IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2672 OF 2018

Raj Relu Gehani, Age 59 years,
Occ.Service, R/o.A-202, 2nd Floor,
Jay Apartment, Near Vihar Hotel,
Nehru Road, Santacruz (E), Mumbai-400 055. Applicant
(Presently lodged at Arthur Road Jail)
versus
The State of Maharashtra and another Respondents

Dr.Sujay Kantawala with Mr.Yogesh Rohira and Ms.Aishwarya Kantawala I/by Mr.Yogesh Rohira for applicant.
Ms.A.A.Takalkar, APP, for State.
Ms.Ameeta Kuttikrishnan for CBI.

CORAM : PRAKASH D. NAIK, J.
DATE : 26th October 2018

PC :

1. This is an application for bail in connection with CR No.RCBAI/2018/A022-CBI-ACB (RA No.922 of 2018) registered under Section 120B of Indian Penal Code and Section 7 of Prevention of Corruption Act, 1988.

2. The case of prosecution is that a written complaint was received on 25th September 2018 by Superintendent of Police, CBI, ACB, Mumbai from Mr.Mahesh Balchandra Gaokar working with M/s.Jai Ambe and Ganesh Exports, Mumbai against applicant who was working as Assistant Commissioner of Customs and one Sadguru Sharan Upadhyay-the Appraising Officer of Customs, who were posted at Group 5B appraising at Sahar Cargo Complex, alleging demand of illegal gratification for allowing clearance of the import consignment. The said firm deals in imports of automobile spare

parts and fabrics. On 21st September 2018 the firm had filed customs bill of entry dated 21st September 2018 consisting of automobile spare parts of Steering and Radiator Fans assembly from Prague port by Air to arrive at Sahar Cargo Complex for customs clearance. On 22nd September 2018, the complainant had approached the Appraising Officer Mr.Upadhyay, who had demanded bribe of Rs.10,000/- for appraising the bill of entry. However, he was paid Rs.4,000/-. It is further alleged that on 24th September 2018 the complainant's office shocked to see the status screen pending with the Assistant Commissioner, Group 5 B (applicant herein), he approached the applicant and requested to finally assess the bill of entry in question for which demand of Rs.2,000/- was made. He was informed that Rs.4,000/- was paid to Mr.Upadhyay. However, the accused insisted for payment of Rs.2,000/- for assessment and clearance of the imported consignment. Hence, the complaint was lodged.

3. Subsequently a trap was laid by CBI, Mumbai and the applicant was apprehended while demanding and allegedly accepting illegal gratification of Rs.2,000/- for final assessment and clearance of bill of entry in respect of imported consignment on 25th September 2018. The applicant was shown arrested on 25th September 2018.

4. The applicant preferred application for bail before Special Judge for CBI which has been rejected on 5th October 2018.

5. Learned counsel for applicant submitted that the applicant is serving as Assistant Commissioner of Customs since several years.

On account of his arrest he has been suspended. It is further submitted that the applicant is arrested on 25th September 2018 and since then he is in custody. Presently he is in judicial custody and further detention of the applicant is not necessary. It is submitted that after his arrest he was produced before appropriate Court for remand on 26th September 2018 and was initially remanded to police custody. However, subsequently the Court declined to extend police custody and he was remanded to judicial custody on 29th September 2018. It is submitted that he is in custody and he has been interrogated. The prosecution is relying on recovery of Rs.10,000/- and Rs.8,505/- which was purportedly recovered from his office and the documents in relation to investment and cash amount of Rs.11 lakh from his residence. It is submitted that the prosecution has not established any link of said documents/investment or cash in the present crime. The prosecution has not initiated any proceedings u/s 13(e) of Prevention of Corruption Act. The applicant is in custody in relation to the offence u/s 7 of the Act. There is no evidence of any conspiracy as alleged by the prosecution and he has been subjected to custody from the date of arrest. The co-accused who has allegedly accepted Rs.4,000/- has not been arrested by the investigating machinery. It is submitted that taking into consideration the prosecution case as it is, for the offence for which the applicant has been charged, he may not be subjected to further detention. It is therefore prayed that bail may be granted to the applicant.

