IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.746 OF 2018

Sunil Surendrakumar Kakkad,
Age 46 years, Occ.Managing Director,
R/o.F-103, Satellite Centre,
Premchand Nagar Road, Vastrapur,
Ahmedabad-380015. (Currently lodged
at Arthur Road Jail) Applicant
versus
1. The State of Maharashtra
2. Central Bureau of Investigation through
BS and FC, Mumbai. Respondents

Mr.Aabad Ponda I/by Sandeep R. Karnik for applicant.
Ms.Ameeta Kuttikrishnan for respondent no.2.
Mr.M.G.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th December 2018

PC :

1. This is an application for bail in Special Case No.63 of 2017 arising out of FIR No.RCBSM/2015-E0001 dated 16th March 2015. The offences were registered under Sections 467, 468, 471, 120B r/w 420 of Indian Penal Code and 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988. However, on completing investigation charge sheet was filed for the offence u/s 420 of IPC and the offences under Prevention of Corruption Act.

2. The prosecution case is that written complaint dated 11th March 2015 was received by CBI, Mumbai. It was a joint complaint signed by General Manager of State Bank of India, Ahmedabad,

General Manager of Vijaya Bank, Bangalore and Deputy General Manager, Mumbai Circle of Canara Bank. It is alleged that M/s.Click Telecom Private Limited through its director (applicant) approached State Bank of India, IFB, Ahmedabad requesting for credit facilities for setting up of Video and Voice over Broadband Project (`VVOBB') for BSNL for South and East Zone by submitting false financial data. The consortium of banks with SBI as lead bank, Vijaya Bank and Canara Bank as other members, sanctioned fund based and non-fund based credit facilities to the extent of Rs.74.16 crores, Rs.40 crores and Rs.40 crores respectively against the assessed amount of Rs.182.16 crores. SBI sanctioned the loan on 8th November 2012, Vijaya Bank on 11th January 2013 and Canara Bank on 20th March 2013. Due to urgency expressed by company, the banks released the limits pending execution of individual documents. The applicant requested time up to 31st August 2013 for providing collateral security, after availing credit facilities from different banks. Thereafter the applicant was not traceable. The banks later realized that one of the property given as collateral security was already mortgaged to IDBI bank. SBI had disbursed Rs.73 crores, Vijaya Bank Rs.15 crores and Canara Bank Rs.37.61 crores by way of cash credit, over draft, term loan, LC facilities. It is further alleged that out of three LCs established by SBI, one LC for Rs.2.99 crores got devolved on 11th September 2013. Out of 4 LCs established by Canara Bank, 3 for Rs.7.56 crores got devolved on 26thSeptember 2013. It is also alleged that these LCs were opened on related companies without any genuine underlying transactions. It is alleged that out of the term loan component of Rs.126 crores, the applicant got released an amount of Rs.86 crores from all the banks between 19th November 2012 and 13th June 2013 through a pool account maintained at SBI for the said purpose. It is alleged that inquiries revealed that these vendor companies were fully controlled by the applicant and other directors. As such, the monies disbursed were siphoned off without any real purchase of machinery/equipment. Thus the accounts of Click Telecom Pvt.Ltd at SBI and Vijaya Bank became non-performing in September-2013 and on 14th December 2013 in Canara Bank. The offences were registered against applicant as well as other public servants.

3. The applicant preferred an application for bail before learned Magistrate which was rejected on 28th June 2017. Subsequently applicant filed another application before Sessions Court which was rejected on 4th August 2017.

4. Pursuant to registration of FIR the investigation proceeded. Public servants who were impleaded as accused, were not arrested till completion of investigation. On filing of charge sheet they had appeared before the Special Court and they were granted bail. While filing the charge sheet as stated above, offence u/s.467, 468 and 471 of IPC were omitted and charge sheet was filed for the offence u/s 420 of IPC r/w Sections 13(2) and 13(1)(d) of Prevention of Corruption Act.

