

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.459 OF 2018

Kiran Bhau Bhai Tandel, Age 35 years, R/o.Shantabai Sohula, Municipal Marathi School, Room No.1, Room No.5, Chembur, Mumbai-400 071.	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL BAIL APPLICATION NO.375 OF 2018

Kiran Bhau Bhai Tandel, Age 35 years, R/o.Shantabai Sohula, Municipal Marathi School, Room No.1, Room No.5, Chembur, Mumbai-400 071.	Applicant
versus	
The State of Maharashtra	Respondent

Adv.Mansha Khemka with Adv.Bhagyashree Upadhyay I/by Khemka
& Associates for applicant.
Mr.A.R.Kapadnis, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th February 2019

PC :

1. The applicant is seeking bail under Section 439 of Code of Criminal Procedure, 1973. Bail Application No.375 of 2018 pertains to CR No.215 of 2013 registered with Govandi Police Station investigated by Economic Offences Wing, Unit-3 vide CR No.41 of 2014. The applicant was arrested on 15th January 2014. The offences were registered under Sections 465, 467, 468, 471, 420, 255, 260, 120B of Indian Penal Code.

Whereas, Bail Application No.459 of 2018 pertains to CR No.255 of 2013 registered with Chembur Police Station investigated by Economic Offences Wing, Unit-3, Crime Branch, vide CR No.42 of 2014. The applicant was arrested on 28th December 2013. The offences were registered under Sections 420, 465, 467, 468, 471, 255, 260, 34 of Indian Penal Code.

2. In connection with CR No.215 of 2013 which is subject matter of BA No.375 of 2018, the applicant had preferred application for bail before this Court which was numbered as Bail Application No.934 of 2014. The same was rejected on 9th July 2014. The applicant thereafter preferred Bail Application No.538 of 2015 which was rejected on 27th March 2015. The applicant had also preferred application for bail in connection with CR No.255 of 2013 which is subject matter of Bail Application No.459 of 2018, which was numbered as Bail Application No.990 of 2014 was rejected by aforesaid order dated 9th July 2014. While rejecting the said applications it was observed that the allegation against the applicant is that he got opened bogus account in the name of Trunk Manager, Bombay Port Trust, by posing himself to be Praful Chandorkar who was supposed to operate the said account. It was further observed that there are cases relating to opening of three bogus accounts in a similar manner by the applicant. From the account opening forms and the statements recorded in the course of investigation, it cannot be doubted at this state that indeed the applicant had opened bogus accounts, as alleged. It was further observed that the applicant appears to have opened bogus account which was to be jointly operated by two persons – Praful Chandorkar and Dharmesh Rasal and in the joint account the applicant posed himself as Dharmesh Rasal. Considering the existence of strong prima facie case which is

of serious offence and the applicant appears to have indulged in not one solitary act of forgery and cheating but in number of such acts. While rejecting Bail Application No.538 of 2015, the trial was expedited and the Trial Court was directed to complete the trial within six months. Liberty was granted to prefer application for bail, in the event the trial is not over within stipulated period.

3. The applicant had preferred applications for bail before Sessions Court in both cases which were rejected vide order dated 28th November 2017.

4. Learned advocate for applicant submits that there is delay in trial. The applicant is in custody since 2014 and in spite of that there is no progress in the trial. It is submitted that there are several witnesses to be examined which would take enormous time to conclude the trial. The co-accused were granted bail. It is submitted that further detention of the applicant is not necessary. In spite of expediting the trial, the Trial Court could not conclude the trial within stipulated time. The material gathered during investigation is falling short for being pleaded admissible in evidence. It is submitted that liberty was granted to the applicant to prefer fresh application for bail in the event trial is not concluded within six months. The Sessions Court has rejected the applications on 28th November 2017. Learned counsel for applicant relied upon roznama of the Trial Court in support of submissions that trial has been delayed. Reliance is placed on the decision of this Court in case of Himanshu Singh Rajawat Vs. CBI delivered in Criminal Bail Application No.710 of 2014 where bail was granted considering the fact that accused was in custody for a period of about seven years and there is no progress in the trial.