6. Learned counsel for respondent submitted that the applicant was arrested while accepting bribe of Rs.2,000/-. The applicant is involved in offence u/s 7 of Prevention of Corruption Act. The

investigation is in progress. During the course of investigation the cash amount, as stated above, has been recovered from the office of applicant and Cash of Rs.11 lakh and other investment documents were also recovered from his house. The investigation in relation to the said recovery is in progress. The applicant may tamper with evidence in the event he is granted bail. It is submitted that the applicant has committed grave offence under the said Act and investigation is at the crucial stage. Therefore, bail may not be granted.

7. I have perused the documents which are annexed to the application and the reply filed by prosecution opposing grant of bail. The applicant was allegedly found accepting Rs.2,000/- on 25th September 2018. He was arrested on that day and was produced before the competent Court on 26th September 2018. On perusal of the remand application dated 26th September 2018 it is apparent that the grounds for remand were to confront the arrested accused person with the incriminating evidence/documents collected during trap proceedings. The voice samples of the accused persons were to be recorded. The accused is required to be interrogated regarding the modus operandi of accepting the bribe and investigation is required to be done in relation to recovery of cash of Rs.10,000/- and Rs.8,505/- from his cabin. It is further stated that the applicant is required to be interrogated for involvement of any other official of ACC Sahar Mumbai as daily hundreds of bills of entry are filed and which indicates bigger corruption. It is also stated that house search was carried out at his residence and various investment documents were seized. In that regard the accused has to be confronted with the seized incriminating documents. Learned Special Judge

remanded the applicant to police custody for three days. It is pertinent to note that on the next date of remand he was produced on 29th September 2018 and the investigating machinery had sought his police custody. I have perused the remand application dated 29th September 2018. The grounds for remand were to conduct inquiry in relation to documents, immovable and movable properties etc. The grounds for remand which were submitted in the first remand application were also reiterated in the second remand application. It is pertinent to note that the Court while passing the order on the second remand application had refused to extend police custody. On perusal of the order dated 29th September 2018 it is apparent that the Court has granted magisterial custody remand till 12th October 2018. It was observed by the Court that the grounds cited seeking extension of police custody would further reveals that the investigating officer intended to confront the accused regarding several bank accounts opened by the accused and his family members regarding investment of huge amounts in FDR which is certainly a subject matter of independent investigation , if a case is registered under the provisions of Section 13(1)(e) of PC Act, which is not yet done. On all aforesaid counts further PC of applicant is not justified. Therefore, it is apparent that police custody was refused by the Court while remanding the applicant when he was produced for remand on 29th September 2018. The case is proceeded on the allegation that applicant has accepted Rs.2,000/- towards bribe. The investigation has proceeded. Presently the applicant is prosecuted for offence u/s 7 of Prevention of Corruption Act r/w Section 120B of Indian Penal Code. The documents are already collected by police. There is no prosecution or charge presently u/s 13(1)(e) of Prevention of Corruption Act. Taking into consideration the aforesaid aspects, further detention of applicant is not necessary and he is entitled to be released on bail.

8. Hence, I pass following order :

ORDER

(i) The applicant be released on bail in connection with CR No. RCBAI/2018/A022-CBI-ACB (RA No.922 of 2018) on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(ii) The applicant shall report the investigating officer, CBI, ACB once in a week on every Friday between 10 am and 12 noon for a period of one month, and thereafter as and when called for;

(iii) The applicant shall not tamper with evidence;

(iv) The applicant is permitted to furnish cash security of Rs.25,000/- for a period of four weeks;

(v) Criminal Bail Application No.2672 of 2018 is disposed off.

(PRAKASH D. NAIK, J.)

MST