IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2384 OF 2018

Manish Kantilal Bosamiya,
R/o.A-501, New Shivam CHS Ltd;
Kulupadi, Borivali (E), Mumbai-400 066.
(In judicial custody at Arthur Road Jail) Applicant
versus
1. Central Bureau of Investigation,
through BS & FC.
2. The State of Maharashtra Respondents

Mr.Vijay Aggarwal I/by Mr.Yashwardhan Tiwari, Ashul Agarwal and Meiron Damania for applicant.
Mr.H.S.Venegaonkar with Ms.P.P.Singhania and T.V.Dhotre for CBI.
Mr.R.M.Pethe, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 29^{th} October 2018

PC :

1. This is an application for bail in CR No.RC RCBSM2018E0001 investigated by Central Bureau of Investigation (`CBI'). The applicant was arrested on 4^{th} March 2018.

2. The FIR was registered by Punjab National Bank through its Deputy General Manager vide complaint dated 29^{th} January 2018 at the branch office of the bank situated at Brady House, Mumbai against some fraudulent issuance of Letters of Undertakings (`LOUs') for and on behalf of set of partnership firms viz M/s.Diamond R. US, M/s.Solar Exports and M/s.Stellar Diamonds, having partners Mr.Nirav Modi, Mr.Neeshal Modi, Smt.Ami Nirav Modi and

Mr.Mehul Choksi. It was transpired that the aforesaid firms had approached the bank and presented the set of import documents to the branch with request to allow buyers credit for making payment to the overseas suppliers. Since there was no sanction limit in the name of above firms, the branch officials requested the firms to furnish at least 100% cash margins for issuing LOUs for raising buyers credit. The firms contended that they have been availing this facility in the past. However, the bank record did not reveal any such facility having been granted to the said firms. On preliminary checking of records it was observed that Mr.Gokuldas Shetty, Deputy Manager, who was posted at the said branch since 31st March 2010 and was working in the foreign exchange department looking after the import section and Mr.Manoj Kharat, had fraudulently issued the LOUs without following prescribed procedure by obtaining required request applications, documents and approval of the authorities and without making entries in the bank system avoiding directions of transactions so made, transmitted swift instructions to the overseas branches of Indian banks for raising buyers credit and funding the account of Punjab National Bank. The funds so raised for payment of import bills have not been utilized for such purpose.

3. The applicant preferred an application for bail before the Sessions Court which was rejected by order dated 12th June 2018. The applicant then preferred another application for bail before the Special Court for CBI, which was rejected on 30th August 2018.

4. Learned counsel for applicant submitted that the applicant has been falsely implicated in this case. The said aspect is vindicated by the fact that he has been cited as a witness by the Enforcement

Directorate in the list of witnesses and the said prosecuting agency is relying on his statement recorded under Section 50 of the Prevention of Money Laundering Act (hereinafter referred to as (`PMLA Act'). It is submitted that the applicant in his statement u/s 50 of PMLA Act has stated that he was not aware about the buyer credit being obtained without margin and statement u/s 50 of PMLA Act is in the nature of judicial proceedings by virtue of the said provision. In the said statement he deposed that he applied for buyers credit on instructions of Mr.Amit Mogia without margin and subsequently he also inquired from him about placement of margin. It is contended that he is not aware as to how accused Nirav Modi got buyers credit without buyer's margin. The statement recorded under Section 50 of PMLA Act stands on a higher footing than the statement u/s 161 of Code of Criminal Procedure, 1973. By virtue of Section 50(4) of PMLA Act, which states that every proceeding under sub-sections 2 and 3 of Section 50 shall be deemed to be judicial proceeding within the meaning of Sections 193 of Indian Penal Code. Such proceedings on recording statement u/s 50 of the PMLA Act, are judicial proceedings. Therefore, the statement of the applicant can be considered for enlarging him on bail. It is further submitted that the applicant is entitled for bail on the ground of parity. Several other persons were granted bail. It is submitted that the applicant is in custody from 4th March 2018. Investigation is completed and charge sheet has been filed. The applicant cannot be subjected to indefinite incarceration. The trial would not be concluded soon. Subsequent to rejection of his bail application, the co-accused was granted bail having higher role in the case. Learned counsel for applicant pointed the role played by the co-accused who are granted bail and the role of applicant and submitted that the applicant is entitled for bail on the ground of parity. It is submitted that accused Gokuldas Shetty, Manoj Khaval, Bacchu Tiawri, Yashwal Joshi, Praful Sawant, Vipul Ambani , Kavita Mankikar, Rajiv Jindal, Mohinder Sharma were granted bail by the Special Court. It is further submitted that the persons who are granted bail had played vital role in the case of prosecution. Considering their designation and overt act attributed to them, the applicant may be granted bail. It is submitted that the co-accused Vipul Ambani who had played primary role in the crime, was granted bail by the Sessions Court. There are several witnesses and the trial may not be concluded. The co-accused Vipul Ambani has been granted bail by the same Court which has rejected the application of the applicant. The said accused was actively involved in the matter pertaining to issuance of LOUs on behalf of three firms. Learned counsel pointed out the nature of evidence against co-accused Vipul Ambani and the applicant. It is further submitted that several senior top bank officials have not been arrested and charge sheet was filed against them without their arrest. However, the applicant has been discriminated subjecting him to arrest.

