IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2766 OF 2017

Sunita Tulsidas Sharma, Age 46 years,
Occ.Service, R/o.At Flat No.604,
Nav-Jeevan `A', Sector 5, SGS Colony,
Antop Hill, Mumbai-400 037.
(Presently lodged at Byculla Jail) Applicant
versus
1. The State of Maharashtra.
2. Ramswarup Soni, Age 44 years,
R/o.Flat No.91, Kalpataru Harmoni,
Sion Koliwada, Sion, Mumbai-400 022. Respondents

Ms.Sonal Parab I/by Rajeev Sawant & Associates for applicant.
Mr.Rushikesh Kale I/by V.V.Purwant for intervenor.
Mr.R.M.Pethe, APP, for State.

CORAM : PRAKASH D. NAIK, J.
DATE : 21st September 2018

PC :

1. The applicant is seeking bail in connection with CR No.144 of 2014 (earlier FIR No.54 of 2014) registered with Sion Police Station for offences under Sections 406, 420 of Indian Penal Code. The applicant was arrested on 5th August 2017. The investigation is completed and charge sheet has been filed.

2. The case of prosecution is that the first informant is in the business of making ornaments of gold and diamonds in the name and style as S.K.Ornaments Private Limited. The complainant is from Rajasthan. Mr.Gyanchand Soni is known to him since last several years. In July-2011, Gyanchand Soni has contacted the informant and told him that his sister-in-law (applicant herein) is in

Mumbai and she intends to purchase ornaments to the tune of Rs.15 lakh. Same may be given to her by taking cheques as security from her. Since the accused was related to Gyanchand Soni, he trusted her and agreed to hand over the ornaments to her. On 2nd August 2011, applicant contacted the informant along with her husband. It was informed that the husband of applicant was the Passport Officer. The accused further represented that she is dealing in the trade of ornaments She further represented that she would sell the ornaments and in the event she is not in a position to sell the same, the ornamens would be returned to the complainant. The applicant took ornaments worth Rs.8,63,500/- for personal use and issued cheque to the complainant. The accused had informed the complainant that cheque should not be deposited and before the date stipulated in the cheque, the amount would be paid to the complainant. On 18th August 2011 the accused visited the shop of complainant and paid the amount as aforesaid in cash. Since first transaction was successful, the complainant had trusted the accused and agreed to part with gold ornaments subsequently. On 18th August 2011 the accused again took gold ornaments worth Rs.1,80,000/- and gave post dated cheques. Before the date of cheque, the accused paid the said amount to the complainant in cash. Thus transactions were taken place up to 2012 on 40 to 45 occasions and accused had taken gold ornaments in the form of bangles, necklace, chain, finger rings, bracelet etc.. The accused purchased the gold ornaments in bulk quantity. Hence inquiries were made by applicant as to what is she doing with the ornaments. The accused informed that she is exporting the ornaments to United States of America and business is managed with the help of her husband. Subsequently the accused placed orders with the complainant for ornaments from time to time. The ornaments were delivered to the applicant by the staff of complainant at her office on several occasions. It is further alleged that whenever the ornaments were being delivered to the accused, she used to hand over post dated cheque. Initially time to take payment was extended. Since payments were made by the accused diligently at the initial point of time, the complainant had developed trust with her and subsequently on several occasions the ornaments were given to the accused. On calculation it was found that applicant was supposed to pay Rs.98,00,000/-. She was shown the calculations and the amount was demanded from her. The accused requested for time and stated that she would make the payment. Even after giving assurances, the accused purchased gold ornaments in bulk quantity but payment was not made on time. The complainant, therefore, suspected the conduct of applicant. The accused stopped making payment towards purchase of gold ornaments which were delivered to her from July-2012. The accused thereafter has paid Rs.10,00,000/- on 28th September 2012 and thereafter payment was not made. In October-2012 the accused visited the shop of complainant and informed him that the person with whom she was having transactions in U.S; is not keeping well and therefore she could not complete her transactions. She assured that after receipt of amount from the person with whom she had transactions, the amount would be paid to the complainant and she sought time to make payment. It is further alleged that upon calculation of the amounts of transactions in respect to the ornaments which were handed over to applicant, it is found that the value of the said ornaments were to the tune of Rs.4,70,33,721/-. The intimation was given to the applicant about payment of said amount. However, she failed to make payment and threatened that in case complainant harasses her, she would commit suicide. In the situation, complainant was constrained to contact Gyanchand Soni and intimated him about the aforesaid transactions and the dues which were outstanding from the applicant. Gyanchand Soni also tried to convince the applicant. It was contended by applicant-accused that there are no dues from applicant. In January-2013 the applicant handed over two cheques, first bearing No.373937 dated 23rd January 2013 for Rs.2,85,77,893/- and another bearing No.373936 dated 24th January 2013 for Rs.1,84,55,900/-. The said cheques were deposited by the complainant in his bank. However, it was found that the account was closed. Hence, it is alleged that the accused had defrauded the complainant for Rs.4,70,33,721/-. The FIR was, therefore, registered on 3rd May 2014.

3. The applicant had preferred an application for bail before the Court of Sessions, which was rejected on 8th November 2017.

