IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLIATION NO.1493 OF 2018

Sunita Mohan Tupasoundarya .. Applicant
Vs.
State of Maharashtra .. Respondent

WITH
CRIMINAL BAIL APPLIATION NO.1095 OF 2018

Hirachand Hasmukhlal Shah .. Applicant
Vs.
State of Maharashtra .. Respondent

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Mr.Milind Deshmukh a/w. Mr.Prasanna Shahane and Mr.Shailesh Chavan i/b. Mr.Vijay R. Garad, Advocate for the Applicant in BA 1493 of 2018.

Mr.Pravesh A. Gupta, Advocate for the applicant in BA 1095 of 2018.

Mrs.G.P. Mulekar, APP for Respondent – State.

Ms.Swati Mehta, Advocate for the Intervener.

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CORAM : PRAKASH D. NAIK, J.

DATE : JANUARY 28, 2019.

P.C.

These are applications for bail under Section 439 of Code of Criminal Procedure. Applicant in BA No.1493 of 2018 was arrested on 7th September, 2017, whereas the applicant in BA No.1095 of 2018 was arrested on 21st September, 2017, in connection with C.R.No.83 of 2017, registered with Pant Nagar

Police Station, Mumbai, for the offences under Sections 420, 465, 467, 468, 471, 474 read with Section 34 of Indian Penal Code ("IPC", for short).

2 The case of the prosecution is that the complainant and his friend had over heard the conversation of the applicant and two other persons about the Chief Minister's Scheme for allotment of residential premises. They were discussing about the allotment letter issued to applicant in B.A.1493 of 2018, regarding premises. In view of that the complainant approached the applicant. In pursuant to that the complainant was informed about the scheme of the Government with regards to the allotment of premises. Applicant allegedly represented that she can provide house from Chief Minister's quota. They were introduced to the co-accused Dilip Bhosale, who was supposed to liaison for allotment. The victim including complainant and others were induced to part with the amount. It is alleged that the accused nos.1 and 2 had given Demand Draft to co-accused Ganesh Pujari, Rakesh Morey, Yogesh being Darji, Bhalchandra Chauhan and some of the Demand Drafts were signed to the applicant for discounting through padmavati Nagarik Sahakari Patsanstha Ltd., Bhayender having account with Catholic Bank and Canara Bank, Calcutta and got the Demand Drafts cleared. The applicant in BA No.1493 of 2018, had acted in connivance with the co-accused. She was part of the transaction, inducing the victims to hand over the

amount. On completing the investigation, charge–sheet was filed.

3 Learned counsel for the applicant in BA No.1493 of 2018, submitted that the applicant is a lady, she is in custody from 7th September, 2017. It is submitted that the applicant is not the master mind of the crime. Primary role has been attributed to accused Dilip Bhosale. It is further pointed out that the entire amount collected by the applicant was handed over to co-accused Dilip Bhosale. The transaction is of 2013-14. First Information Report ("FIR", for short) was lodged after a period of about two years. The amount of Rs.5,00,000/-, was given to the complainant by way of cheque by the applicant. It is further submitted that in the similar cases, the applicant has been granted bail.

4 Learned counsel for the applicant in BA No.1095 of 2018, submitted that he has not played any role in false representation made to the victim. He is not concerned with the allotment of premises. The role that has been attributed to him is discounting the Demand Draft, which was given to him through one Darji, and, which is allegedly amount of proceeds of the crime. The prosecution case is that the applicant had received the commission to the tune of 15% for discounting the amount. Applicant is in custody from the date of arrest. Investigation is completed and charge–sheet is already filed.

5 I have perused the documents on record. Applicant in BA No.1493 of 2018, is a lady and she is in custody from the date of arrest. Perusal of the statement of the complainant which is part of charge–sheet, it is apparent that, the complainant, co-accused Dilip Bhosale and the applicant had discussion on 19th October, 2013. It was intimated by the applicant that the amount of Rs.26,01,000/-, was handed over to the co-accused Dilip Bhosale. The complainant verified and confirmed the said fact and the co-accused Dilip Bhosale has admitted that he has received amount of Rs.26,01,000/-. The contention of the applicant is that accused has also issued the allotment letter in the name of her father and she is not instrumental in preparing any forged and fabricated documents.

6 It appears that the complainant and another person over heard the conversation and had approached the applicant–Sunita. It is pertinent to note that in other cases, the said applicant has been granted bail. She is in custody for substantial time. As far as the accused in the Bail Application No.1095 of 2018, is concerned, he was not party to the primary offence. The role attributed to him with regards to discounting the Demand Draft. The applicant is the Chairman of said Cooperative Credit Society. It is submitted by counsel for applicant that not a single case is filed against said credit society. The society is authorised to discount cheques, Demand Draft, Bills, Hundies etc. It is

submitted that the applicant was informed to accused no.4 by one agent and requested for discounting of Demand Draft bearing round seal/stamp of BMMP and MHADA. Panchanama dated 23rd September, 2017, shows that no single forged documents or seal/stamp relating to offices of Government is recovered from applicant. It is submitted that applicant was assured by accused no.4 that Demand Drafts are genuine. The entire amount of Rs.57,51,000/-, covered under Demand Draft was transferred to account of accused no.4. The FIR indicate that the said applicant had received the amount by way of commission to the tune of 15 percent and the rest of the amount was handed over to the co-accused. Considering the role attributed to the said applicant, further detention is not required. Learned APP submitted that during the course of investigation, statement of son of the applicant in BA No.1095 of 2018, was recorded, in which it is evident that he was asked to sign the Demand draft by the applicant to represent that it is signed by the Corporation. It is submitted that considering the version of the said witness, the transactions executed by the said accused were fraudulent, and, therefore, he is not entitled for bail. It is alleged that said applicant violated rules and regulations. There are criminal antecedents. The applicant is on bail in those cases. Learned advocate for the intervener adopted arguments of learned APP. In this case, applicant is in custody for a period of about 16 months.

7 Considering the observations made herienabove, further detention of the applicants is not necessary and bail can be granted to them.

8 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Bail Application Nos.1493 and 1095 of 2018, are allowed;

(ii) Applicants are directed to be released on bail in connection with C.R.No.83 of 2017, registered with Pant Nagar Police Station, Mumbai, on their furnishing P.R. Bond in the sum of Rs.25,000/-, each with one or more sureties in the like amount;

(iii) Applicants shall attend Pant Nagar Police Station, Mumbai,, once in a month on first Saturday between 11:00 a.m. to 01:00 p.m., till further orders;

(iv) Applicants shall not tamper with the evidence and shall attend the trial Court on the date of hearing of the case regularly, unless exempted by the Court;

(v) Bail Applications stand disposed of.

(PRAKASH D. NAIK, J.)