IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3062 OF 2018

Ashok Damodar Biyani .. Applicant
Vs.
State of Maharashtra .. Respondent

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Mr.Ghanshyam Upadhyay i/b. M/s.Law Juris, Advocate for the Applicant.
Ms.A.A. Takalkar, APP for the Respondent – State.
Mr.V.V. Devkate, PSI, Bandup Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 10, 2018.

P.C. :

This is an application for bail under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 18th October, 2018, in connection with C.R.No.251 of 2015, registered with Bhandup Police Station, Mumbai, for the offences punishable under Sections 420, 406 read with 34 of Indian Penal Code ("IPC", for short). First Information Report ("FIR") was lodged on 6th May, 2015.

2 The case of the prosecution is that the first informant was desirous to avail loan for his business, was introduced by one

Santosh Satam. The applicant had introduced him to one Jogesh Jerath, the owner of a Finance Company by name TOTAL SINO and said Jogesh Jerath agreed to provide requisite finance/loan to the first informant to the tune of Rs.35 crores at 9% interest and for that purpose, the said Jogesh Jerath informed the first informant that he would be required to pay 11% of the said loan amount of Rs.35 crores, which comes to Rs.3,85 crores towards processing charges and, thus, he desired the first informant to initially pay him Rs.1.50 crores. According to the first informant, by believing the applicant be paid Rs.55 lakhs between the period from 1st March, 2013 to 26th March,2013, by transferring the same through RTGS/NEFT in the account of the company of Jogesh Jerath by name Subh Marketing Private Limited. It is alleged that the complainant had paid a sum of Rs.57 lakhs cash between the period from February 2013 to March 2013 to the applicant towards third party security, which the applicant promised to arrange for the first informant in connection with the said loan, as according to the first informant, the applicant desired him to pay the said amount in cash by claiming that the person who would be providing security, has asked the said amount in cash. It is further alleged that on 10th April, 2013, when the complainant remitted further sum of Rs.38 lakhs in the account of Jogesh Jerath, he paid the said amount to the applicant upon being asked by Jogesh Jerath to do so, as Jogesh Jerath claimed to have some technical reasons for not getting the said amount transferred in his account. It is, therefore, alleged that a sum of Rs.55 lakhs was paid to Jogesh Jerath and Rs.95 lakhs were paid to the applicant. According to the first informant, the applicant and Jogesh Jerath failed to make available the aforesaid requisite loan to him after prolonging the matter on various grounds, he called upon them to refund his money paid to them, but they failed to do so and thereby cheated him. In view of that, FIR was lodged on 6th May, 2015.

3 Applicant has been arrested on 17th October, 2018, and, presently he is in judicial custody. The primary contention of the applicant is that he was already subjected to arrest in C.R.No.344 of 2014, registered with the same police station on 24th September, 2014. It is submitted that in the said FIR also the applicant was impleaded as an accused alongwith Jogesh Jerath and another person. The said FIR was registered for offence punishable under Sections 406 and 420 of IPC. It is submitted that the statement of the present complainant was also recorded on 15th March, 2015. Applicant was arrested in the said case and

was subsequently granted bail. On completing investigation charge–sheet has been filed in connection with C.R.No.344 of 2014. The present complainant has been cited as one of the witness (witness no.6) in the said case. There is no proof of payment of cash amount to the applicant. Learned counsel submitted that having investigated the allegations spelt out in the present FIR, the applicant ought not to have been subjected to arrest in the present case. The registration of present FIR was also unwarranted. The applicant is in custody from the date of arrest and further detention of the applicant is not necessary. Learned counsel also pointed out that in connection with the present FIR i.e. C.R.No.251 of 2015, registered with Bhandup Police Station, Mumbai, the applicant had preferred an application for Anticipatory Bail, before this Court in which the interim order was passed on 25th May,2018, which is continued from time to time, till this application is decided. It is therefore submitted that the applicant has cooperated with the investigation as during the pendency of this application, he was directed to make himself available to the investigating officer by attending the police station. It is also submitted that the said application was ultimately rejected on 12th July, 2018. In pursuant to that the applicant had been arrested in the present case. It is, therefore, submitted that in the aforesaid circumstances, the applicant be directed to be released on bail. Learned APP submitted that the applicant was involved in two different transactions. The present FIR relates to the loan transaction of complainant and the representation made to complainant Surendra Patil. It is submitted that the applicant had admitted vide E-mail that he has accepted the amount as alleged by the complainant. It is, therefore, submitted that the applicant is involved in two cases, and, therefore, the case for grant of bail is not made out. Both the cases are distinct in nature.

4 I have perused the FIR and all other documents, which are annexed to this application. It is apparent that C.R.No.344 of 2014, was registered with the same police station on 24th September, 2014, on the complaint of one Jeetendra Ghadigaonkar. Applicant was impleaded as an accused. From the remand application, it is apparent that the grievance of the present complainant was also investigated. It is also seen that the statement of the present complainant was also recorded during the course of investigation in C.R.No.344 of 2014. On perusal of the said statement, it can be seen that the allegations spelt out in the present FIR are reflected in the statement of the complainant,

which was recorded in the earlier case, as witness. Present complainant is also referred to as witness no.6 in the said case. Applicant was arrested and investigation is completed in the earlier FIR and charge–sheet is already filed. The applicant was subsequently granted bail. It is also noted that the applicant had been granted interim protection in this crime vide order passed in Anticipatory Bail Application No.757 of 2015, on 28th May, 2018, which order continued till rejection of the application. The matter is investigated in the earlier FIR, which is apparent from the statement of the complainant. Taking into consideration the aforesaid circumstances and considering the fact that the applicant had earlier attended the police station in accordance with the directions issued by the Court and that he is in custody from date of arrest, bail can be granted. The applicant was also in custody in relation to earlier FIR.

5 Hence, I pass the following order:

:: O R D E R ::

(i) Bail Application No.3062 of 2018, is allowed;

(ii) Applicant is directed to be released on bail in connection with C.R.No.251 of 2015, registered with Bhandup Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

(iii) Applicant shall report the investigating officer at Bhandup Police Station, Mumbai, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further order;

(iv) Applicant shall attend the trial Court on the date of hearing of the case regularly, unless exempted by the Court;

(v) Applicant is permitted to furnish cash security of Rs.25,000/- in lieu of surety for a period of six weeks from today;

(vi) Bail Application No.3062 of 2018, stands disposed of.

(**PRAKASH D. NAIK, J.)**