5. It is submitted that continued incarceration of the applicant is not necessary as he had fully co-operated during investigation of the matter. Trial is not likely to commence in the near future and continued detention of the applicant at the pre-trial stage does not appear to be warranted. The charge sheet has been filed against the applicant. The case of prosecution is full of contradictions.

6. Learned counsel for applicant adverted to several decisions of Hon'ble Supreme Court and this Court in support of application for bail, which are as follows :

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

(ii) State of Kerala Vs. Ranee (2011)1-SCC-784;

(iii) Vaishali Mudale Vs. State of Maharashtra – delivered by this Court in Criminal Bail Application No.1332 of 2017;

(iv) Ashok Singh Vs. CBI delivered by this Court in Criminal Bail Application No.617 of 2018.

7. Learned counsel for CBI vehemently opposed the application for bail. The prosecution has filed its reply. It is contended by the prosecution that the applicant has conspired with other accused with intent to commit cheating and caused undue pecuniary advantage to Nirav Modi, Neeshal Modi, Smt.Ami Nirav Modi, Mehul Choksi and other partners of M/s.Diamond R US, M/s.Solar Exports and M/s.Steller Diamonds and caused wrongful loss to Punjab National Bank to the tune of Rs.280.70 crores during the year 2017. It is submitted that the applicant is not entitled for bail on the ground of parity. The accused who are released on bail were not concerned with issuance of LOU. However, the applicant has played a major role in respect to issuance of LOU. The prosecution case is that LOU has been issued on instructions/participation of the applicant. It is submitted that the applicant is also not entitled for bail on the ground that he is referred to as a witness in the prosecution under the PMLA Act. Section 3 of PMLA Act relates to proceeds of crime. Role in PMLA is different. The parameters for considering the scope of the prosecution under PMLA Act has to be kept in mind. Thus, merely because the applicant is an witness in the said prosecution, he cannot be exonerated from the present case. He has played a major role in this case. The applicant was working as in-charge of Finance Department of Firestar Group of Companies from 2009 to 2015.

Learned counsel for respondent pointed the statement of Mr.Dinkaran Pillai (PW-8), wherein it is stated that on receipt of import documents, if buyers credit is required, as per instructions of the applicant, they used to prepare the buyers credit application, undertaking, external commercial borrowing forms and forward it to Mr.Hemant Bhat and Ms.Kavita Mankikar who were the authorized signatories for operating and signing documents on behalf of the aforesaid accounts of M/s.Diamond R US, M/s.Solar Exports and M/s.Stellar Diamonds. He has further stated that the applicant was obtaining quotes from buyers credit on behalf of M/s.Diamond R US M/s.Stellar Diamonds and M/s.Solar Exports from foreign based banks.

