

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2744 OF 2017

KETAN PAREKH

)...APPLICANT

V/s.

**SECURITIES AND EXCHANGE BOARD OF)
INDIA (SEBI) AND ANOTHER**

)...RESPONDENTS

Mr.Abad Ponda and Mr.Nilesh Tribhuvan i/b. Mr.Ashish Agarkar and Burzin Bharucha, Advocate for the Applicant.

Ms.Anubha Rastogi a/w. Mr.Sonawane, AGM, SEBI, Advocate for Respondent No.1.

Mr.Avinash Kamkhedkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 7th DECEMBER 2017

P.C. :

1 The applicant/accused in SEBI Special Case No.203 of 2014, by this application, is seeking his release on bail during pendency of the said case for alleged offences punishable under Sections 26 read with 24(2) and 27 of the Securities and

Exchange Board of India, Act, 1992 (hereinafter referred to as SEBI Act for the sake of brevity).

2 Heard the learned advocate appearing for the applicant/accused. He vehemently argued that the case was instituted by the SEBI against the accused persons in respect of their default to pay penalty of Rs.6.50 lakh within the prescribed period. Without prejudice to the contentions of the applicant/accused, the learned advocate for the applicant/accused submitted that applicant/accused is ready and willing to deposit the entire amount of Rs.6.50 lakh before the learned trial court to show his bonafides. The learned advocate further argued that the complaint against the applicant/accused came to be filed on 13th January 2014. In January 2016 warrant as well as proclamation came to be issued against the present applicant/accused. Subsequently, his advocate assured the court to keep the applicant/accused present, and therefore, the warrant and proclamation came to be stayed. Subsequently, on 24th October 2016, without noticing the present applicant/accused, the case

was taken on board. Ultimately, the applicant/accused surrendered himself on 3rd November 2017 and from that time, he is in judicial custody. The learned advocate further argued that first bail application of the applicant/accused came to be rejected. Then, an undertaking came to be filed before the learned trial court. Willingness to deposit the amount of penalty was shown in the undertaking by taking the entire blame on the applicant/accused himself. However, this was not construed as changed circumstance for warranting entertainment of second bail application moved by the applicant/accused and the learned trial court on 23rd November 2017 rejected second bail application of the applicant/accused. The learned advocate further argued that though the learned trial court gave a finding that he is not satisfied that the applicant/accused will be available for trial, in another similar case on 17th November 2017, the applicant/accused was released on bail by the very same court. The applicant/accused had moved an application for discharge as he has valid grounds to claim discharge. The learned advocate further argued that as there is no extension of remand, the

detention of the applicant/accused in judicial custody was illegal. It is further argued that the offence is punishable for an imprisonment ranging from 1 month to 10 years and the applicant/accused has actually undergone the minimum sentence, and therefore, he is entitled to bail.

3 The learned advocate appearing for the SEBI has vehemently opposed the application by placing reliance on the reply affidavit filed on behalf of SEBI. She argued that the complaint against the present applicant/accused was filed way back in January 2013 and since then, on several addresses of the applicant/accused available on record, attempts were made to serve him. However, on each occasion, the applicant/accused evaded service of summons. The learned advocate further argued that the applicant/accused was served ultimately when the case was pending before the learned Metropolitan Magistrate. Thereafter, it was transferred to the Special court under SEBI Act. There also, the applicant/accused was served with summons on 26th December 2014. However, the applicant/accused did not

appear before the court even once. Upon being argued, the learned advocate for the respondent submitted that the applicant/accused had not even applied for bail or bail during pendency of the special case after service of summons to him on 26th December 2014. The learned advocate, therefore, argued that, the court was constrained to issue proclamation and it was accordingly published. That is how, the applicant/accused surrendered before the learned Special Judge and he is not entitled to bail. The learned advocate placed reliance on observations made by the learned Special Judge while rejecting the applications for bail moved by the applicant/accused. By stating that the learned trial court has fixed the time limit for the trial and the SEBI is ready to abide by that direction. It is further argued that still the applicant/accused is not willing to co-operate the court.

