the Sessions Court. The learned Additional Sessions Judge was pleased to partly allow the said application and the said condition of deposit of 10% of the alleged fraud amount was modified and the applicant was directed to deposit 5% of the alleged fraud amount, instead of 10%.

8. It is a matter of record, that a sum of Rs. 80 crores has been encashed from the bank guarantee submitted by the applicant and physical assets valued at Rs. 59.72 crores have been taken over by ONGC. In the

facts, the order directing the applicant to deposit initially 10% of the total alleged fraud amount and subsequently modified to 5%, was unjustified. Even the condition imposed by the trial Court directing the applicant to furnish names and addresses, mobile numbers of his two close friends and two blood relatives or close relatives, was not warranted.

9. Considering the aforesaid, the application is allowed on the following terms :

ORDER

(i) The condition No.3, imposed by the learned Additional Sessions Judge, Greater Mumbai, vide order dated 4th September, 2017 stands modified/relaxed. Accordingly, the applicant be released on provisional cash bail in the sum of Rs. 5,00,000/-, for a period of six weeks;

(ii) During the said period of six weeks, the applicant shall furnish PR Bond in the sum of Rs. 5,00,000/- with one or two local solvent sureties in the like amount;

(iii) The condition No. (3) of the order dated 21st August, 2017 passed by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, is also relaxed;

(iv) Rest of the conditions imposed by the orders dated 21st August, 2017 and 4th September, 2017, to remain as it is.

10. Application is disposed of in the above terms.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.