8. It is further submitted that the applicant may not be involved in money laundering, whereas, he is party to criminal conspiracy to cheat Punjab National Bank by getting fraudulent LOUs issued for availing buyers credit for bogus business transactions by the accused firms viz Steller Diamonds, Solar Exports and Diamond U. US. The enforcement Directorate has filed their complaint before the concerned Court under Sections 3 and 4 of PMLA Act only, whereas CBI has filed charge sheet against 26 persons for the offences under Sections 120B r/w 409, 420, Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act. The offence of money laundering is being investigated and it is within the exclusive domain of Enforcement Directorate. However, in case of offence under the PC Act and IPC, the investigation is conducted by CBI and the accused are charge sheeted. The charge sheet filed by CBI is different from the complaint filed by Enforcement Directorate. The applicant was actively involved in conspiracy with Subhash Parab and Arjun Patil in

contact with main accused Nirav Modi and directly involved in preparation of applications for issuance of fraudulent LOUs on behalf of the aforesaid companies without required margin as there was no fund available. Thus the applicant was aware that the LOUs issued by Punjab National Bank officials are fraudulent and was party to the conspiracy to cheat the complainant bank. The role of the applicant is more prominent than the other accused who are granted bail. The issuance of fraudulent LOUs commenced from 2011 onwards and continued up to 2018 and the funds so received fraudulently were utilized over a period of time. It is further submitted that the accused Nirav Modi, Neeshal Modi and Subhash Parab are absconding. There are about 1208 LOUs issued fraudulently by Punjab National Bank from 2011 to 2017 and the investigation is still going on which is spread outside India Dubai, UAE, Hong Kong, Belgium etc. It is suspected that the ingotten money is invested in various countries by accused Nirav Modi and details are yet to be unearthed. It is submitted that the record of the case indicate that there was fraud involving crores of rupees and the main accused Nirav Modi and Neeshal Modi have escaped from the clutches of investigation process. The applicant is the part of criminal conspiracy with other accused. If the applicant is granted bail, he will help other absconding accused viz Nirav Modi, Neeshal Modi and Subhash Parab to escape the clutches of law. The investigation is continuously going on. There is every possibility that the applicant will tamper with the evidence if granted bail. The economic offences are required to be dealt with strictly as it affects the society at large. It is therefore prayed that the application for bail be rejected.

9. I have perused the documents on record. The case was

registered with CBI on 31st January 2018 on the basis of complaint received from the Punjab National Bank, Zonal Office, Mumbai against the accused. The applicant was working as in-charge of Finance Department of Firestar Group of Companies from 2009 to 2015. Witness Dinakaran Pillai had stated that on receipt of import documents, if the buyers credit is required, as per the instructions of the applicant, they used to prepare the buyers credit application, undertaking, external commercial borrowings form and forward it to Hemant Bhat or Ms.Kavita Mankikar who were the authorized signatories for operating and signing documents on behalf of the three accounts of M/s.Diamond R US, M/s.Solar Exports and M/s.Steller Diamonds. He further stated that the applicant was obtaining quotes for buyers credit on behalf of M/s.Diamond R US, M/s.Solar Exports and M/s.Steller Diamonds from foreign based banks. The modus operandi adopted by Firestar Group of Companies was that the pearl necklace/bracelet exported to the foreign dummy companies in Hong Kong gets dismounted by the Hong Kong dummy companies and re-exported to the Indian companies in varying quantities. Investigation revealed that to avoid detection of the fraud, the dummy companies at Hong Kong also did similar business with Firestar International Private Limited and Firestar Diamond Pvt.Ltd. This revealed that rotation and round tripping of same goods was carried within Firestar group under different names of companies. According to prosecution, the applicant, Mr.Subhash Parab and Arjun Patil were privy to preparation of fraudulent LOUs. They used to sit together and discuss, prepare fraudulent LOUs. These three persons were aware that supporting documents were fraudulent. There is direct accusation against the applicant regarding fabrication of LOUs. The applicant has close association with the absconding accused Nirav Modi and Neeshal Modi. The investigation conducted by Enforcement Directorate and the one conducted by CBI are distinct. Merely on the ground that the applicant has been cited as a witness in PMLA case, he cannot be absolved from the present prosecution and that cannot be considered as a ground for bail. The prosecution under PMLA Act relates to the offence of money laundering. In the present case, the investigating authority has collected sufficient evidence to show the involvement of the applicant in the present crime. The applicant was actively involved in conspiracy with the co-accused Subhash Parab and Arjun Patil and the main accused Nirav Modi and directly involved in preparation of applications for issuance of fraudulent LOUs on behalf of the aforesaid companies without required margin as there was no fund available. The applicant was aware that the LOUs issued by Punjab National Bank officials are fraudulent and was party to the crime. The role of the applicant can be distinguished from the other persons who are granted bail. The funds obtained fraudulently were utilized for a period of time. According to prosecution, the applicant was preparing the documents pertaining to LOUs and was approaching the foreign banks for quote interest rate. He along with Arjun Patil was privy to the preparation of fraudulent LOUs applications. He was close confident of main accused Nirav Modi and Nishal Modi and acting on directions of the said accused. It is the prosecution case that the activities of issuance of fraudulent LOUs started from 2011 onwards which was continued up to 2018.