4 I have carefully considered the rival submissions and also perused the record made available. The applicant/accused is one of the directors of Panther Fincap and Management Services Limited. For alleged offences committed by the said Company as

well as its directors, a Criminal Complaint came to be lodged against them by the SEBI in January 2013. Now the said SEBI Special Case No.203 of 2014 is pending for adjudication before the Special court under the SEBI Act. It is not in dispute that on 26th December 2014, summons of the SEBI Special Case No.203 of 2014 was served on the present applicant/accused. Contentions of the learned advocate for the SEBI that applicant/accused did not appear before the learned Special Judge in SEBI Special Case No.203 of 2014 prior to his surrender is not disputed on behalf of the applicant/accused. This makes it clear that despite service of summons on 26th December 2014 till his surrender i.e. on 3rd November 2017, the applicant/accused did not personally appear before the Special Judge trying his case bearing No.203 of 2014.

5 At this juncture, the observations of the learned Special Judge found in paragraphs 8, 9 and 10 of the order dated 10th November 2017 rejecting the first bail application of the applicant/accused will show how the trial proceeded during all these years. The relevant portion from those paragraphs read

thus:

“8 SEBI has been hunting accused no.5 since more than 3 years. Series of warrants and processes were tried to serve on him and other accused at their available known addresses but they purposely evaded the same. In spite of relentless pursuit to serve and execute the legal processes, he always gives the Court the slip. This glaringly indicates his tendency to show utter disregard for legal process. This background is discussed in detail when order was passed below Exhibit 16 and Proclamation was published against him in Times of India and also affixed to the conspicuous parts of his all known places. This was the only last resort to secure his appearance. There is absolutely no change in the situation and background discussed in Order Below Application Exhibit 16 for proclamation. Even the Roznamas were also reproduced in said order below Exhibit 16. When there was no alternative, only then accused no.5 surrendered in this Court and filed this application. This background, constrained me to borrow and reproduce my observations in paragraphs 5 and 6 of the order below application Exhibit 16 as it is as follows :

Order below Exh.16

5. It is to be noted that only Ld. Advocate for accused was addressing the court and accused No.5 Ketan Parekh was always remaining away from the Court. Noting this fact in the roznama dt. 12.02.2016. My Ld. Predecessor believing the words of Ld. Adv. Mr.Agrawal once again stayed the execution of NBW and proclamation against accused no.2, 3 and 5 till next date. Though Ld. Advocate Mr.Agrawal assured the court of my Ld. Predecessor to keep accused no.2, 3 and 5 present on next date and got NBW/Proclamation in daily Newspaper Times of India, stayed till next date, yet against accused no.5 Ketan Parekh never turned to the court. The record clearly indicates that said order of stay till next date passed by my Ld. Predecessor was not continued later on and got vacated automatically.

6. Careful perusal of vakalatnama of Ld. Advocate for accused who made such statement before my Ld. Predecessor indicates that there is no mention of the name of accused no.5 Ketan Parekh. It is therefore evident from the record that accused no.5 not only made false representation before my Ld. Predecessor and got the NBW stayed till next date

by abusing the process but also misused the same. Since then till date he did not even apply for bail. This attitude, conduct of accused no.5 Ketan Parekh not paying any heed to the process of court clearly indicates that he has taken the courts granted. The only fact reflected from such conduct of accused no.5 Ketan Parekh indicates his, “Chalata Hai Attitude” and the way he is dealing with the cases pending in the Court.”

“9 It is evident from the record that accused no.5 never appeared before the court. Same was the case with accused nos.2 to 4. Still my Learned Predecessor many times believed the words of Learned Advocate for accused and stayed the orders of warrants and proclamation, in a hope that these accused would never expose their Learned Advocate that he gave false assurances across the bar on their behalf and got the warrants stayed.”

