IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1381 OF 2018

Rajesh Mishrilal Kanojia,
Address at Shop No.1 AKP, Building Kapad
Bazar, Near Mahim, Police Station,
Mumbai-400 016. Applicant
versus
1. The Union of India, through
CBI, EOW, Mumbai.
2. The State of Maharashtra. Respondents

WITH
CRIMINAL BAIL APPLICATION NO.1382 OF 2018

Asha Prakash Kanojia, Age 40 years,
Address at Shop No.1 AKP, Building Kapad
Bazar, Near Mahim, Police Station,
Mumbai-400 016. Applicant
versus
1. The Union of India, through
CBI, EOW, Mumbai.
2. The State of Maharashtra. Respondents

WITH
CRIMINAL BAIL APPLICATION NO.2240 OF 2018

Prakash Mishrilal Kanojia, Age 42 years,
Address at Shop No.1 AKP, Building Kapad
Bazar, Near Mahim, Police Station,
Mumbai-400 016. Applicant
versus
1. The Union of India, through
CBI, EOW, Mumbai.
2. The State of Maharashtra. Respondents

Mr.Girish Kulkarni I/by Adv.Mrunmai Kulkarni for applicants.
Ms.Ameeta Kuttikrishnan, for respondent no.1.
Mr.A.R.Kapadnis, APP, for respondent no.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd December 2018

PC :

1. These are applications for bail. The applicants were arrested on 29th December 2017 in Special Case No.6 of 2018. The charge sheet was filed for the offences under Sections 420 r/w Section 120B and 471 of Indian Penal Code as well as under Sections 13(2), 13(1)(d) of Prevention of Corruption Act.

2. The respondents had registered FIR No.RC 06/E/2017 on 14th September 2016 for the aforesaid offences. It was alleged that the accused no.1 M/s.Asha Exim Apparels Private Limited, accused no.2 Smt.Asha Kanojia (director of accused no.1), accused no.3 Rajesh Kanojia (director of accused no.1) and accused no.4 Prakash Kanojia (director of accused no.1) had executed transactions with the complainant bank. On the request of applicants-accused, the bank had sanctioned Rs.150 lakhs to accused no.1 for purchase of a plot from Maharashtra Industrial Development Corporation, Mumbai to construct a factory. The plot was allotted to accused no.1. In stead of creating mortgage of the said property in the name of the bank, the plot was sold to private party and proceeds were siphoned off. In order to accommodate, the demand draft/banker's cheque was given by the purchaser of plot in the name of accused no.1. The accused voluntarily opened current account in the name of accused no.1 with HDFC Bank and deposited the sale proceeds of the plot with the said bank. Cash credit limit sanctioned in favour of accused no.1 was not utilized for the purpose for which it was sanctioned. The loan amounts were diverted to the fictitious account opened by accused no.1 and then siphoned off. Pursuant to registration of FIR, the

investigation had proceeded. Statements of various witnesses were recorded. The applicants were not arrested during the course of investigation. On 29th December 2017, the applicants were shown arrested and were produced before the Court when the charge sheet was filed. Learned Special Judge took cognizance of the charge sheet.

3. The applicants preferred an application for bail before the Trial Court which was rejected and since then the applicants are in custody.

4. Learned counsel for applicants submits that during the course of investigation the fact that the applicants were not arrested, indicate that their custodial interrogation was not necessary and on completing investigation the charge sheet was filed. In the circumstances the only apprehension was with regards to availability of the applicants to face the trial. It is further submitted that the applicant in Bail Application No.1381 of 2018 was the guarantor and has not played any role to suggest that he has participated in any transactions. It is further submitted that the entire matter relates to documents which are collected during the course of investigation. The custody of the applicants is not necessary. It is submitted that the maximum punishment which can be imposed for the offences under IPC for which charge sheet has been filed, is up to seven years. The whereabouts of the applicants were always known to the prosecuting agency and the applicants have always joined the investigation as and when called by the concerned officer, which goes to show that they have co-operated with the investigating agency and facilitated the investigation. No purpose would be

served by keeping them in custody as charge sheet is already filed. All the documents, as alleged by the prosecution, are collected and are forming part of the charge sheet. The applicants are in custody from 27th December 2017. Learned counsel relied upon the decision of Supreme Court in the case of **Dataram Singh Vs. State of Uttar Pradesh and another** reported in **CDJ-2019-SC-075**. In view of the ratio laid in the said decision and considering the fact that the applicants were arrested on the date of filing of charge sheet, they may be granted bail. It is submitted that all the applicants are permanent residents of Mumbai and there is no likelihood of their absconding.