5. Learned APP submitted that there is no delay at the instance of prosecution in conducting trial. The prosecution is willing to proceed with the trial. It is submitted that trial has already commenced and investigating officer is in the witness box. There are about 20 accused. The applicant had preferred application for clubbing Sessions Case Nos.803 of 2014 and 804 of 2014. It is submitted that the accused had also filed discharge application.

6. The applicant is in custody in both the cases since long. Application for bail preferred by the applicant in both these cases were rejected on merits by order dated 9th July 2014. Subsequently the applicant had preferred another application for bail before this Court, which was also rejected vide order dated 27th March 2015 and the trial was expedited with liberty to apply afresh for bail in the event trial is not concluded in stipulated time. During pendency of these applications this Court had called for the report from the Trial Court with regards to the status of the trial vide order dated 3rd April 2018 and the report was received on 13-4-2018. In the report dated 13.4.2018 submitted by the Trial Court it was stated that applicant is accused in CR No.41 of 2014 of Economic Offences Wing and CR No.42 of 2014 of Economic Offences Wing. Out of CR No.41 of 2014, two sessions cases are filed bearing Sessions Case No.803 of 2014 and 804 of 2014. There are 18 accused for the Sessions Case No.803 of 2014 and 14 accused in Sessions Case No.804 of 2014. There are two more cases arising out of the transaction from the same offence. Sessions Case No.802 of 2014 arises out of CR No.42 of 2014 which is against the applicant. Therefore, other Sessions Case No.58 of 2014 and Sessions Case No.802 of 2014 are required to be tried at the same time simultaneously one after another. It was further

stated that charge is framed vide Exhibit-11 on 18th June 2016 in Sessions Case No.803 of 2014 and the matter was posted for evidence. The evidence was not recorded as the witnesses were absent. Other Sessions Case No.803 of 2014 and Sessions Case No.804 of 2014 were posted for framing charge. The charge could not be framed as some of the accused used to remain absent. I have also perused the report dated 8th October 2018 wherein it is stated that the accused-applicant is accused in CR No.41 of 2014 of Economic Offences Wing and CR No.42 of 2014 of Economic Offences Wing. Out of CR No.41 of 2014 two sessions cases are filed bearing Sessions Case No.803 of 2014 and 804 of 2014. In Sessions Case No.803 of 2014 charge was framed on 8th June 2018. The applicant filed application vide Exhibit-138 on 14th August 2018 for clubbing the Sessions Case No.803 of 2014 with Sessions Case No.804 of 2014. The said matter is posted for passing order. Out of CR No.42 of 2014 two sessions cases are filed bearing Sessions Case No.58 of 2014 and Sessions Case No.802 of 2014. In Sessions Case No.58 of 2014 there are 19 accused and in Sessions Case No.802 of 2014 there is one accused. In Sessions Case No.802 of 2014 charge was framed vide Exhibit-11 on 18th June 2016 and the matter was posted for evidence. The examination-in-chief of prosecution witness no.1 had commenced on 7th July 2018. The accused filed application vide Exhibit-33 for clubbing Sessions Case No.802 of 2014 with Sessions Case No.58 of 2014. Admittedly the application for clubbing was subsequently allowed.

7. It is noted that applications were rejected on merits by this Court. Considering the aforesaid circumstances, bail cannot be granted to the applicant. The applicant had also preferred Bail

Application No.102 of 2016 which was disposed off by order dated 24th October 2016. However, considering the fact that applicant is in custody since long, the prosecution shall make an endeavour to produce the witnesses and proceed with examination of witnesses. The Trial Court shall take into consideration the fact that applicant is in custody from the date of his arrest and shall make an endeavour to conclude the trial expeditiously. Priority be given to this case. The defence is also expected to co-operate in expeditiously concluding trial and shall not cause any delay. It is expected that Trial Court would conclude trial as expeditiously as possible. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.459 of 2018 and Criminal Bail Application No.375 of 2018 are rejected.

(PRAKASH D. NAIK, J.)

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