5. Learned counsel for applicant submitted that the applicant is in custody from 13th May 2017. Primarily the applicant has been charged for the offence u/s 420 of IPC. The said offence is punishable with maximum punishment of seven years. The applicant is in custody for a period of about one and half years. There is no indication of the trial concluding with immediate effect. It is further

submitted that public servants were not arrested during the course of investigation and after filing of charge sheet they were granted bail by the Special Court. It is submitted that the complainant had lodged the complaint after considerable delay. The FIR was lodged on 16th March 2016. The banks had also preferred proceedings before the Debts Recovery Tribunal, at Ahmedabad wherein there was no allegation of cheating. It is submitted that the applicant had preferred an application u/s 482 of Code of Criminal Procedure for quashing other FIRs registered by CBI before Gujarat High Court. Since talks of settlement were going on, the prosecuting agency was directed not to take coercive steps against the applicant. It is further submitted that all other co-accused are on bail. The entire case of prosecution pertains to loan application dated 25th August 2012 which is part of charge sheet. It is submitted that the said loan application was not signed by the applicant. Therefore, question of inducement does not arise. After filing of the charge sheet the only allegation leveled against the applicant is of cheating. The prosecution has to show that the applicant had intention to deceive the banks right from the inception i.e. at the time of applying and taking loan amount. It is submitted that admittedly out of the total amount of Rs.182 crores that was sanctioned, approximately Rs.120 crores had been utilized in the project. The said fact is evident from the documents filed by prosecution along with charge sheet. The statement of prosecution witness Mukesh Shah supports the said contention wherein he has specifically stated that in his lenders engineers certificate that amount of Rs.118.10 crores was utilized for installation of equipments for the said project. Learned counsel for applicant relied upon certificate dated 23rd March 2013 along with said statement. It is thus submitted that this makes evidently clear that had there been any intention to cheat the banks, the applicant could have siphoned off the entire amount or siphoned off remaining amount of Rs.63 crores. He had legally applied for loan to extend his business and since his business did not pay off, the same cannot be termed as a criminal offence of cheating.

6. It is further submitted that there is another certificate issued by Mr.Mukesh Shah which also mentions the fact about utilization of the amounts for equipments and instruments to the tune of Rs.89,72,56,200/-. Pursuant to the said certificate being issued, the Click Telecom Ltd. Write a letter to BSNL about completion of installation of equipments and for inspection by letter dated 30th January 2013. It is submitted that documents on record would clearly reflect that there was no intention to deceive or misappropriate the funds and out of disbursed amount substantial amount has been utilized for equipments and machinery. The case revolves around company deceiving banks to disburse the loan to the company. Learned counsel relied upon inspection reports by SBI officers confirming stock and debtor being in order. It is submitted that these documents are not disputed by prosecution.

7. The applicant had also filed affidavit-in-rejoinder to deal with the objections raised by prosecution by filing reply. In the said rejoinder it is contended that there is suppression of earlier complaint dated 30th June 2014. The present FIR is based on complaint dated 11th March 2015 wherein no reference of earlier complaint has been given. The earlier complaint has been suppressed by the investigating agency. In the original complaint it was stated that company was headed by four directors mentioned

therein. However, the respondents chose to implead the applicant as an accused in the present case. It is further submitted that in the original complaint dated 30^{th} June 2014 it was stated that during the financial year 2013 the parent company Sai Info System (India) Limited expected to finance two high value projects viz order of department of Posts valued at Rs.1,500/- crores and Mumbai CCTV Surveillance project of Rs.700/- crores. Performance BG for Rs.150 crores and Rs.69 crores respectively were sanctioned by the lenders for these projects. Main promoter was vigorously following up for getting these orders and arranging for other formalities, the account of all banks developed stress for non-serving of interest and instalments since the quarter ending December-2012. It is thus stated in the earlier complaint that due to the developments in parent company, in turn affected the operation of other group companies including Click Telecom Pvt.Ltd. Several other averments reflected in the earlier complaint also shows the fact that the applicant had no intention to deceive the banks. It is submitted that the applicant is not the beneficiary of any amount. The charge sheet pertains to Rs.126 crores but there is no document or evidence to show that the applicant is a beneficiary of any amount. It is submitted that most of the documents are signed by other directors who are either arraigned as witnesses or their role was not even investigated by CBI. In the application filed before Debts Recovery Tribunal, the allegation of banks is entirely different for the applicant and the company and it does not contain the allegation of mala fide transactions. It is thus submitted that admittedly there are two versions of the case and the applicant will defend himself at the appropriate stage during trial. However, he cannot be subjected to prolonged incarceration in the light of evidence collected by investigating machinery and considering the fact that applicant is primarily charged for the offence u/s 420 of IPC.

8. Learned counsel for applicant relied upon following decisions :

(a) Sanjay Chandra Vs,. CBI – (2012)1-SCC-40;

(b) Nimmagadda Prasad Vs. CBI (2013)7-SCC-466;

(c) Jagdish Ramniklal Kanani Vs. The State of Maharashtra (Criminal Appeal No.612/2018 arising out of Special Leave Petition (Criminal) No.1076 of 2018, dated 9th April 2018;

(d) Criminal Bail application No.476 of 2017 and group decided on 4th August 2017 of Bombay High Court (Single Bench).