10. The FIR was registered on 31st January 2018 on the basis of complaint lodged by the Punjab National Bank for issuance of fraudulent LOUs during the period from 9th February 2017 to 14th

February 2017. Subsequently the complainant furnished additional information that several LOUs were issued. The bank also lost amount to the extent of Rs.500 crores as legitimate commission towards issuance of the said LOUs. For settling the liabilities of earlier LOUs, fresh LOUs were issued and the funds received from the foreign banks were utilized for repayment of earlier LOUs and the magnitude of the fraud was much higher than what was expected. The applicant has relied upon several decisions in support of the prayer for grant of bail. It is not necessary to analyze the said decisions as it is a settled principle of law as to what parameters are to be considered for grant of bail. It is pertinent to note that while granting bail, the Court has to keep in mind the nature of accusations, nature of evidence in support thereof, the severity of punishment, the character of the accused, the circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of State and other similar kind of considerations. It is required to be noted that the main accused persons are absconding. The investigation is continuing in respect of 1,208 LOUs issued during the period 2011 to 2017 and the entire conspiracy, diversion of funds, acquisition of properties in India and abroad out of the ill gotten funds, are yet to be identified. On receipt of import documents, if the buyers credit is required, as per the instructions of the applicant, the buyers credit application was being prepared, along with undertaking, external commercial borrowings form and forwarding it to the co-accused who were the authorized signatories for operating and signing the documents of accounts on behalf of the said three firms. The documents are the part of the charge sheet. It is pertinent to note that the applicant was actively involved with the main accused in getting issued LOUs from Punjab National Bank vide Exhibit-D-12 to D-19 without any sanction limit and without providing 100% margin. These documents were fraudulent, as the facility of LOU was not sanctioned by the bank authority. PW-28 Dinkaran Pillai has specifically attributed overt act to the applicant and the other accused as stated hereinabove. The applicant was looking after collection of export and remittance of import in respect of the said three firms. He was preparing the documents pertaining to LOUs. It is the case of the prosecution that the applicant along with the other accused were party privy to the preparation of fraudulent LOUs. They used to sit together, discuss and prepare it in isolation. PW-28 has specifically stated that accused Arjun Patil used to work very closely with the applicant and absconding accused Subhash Parab. These three persons were aware that the supporting documents were fraudulent. PW-30 Rahul Sisodia has described the role of applicant in preparation of fraudulent LOU application. This process was going on since 2011. The applicant was part of the said process since long time. He is also closely associated with the master mind of the said offence viz Nirav Modi and Nishal Modi. The applicant was apparently working and acting as per the directions of main accused. It is also transpired that the applicant was closely working with co-accused Hiten Pandya, Arjun Patil and Hemant Bhat. It is contended that the other accused are granted bail and primarily the accused Vipul Ambani who has played a vital role has been granted bail by the Sessions Court. While granting bail to accused Vipul Ambani the Sessions Court has observed that the consideration of bail application, alleged role and alleged accusations against the accused is required to be seen. It was further observed that apparently there are no direct allegations against the said accused regarding fabrication of bogus LOUs, and merely because he was the President of Finance of said firms, it cannot be presumed that he is the master mind of the offence. The case of the applicant can be distinguished from the other accused who are granted bail. There is sufficient evidence showing involvement of applicant, more particularly showing his complicity in preparation of fraudulent LOUs which is the primary circumstance in commission of present crime. In the light of the nature of evidence, the case for grant of bail to the applicant is not made out. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.2384 of 2018 is rejected;

(ii) The observations made in this order are for considering the application for bail and the Trial Court shall not be influenced by the same at the time of trial.

(PRAKASH D. NAIK, J.)

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