5. Learned counsel for respondent no.1 submitted that the charge sheet indicates involvement of the applicants in the crime. The accused no.1 represented by applicants herein had purchased the plot of land which was handed over to them in February-2015. The accused no.1 sold the said land by using the term loan proceeds released by Bank of Baroda to another person and the sake consideration was credited to the account opened by accused no.2 in the name of Asha Exim Apparels Pvt.Ltd. The accused nos.2 and 4 are having criminal antecedents. Two cases are pending against them. They are facing prosecution in CC No.703/PW/2015 and RC No.512 of 2016 wherein the complainant bank was purportedly cheated for a huge amount. If the applicants are released on bail, there is every likelihood that they would repeat such activities and may not be available for trial. She further submitted that the decision relied upon by the advocate for applicants cannot be applied in this case in view of nature of crime committed by the applicants as well as antecedents against them.

6. I have perused the documents on record. The FIR was registered on 14th September 2016 for the offences under Sections 420, 471, 120B of IPC, as well as Sections 13(2) and 13(1)(d) of Prevention of Corruption Act. The factual matrix of the matter is already referred to hereinabove. The investigation proceeded and statements of various witnesses were recorded. Apparently the accused had co-operated during the course of investigation and the investigating authority did not feel it necessary to arrest the accused. The matter relates to documents. On completing the investigation the charge sheet was filed on 29th December 2017. Apparently the applicants were arrested on that day and produced along with charge sheet before the Trial Court. The applicants were taken into custody by the Trial Court. They preferred application for bail which has been rejected. The applicants are accused nos.2, 3 and 4. The accused nos.2 and 3 are directors of accused no.1, and accused no.4 is the guarantor of the transactions executed with the bank. While rejecting the application for bail, one of the grounds considered by the Special Court is that two cases are pending against accused nos.2 and 4 and thus there is likelihood of the accused repeating such offences. Learned counsel for the applicants, on instructions, submits that in view of the situation, the applicants shall not execute any similar transactions with the banks.

7. It is noted that even after filing of the charge sheet, the applicants are in custody for a period of about eleven months.

8. The Supreme Court in the case of Dataram Singh Vs. State of Uttar Pradesh and another (supra) has observed that a fundamental

postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. It is further observed that grant or denial of bail is entirely the discretion of the Judge considering the case. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case. While so introspecting, amongst the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence the witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. If the accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a Judge would need to consider in an appropriate case.

9. Learned counsel for respondents, however, drew my attention to the observations in paragraph 7 of the said decision where it has been observed that it may not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the Judge hearing the matter and

though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Learned counsel for respondents had harped upon the fact that apart from the involvement of the applicants in the present crime, there are antecedents against accused nos.2 and 4. The cases registered against them were of similar nature. It is also noted that the applicants are in detention since the date of arrest. In paragraph 17 of the aforesaid decision the Supreme Court has observed that what is important is that during the entire period of investigation which appear to have been spread over for seven months the accused was not arrested by the investigating officer. In the present case, as stated above, the FIR was registered on 14th September 2016. The charge sheet was filed on 29th December 2017. Taking into consideration the totality of circumstances and considering the factual matrix, there is no necessity of continuing detention of the applicants. The maximum punishment which can be imposed for offence u/s 420 of IPC is seven years. The applicants are primarily prosecuted for offences under Sections 420, 471, 120B of IPC. Since public servants were also prosecuted, charge sheet was also filed for offences under Sections 13(2), 13(1)(d) of Prevention of Corruption Act.

10. In the circumstances, case for grant of bail is made out. Hence, I pass following order :

ORDER

(i) Criminal Bail Application Nos.1381 of 2018, 1382 of 2018 and 2240 of 2018 are allowed and disposed off;

(ii) The applicants are directed to be released on bail in Special Case No.6 of 2018 pending in the Court of learned Special Jude, 47th Court for Greater Bombay, on executing PR bond in the sum of Rs.50,000/- each with one or more sureties in the like amount;

(iii) The applicants shall report CBI, EOW once in a month on every first Saturday between 10 am and 12 noon till further orders;

(iv) The applicants shall not leave India without prior permission of the Trial Judge;

(v) The applicants shall deposit their passports, if any, with the investigating officer forthwith. In case they do not have passports, they shall file an affidavit individually indicating that they do not have passports, and tender the same while executing the bail bonds before the Special Court;

(vi) The applicants shall not tamper with the evidence and shall attend the case before the Special Court regularly, unless exempted by the Special Court for some reason;

(vii) The applicants shall not indulge in similar offences, as are charged in this case and other cases pending against them, in future.

(PRAKASH D. NAIK, J.)

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