9. Learned counsel for CBI opposes the application for grant of bail. The respondent CBI had filed reply opposing bail. It is submitted that there is voluminous evidence against applicant and he is involved in crime. The grounds agitated by the applicant cannot be considered at this stage. The applicant was responsible for deceiving the banks to the tune of crores of rupees causing losses to the said banks. The material collected during the investigation indicate that the applicant had dishonest intention to cause wrongful loss to the banks and gain to himself. It is submitted that investigation regarding offences alleged by Vijaya Bank and Canara Bank are in progress. The company involved in this case is Click Telecom Pvt.Ltd which was earlier known as Dev Chhaya Construction Pvt.Ltd which was incorporated on 19th June 1998. During the investigation it was revealed that the applicant had participated in the tender process for BSNL VVOBB Project as M/s.Sai Info System (India) Ltd, as applicant was the Chairman and Managing Director of M/s.Sai Info Systems (India) Ltd. For the

purpose of this project BSNL divided its jurisdiction into two zones; (I) Zone-1 and (ii) Zone-2. Each zone comprising of two regions. BSNL had signed franchise agreement with Sai Info System (India) Ltd for execution of project in 2009-10 but Sai Info System launched the project only in 2012 in Ahmedabad. The applicant took over Click Telecom Pvt.Ltd. In 2009. The said company had formed a consortium for bidding for this project. The other consortium member was M/s.ITI Ltd. Who was the lead and M/s.UTStarcom India Telecom Pvt.Ltd who was the OEM partner. The consortium was formed in 2008. In 2009 Click Telecom Pvt.Ltd was taken over by applicant through his shell company M/s.Cameo Infotech Pvt.Ltd and later he had purchased 50% shares in his name and also became director in M/s.Click Telecom Pvt.Ltd. BSNL had signed franchise agreement with ITC Limited on 16th August 2012. Thereafter ITI Ltd signed agreement with M/s.Click Telecom Pvt.Ltd for execution of VVOBB project. The applicant had applied for loan to SBI by furnishing false details that he has been given BSNL VVOBB project for execution vide agreement dated 30th August 2012 and that he requires Rs.168 crores for the purpose of this project. He also misrepresented that he required huge funds for the whole project in the guise of installing equipments in four states viz Bangalore, Hyderabad, Chertala and Kolkata. The applicant. Whereas BSNL had allocated sites only in two places i.e. Bangalore and Kolkata. The applicant had inflated project cost. With a dishonest intention to avail funds from the bank, he gave agreement of M/s.Micro Technologies (India) Ltd and availed of funds from the bank and round tripped the same and siphoned off the whole of term loan through his shell companies. He also availed off cash credit facility from SBI and siphoned off the money through shell companies. The applicant had established LCs favouring his own shell companies and siphoned off funds by transferring the funds to his own company. The applicant siphoned off funds to the tune of Rs.126 crores from the consortium of banks. The investigation also revealed that BSNL had also taken inventory of IDC site at Bangalore immediately after applicant escaped from India and the list so prepared by BSNL does not contain any equipment pertaining to BSNL VVOBB project at the Bangalore site. The investigation also revealed that the applicant did not utilize credit facilities for purchase of any equipment and had diverted the sums dishonestly to his own flagship company. The applicant was not available for a long period of time and he was arrested at Liberia and was deported to India. It is further submitted that in the event applicant is granted bail, it is likely that he would abscond. It is also submitted that the applicant had formed shell companies and they were governed by his relatives and in case applicant is granted bail, he is likely to tamper with the evidence. Learned counsel for CBI relied upon contents of reply filed by the prosecution and submitted that the applicant is involved in crime. Hence, no case for grant of bail is made out. It is further submitted that there is voluminous evidence against applicant showing his involvement in the crime. He is likely to influence the witnesses in the event he is granted bail.

10. Learned counsel for respondent CBI relied upon the decision of Hon'ble Supreme Court in the case of **State of Bihar and another Vs. Amit Kumar @ Bachcha Rai (2017)13-SCC-751**.