4. Learned counsel for applicant submitted that the entire investigation is complete and charge sheet has been filed. The applicant is in custody from 5th August 2017 and further detention of the applicant is not necessary. It is further submitted that the dispute is in relation to the settlement of accounts in respect to the purchases made by applicant. It is submitted that the offence under Section 420 of Indian Penal Code is not made out as admittedly from time to time payment was made to the complainant. It is submitted that there is no evidence to substantiate that the applicant is supposed to make payment of Rs.4,70,33,721/-. It is further submitted that the transactions were held between both the parties since 2011 and from time to time the applicant had made payments

to the complainant. It is submitted that cheques which were given as security to the complainant, were deposited by him, which were dishonoured and in respect to that, proceedings under Section 138 of Negotiable Instruments Act are initiated by the complainant. It is submitted that the FIR does not disclose as to how the complainant had arrived at the figure of the aforesaid amount towards said transactions. It is submitted that although the applicant was arrested in other cases, she has been granted bail by respective Courts. Learned counsel for applicant pointed out the statement of Karan Kabawalla recorded on 17th November 2014 in which it was stated that cheques were filled up by him on instructions of complainant by inserting the amount of Rs.4,70,33,721/- in both the cheques. She further pointed out the statement of Sunil Kalan recorded on 27th September 2017 in which it was mentioned that the applicant and her daughter had taken gold loan from Capital First by mortgaging gold ornaments and payment in respect to that was made and the gold was released. She also pointed out the statement of Abdul Nabisa Patel recorded on 26th September 2017, who has also referred to the transactions of the applicant and loan obtained by applicant and her daughter. It is also mentioned that the said loan has been paid by them. Reference is also made to statement of Avinash Pandhre recorded on 21st June 2017 who has also referred to the transactions made by applicant with his company and clearance about the same.

5. Learned APP submitted that huge quantity of gold was taken by applicant and payment in that regard was not made although assurances were given. He relied upon the contents of affidavit filed by investigating officer wherein it is stated that gold ornaments

worth Rs.4,70,33,721/- was parted to the applicant and she has failed to pay the said amount. It is submitted that there are several receipts in respect to the said transactions which fortifies the fact that gold worth crores of rupees was given to the applicant and the payment in that regard was not made by her. It is further submitted that the statement of complainant, Gyanchand Soni and other employees of the complainant, fortify the claim of prosecution of delivery of gold ornaments to the applicant. It is further submitted that the applicant had mortgaged gold and availed of loan from several non-banking institutions, such as Muthoot Finance Limited, Indian Info Line Finance Limited etc.. It is further submitted that two other cases were registered against her vide CR No.11 of 2017 and CR No.337 of 2018 which are pending. It is submitted that several cases under Section 138 of Negotiable Instruments Act are pending against applicant in the respective Courts. There are about eight cases under the provisions of Negotiable Instruments Act pending against the applicant. It is submitted that taking into consideration the nature of offence committed by the applicant, she is not entitled for bail.

6. Learned counsel for intervenor has reiterated the submissions advanced by learned APP and submitted that the transactions are supported by several documents and statements of witnesses recorded during the course of investigation which support the prosecution case. It is submitted that on trust ensued between the applicant and complainant, the gold ornaments worth crores of rupees were given to her in respect to which payment was not made by applicant, which is to the tune of Rs.4,70,33,721/-.

7. I have perused the documents on record. The FIR was registered on 13th May 2014 and investigation has proceeded since then. The applicant is arrested on 9th May 2017 and since then she is in custody. On perusal of FIR and other documents on record it appears that there were several transactions held between the applicant and complainant. The FIR refers to about 40 to 45 transactions which were transacted initially and thereafter several transactions took place between complainant and applicant. In the FIR it is stated that calculations which were made initially disclosed that applicant was supposed to make payment of Rs.98,00,000/- to the complainant. However, on the basis of assurances given by applicant, the complainant had parted gold and the total outstanding from the applicant was Rs.4,70,33,721/- on the date of registration of FIR. According to the complainant, the complainant is relying on receipts of delivery made to applicant. The charge sheet which is voluminous contains various documents including statements, income tax returns, letters and copies of other proceedings initiated against applicant. On perusal of said documents and photographs, it appears that transaction between the applicant and complainant had initiated right from 2012 till registration of FIR. The calculation of the said amount which is arrived at and mentioned in the FIR is based on said rough receipts as alleged by the prosecution. However, it is not clear as to how this exact amount is arrived at. It is also pertinent to note that the complainant has alleged that two cheques were issued for the amounts stated above by the applicant. On perusal of statement of witness, it is apparent that the amount was filled up on calculation of outstanding by the said person on the instructions of complainant. The statements of other persons with whom the applicant had transactions, indicate that same were

cleared. There are two cases registered against the applicant in which applicant has been granted bail by the respective Courts. The cheques were deposited and since same were dishonoured, proceedings under Section 138 of Negotiable Instruments Act are already initiated against the applicant. The investigation is complete and charge sheet is filed. The further detention of applicant is not necessary. The applicant is lady and she is in custody since 9th May 2017. Considering the aforesaid circumstances, bail can be granted to the applicant on certain terms and conditions.

8. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.2766 of 2017 is allowed and disposed off;

(ii) The applicant be released on bail in connection with CR No. 54 of 2014 investigated by Economic Offences Wing, Unit No.1, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall report Economic Offences Wing, Unit No.1, once in a month on every first Monday between 10 am and 12 noon till further orders;

(iv) The applicant shall not tamper with evidence;

(v) It is made clear that the observations made in this order are for considering present application and Trial Court shall not be influenced by the same.

(PRAKASH D. NAIK, J.)

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