“10 I am of the opinion that no stringent condition can bind accused no.5. Only proclamation was the last resort which forced accused no.5 to surrender this court and peep his appearance. Therefore, I am of the opinion that this case

independently or alongwith other cases of accused no.5 can be tried on top priority i.e. on day to day basis without which trial is not possible. The court is ready for the same and expects positive response from accused no.5 to try the case by framing charge. Hence, I am of the opinion that fate of trial is not safe if accused no.5 is released on bail. Point No.1 is therefore, answered in the negative and following order is passed :-

ORDER

1. Bail Application Exh.24 stands rejected.
2. Case is being tried on top priority i.e. on day to day basis.
3. The Court is ready to prepone the date of production of accused no.5 which is posted on 15.11.2017 and direct the production of accused no.5 in case parties are ready for the same.
4. Learned Advocates for accused, SEBI and their Learned Prosecutors shall pass the Pursis whether they are ready to follow the Schedule referred above. Even otherwise also accused no.5 is undertrial prisoner, hence, the trial will begin on **15.11.2017** by giving an opportunity to the accused u/s. 227 Cr.PC., if he and his Learned Advocates are not willing to prepone the next date.”

6 After rejecting the first bail application moved by the applicant/accused, the applicant/accused then tendered undertaking cum apology before the learned Special Judge and expressed his willingness to deposit the entire amount of penalty, apart from other contentions raised in that undertaking.

7 The applicant/accused then moved second bail application seeking his release on bail in the said crime. The second bail application moved by the applicant/accused came to be rejected by the learned Special Judge by an order dated 23th November 2017. The gist of reasoning leading to rejection of this application can be found in paragraph 14 of the said order which reads thus :

“14 I carefully studied the guidelines in these two authorities. It is the accused who evaded the process and trial. Even this court has kept the case on day to day basis since he is in judicial custody to finish the same as early as possible, but accused is filing application after application keeping unheard the application for discharge. Learned Counsel Mr. Ponda argued that since 17 days there is no trial. In

fact accused is responsible for the same who wants bail and only bail but does not want to face the trial. SEBI has repeatedly submitted that after fate of discharge applications in case trial begins, then they would finish their evidence within 8 days and case would be disposed of even within 15 days. If accused would have responded the discharge u/s.227 Cr.P.C. by this time trial would have been finished. In this background, I hold that trial is the paramount consideration. Same is not safe, if the accused is released on bail. If accused co-operates the day to day hearing, the question of any mechanical detention does not arise nor the same amounts any pre-trial conviction. Therefore, the ratio in both the authorities relied upon on by the Learned Counsel Mr. Ponda are not applicable to this case.”

8 It is, thus, seen from the record that the applicant/accused was not available for trial right since filing of the complaint against him. The learned Special Judge, upon coming to the conclusion that the applicant/accused is concealing himself in order to see that the warrants will not be served on

him, issued proclamation against the present applicant/accused, which has resulted in surrendering of the present applicant/accused before the learned Special Judge. It is seen from the record that the learned Special Judge has fixed a time schedule for disposal of the special case in a time bound manner. He has held that the case will be tried on day to day basis.

9 The prime consideration for releasing the applicant/accused on bail is assurance that the applicant/accused would be available for trial. In the case in hand, the conduct of not attending the trial even for once till proclamation is issued, prima facie, reflects that the applicant/accused may not be available for trial if he is released on bail. In this view of the matter, the application cannot be entertained to release the applicant/accused on bail. However, the learned trial court can be directed to strictly adhere to the time frame fixed by him for getting the Special Case No.203 of 2014 disposed in a time bound manner. Therefore the order :

ORDER

- i) The application is rejected.
- ii) The learned trial court is directed to decide SEBI Special Case No.203 of 2014 between the parties on top priority by conducting hearing on day to day basis.
- iii) The application is disposed of.

(A. M. BADAR, J.)