11. I have heard both sides. I have perused the documents on record. The FIR was lodged on 16th March 2015. The applicant was arrested on 12th May 2017. Although the offences were registered

under Sections 467, 468 of IPC, the charge sheet was filed for the offence u/s 420 of IPC. The other offences for which the charge sheet was filed, pertain to Prevention of Corruption Act. It is pertinent to note that all the public servants i.e. accused nos.3 to 17 were not arrested during the course of investigation and charge sheet was filed against them when they were arrested. They had appeared before the Special Court and at the time of filing of charge sheet they applied for bail. Learned Special Judge granted bail to accused nos.3 to 10. Thus it is contended that the co-accused who were attributed the role of participating in the crime, were not even arrested and they were granted bail. The applicant cannot be subjected to prolonged incarceration in the custody. It is noted that the applicant is in custody for last about one and half years. One of the primary objection raised by the prosecution is that the applicant was absconding and was arrested at Liberia and thereafter he was deported to India. However, the applicant has continued to be in custody from 12th May 2017. It is pertinent to note that for the offence registered against the applicant by his employees for violation of provident fund deposit, the applicant was arrested and Gujarat High Court granted bail to the applicant. It is submitted that the objection with regards to absconding of the applicant was dealt with by Gujarat High Court and applicant was granted bail. It is pertinent to note that the applicant was deported to India in 2015 and the fact of his absconding was considered by Gujarat High Court in order dated 1st April 2015 wherein bail was granted to the applicant in CR No.I-308 of 203 registered for offences under Sections 409, 418 of IPC as well as for breach of provisions of Employees Provident Fund Act. The applicant is in India since the date of arrest and subsequently he was arrested in present case on

13th May 2017. From the proceedings which were initiated before Gujarat High Court, it is apparent that settlement talks were in progress and in the other proceedings Gujarat High Court has also passed order directing that the respondents therein shall not take any coercive steps against applicant. It is contended that the applicant was arrested on 12th May 2017 in spite of order of no coercive action. The advocate for respondents, however, submitted that the said interim relief was not concerning present case and therefore the applicant was arrested. Be that as it may, admittedly the applicant is in India after he was deported from Liberia and subsequently he was granted bail by Gujarat High Court. It appears that CBI has registered other FIRs but the applicant has been arrested in present case and in other cases the applicant has been arrested by CBI in Mumbai. On perusal of the contentions raised by the applicant as well as respondents, it is apparent that the applicant has pointed out several documents which according to him indicate that there was no intention to cause cheat. It is also contended that proceedings were initiated by the banks before Debts Recovery Tribunal where there was no allegation of cheating. It is also brought to my notice several certificates issued by one of the witness Mukesh Shah indicating that the amount was spent for purchasing equipments. According to applicant, therefore, he has made out arguable case for defence which he would agitate at the time of trial. However, presently, considering the contentions of applicant and fact that he is in custody for one and half years, the applicant may be granted bail.

12. I have noted that all the accused viz accused nos.3 to 10 are granted bail and other accused were not even arrested during the course of investigation. To meet the apprehension of the prosecution

that the applicant is likely to abscond, certain terms and conditions can be imposed. Learned counsel for applicant had placed reliance on several decisions of apex Court in support of his submission that the applicant cannot be detained for an indefinite period considering the fact that he has been charged for offence u/s 420 of IPC. The law is well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court granting bail to consider among other circumstances, the following factors also before granting bail. They are (a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) prima facie satisfaction of the Court in support of the charges. The fact is that the applicant is in prolonged custody. The applicant is available to face trial. The said principle is enunciated from time to time in various decisions of Hon'ble Supreme Court and in the case cited by applicant in the matter of Sanjay Candra Vs. CBI (supra). Paragraph 38 elaborates on this aspects.

13. In the present case it pertinent to note that the matter relates to documents. Considering the contentions of the applicant and objections raised by prosecution, there is no impediment in granting

bail to the applicant. Case of the applicant is that which is based on documents collected during investigation and which were purportedly suppressed by the investigating authority, show that substantial amount was used for project. According to applicant, Rs.182 crores was utilized for project and there is no evidence on record to show that the applicant has benefited or any amount has been transferred to his personal account. Taking into consideration factual matrix and the observations made hereinabove, applicant can be granted bail.

14. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.746 of 2018 is allowed and disposed off;

(ii) The applicant is ordered to be released on bail in connection with Special Case No.63 of 2017 arising out of FIR No.RCBSM/2015-E0001, on furnishing PR bond in the sum of Rs.1,00,000/- with one or more local solvent sureties in the like amount;

(iii) The applicant is directed to deposit his passport with the Trial Court, if not already deposited;

(iv) The applicant shall not leave India without prior permission of Trial Court;

(v) The applicant shall not tamper with evidence or witnesses and shall attend the Trial Court regularly on the dates of hearing, unless exempted for some reason;

(vi) The applicant shall co-operate with the investigation in respect to other cases investigated by CBI in the present case, in relation to transactions of Vijaya Bank and Canara Bank;

(vii) The applicant is permitted to furnish cash security in the sum of Rs.1,00,000/- for a period of four weeks.

(PRAKASH D. NAIK, J.)

MST