IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.337 OF 2019

Naresh Karulal Jain .. Applicant
Vs.
State of Maharashtra & Anr. .. Respondents

……

Mr.Niranjan Mundargi i/b. Prasanna A. Bhangale, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent – State.

Mr.Maroof M. Khan, Advocate for Respondent No.2.

Mr.Shivaji Devkar, API, Dadar Police Station, present.

……

CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 21, 2019.

<u>P.C.</u> :

This is an application for bail in M.E.C.R.No.2 of 2015, registered with Dadar police station, Mumbai, on 5th June, 2015. Complainant filed a private complaint in which directions were issued under Section 156 of Cr.P.C. The offences were allegedly committed under Sections 406, 420 323, 504 , 506(II) of Indian Penal Code ("IPC", for short).

2 The case of the prosecution is that the complainant is a licenced money lender. He accepts gold as collateral and lends

money as loan. He would charge interest. Gold was deposited with his Banks. He was earning interest from Banks. The Applicant showed attractive schemes and created impression of financial strength. The Applicant told informant to keep gold with him. The informant entered into agreement with Applicant. First informant took loan from Applicant on various occasions. From 2012 to 2015 first informant gave 6500 gold packets as mortgage to Applicant. 4700 packets were given back to customers. In December 2014, 1300 packets were due from Applicant. He stopped returning packets. The Applicant stated that the first informant owes Rs.2 crores fifty lakhs. Dispute was referred to Jain Panch Committee. They were advised to settle. First informant gave cash to Applicant to settle dispute. The Applicant charged receipts and increased loan amount and interest rate.

3 The Applicant preferred applications for anticipatory bail before this Court and Sessions Court, which were rejected. The Applicant also move before Hon'ble Supreme Court. On the basis of statement made by counsels, matter was remanded back to High Court and interim was extended by four weeks. The Applicant moved application for directions/modifications. Interim protection was vacated. The Applicant was arrested on 24th

August, 2018. Application for bail was rejected by Court of Magistrate and Sessions Court. Charge–sheet is filed.

4 Learned Advocate for the Applicant submitted that there is no element of penal offences in the transaction, which is purely a business transactions. Attempts were made to resolve the dispute between the parties. It is submitted that presently according to the prosecution, the liability is to the extent of Rs.2 crores. Learned Counsel pointed out the statement of Bhavarlal Jain, who had acted as a Mediator for resolving the dispute. It is submitted that the contents of the said statement would indicate that the complainant is suppressing vital facts. He gave money to the complainant. Learned counsel for the Applicants drew my attention to the statement of one Ganesh Kalikatti and several other statements and contended that it is a dispute relating to business transaction between two individuals. It is also submitted that Applicant had approached the Apex Court before his arrest, and, initially statement was made that the gold packets would be returned, however, after realizing that it would not be possible to do so, although the Apex Court granted protection for a stipulated period, Applicant had moved before the Apex Court before expiry of interim protection and shown his inability to

deposit the gold packets and in view of that the interim protection was vacated. It is submitted that all the offences are triable by Magistrate. Applicant is in custody from 24th August, 2018.

5 Learned APP submitted that the documents on record clearly establish that the gold ornaments were entrusted to the Applicant. Some of the ornaments were melted by him and he has misappropriated the same. It is submitted that the complainant was duped to the extent of Rs.2 crores. It is submitted that the entire property could not be recovered from the Applicant, which was in his custody.

6 Learned counsel for the complainant opposed the Application for bail. He reiterated the submissions advanced by learned APP. It is submitted that the Applicant–accused has been suppressing facts. The gold valued at Rs.2 crores were misappropriated by him. About 386 gold packets could not be recovered from the Applicant. The gold was entrusted to the Complainant by his customers. He, therefore, submitted that bail may not be granted to the Applicant.

7 On perusal of FIR and other documents as well as statements of witnesses, it appears that there was a transaction with regards to entrustment of gold between two parties. It is a transaction between two individuals. The statements also indicate that attempts were made to resolve the dispute. The investigation is completed and charge–sheet is filed. Applicant is in custody for more than a year. Further detention is not called for. All the offences are triable by the Magistrate. In the circumstances, bail can be granted to the applicant.

8 Hence, I pass the following order:

:: O R D E R ::

(i) Bail Application No.337 of 2019, is allowed;

(ii) Applicant be released on bail in connection with M.E.C.R.No.2 of 2016, registered with Dadar Police Station, Mumbai, on his executing P.R. Bond in the sum of Rs.1 Lakh, with one or two sureties in the like amount;

(ii) Applicant shall attend the concerned police Station once in a month on 1st Saturday of the month between 10:00 a.m. to 12:00 noon;

(iii) Applicant shall not tamper with the prosecution evidence;

(iv) Bail Application stands disposed of.

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