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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1550 OF 2019

Santosh Jeevanlal Bhavsar ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr.P.G.Sarda, for the Applicant.

Ms. Veera Shinde, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 24th SEPTEMBER, 2019

P.C. :

1. Heard learned counsel for the parties.

2. This is the third bail application preferred by the applicant. In both the earlier bail applications preferred by the applicant, orders were passed by this Court (Coram: Revati Mohite Dere, J.). In the first bail application of the applicant, it is clearly stated that the application was not heard on merits and as the applicant sought leave to withdraw the application, the same was disposed of as withdrawn. The second bail application preferred by the applicant, was produced and withdrawn. The said application was also not heard on merits.

3. By this third bail application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-203 of 2016, registered with the Naupada Police Station, Thane, for the alleged offences punishable under Sections 420 r/w 34 of the Indian Penal Code and under Section 3 of Maharashtra Protection of Interest of Depositors Act (MPID Act).

4. Learned Counsel for the applicant submits that the applicant was only an employee of 'Dark Horse Travel Solutions' which was a proprietory concern. He submits that one Sohan Amar was the proprietor of the said 'Dark Horse Travel Solutions'. Learned Counsel relied on page nos.167 and 185 of the compilation, in support of his submission that Sohan Amar was the proprietor of 'Dark Horse Travel Solutions'. He submits that even taking the prosecution case as it stands, no offence under Section 3 of the MPID Act, is disclosed, *qua* the applicant. He further submits that the applicant is in custody since 17th July, 2016, for almost 3 years and that investigation is complete and charge-sheet is filed.

5. Learned APP opposed the application. Learned APP has filed an affidavit of Suman Anand Chavan, Police Inspector, Economic Offences Wing, Thane City.

6. Perused the papers. According to the complainant – Danny Samual Nadar, he learnt that Dark Horse Travel Solutions, at Thane was in the business of Tourism; that the said company would take vehicles of the clients on rental basis and would use the said vehicles for tourist business and make monthly payment to the vehicle owners; and that if a person did not own a vehicle, the company would assist him in purchasing the vehicle on loan basis. It is alleged by the complaint that when he visited the said company, two persons viz. Pooja and Madhuri offered a proposal and lured him, by stating that if he gives his car for tourist business to the company, then the company would pay Rs.22,000/- and if he did not have a vehicle, then the company would finance him for purchasing a Corolla/Fortuner vehicle by making down payment of Rs.2,50,000/- and after completing the period of payment, the four wheeler would be transferred in his name. Pursuant to the said offer, the complainant paid Rs.2,50,000/- for purchase of 3 Fortuner vehicles in the Bank Account of the said company i.e. Dark Horse Travel Solutions, in its IDBI Bank Account. It is alleged that the applicant issued payment receipt to the complainant on receiving the payment. It is alleged that when the complainant went to the applicant’s company after a month, he found that the office of the company was locked, pursuant to which, the complainant lodged the aforesaid complaint. There are 150 persons, who are alleged to have been cheated to the tune of

Rs.1,20,22,000/- .

7. Learned Counsel for the applicant relied on certain documents, in particular, documents on page nos.167 and 185 of the compilation, in support of his submission to show that 'Dark Horse Travel Solutions' was a proprietory concern and not a company, as alleged by the prosecution. The document at page 167, is a letter given by the proprietor Sohan Amar for 'Dark Horse Travel Solutions' to the Branch Manager of IDBI Bank, requesting for one cheque leaf for cash withdrawal. The document at page no.185 is a letter issued to 'Whomsoever it may concern' by Vaibhav M. Mittal & Co., a Chartered Accountant Company, certifying that Sohan Amar is the proprietor of 'Dark Horse Travel Solutions', carrying on business from 306, Dev Corpora, Opp. Cadbury, Khopat, Thane. The said certificate was issued by the said Chartered Accountants Company on the request of Sohan Amar for the purpose of opening a bank account. Learned Counsel for the Applicant states that the prosecution has not placed on record any document of the ROC, to show that 'Dark Horse Travel Solutions', was not a proprietory concern but a company. He submits that the applicant's 5 bank accounts have been frozen and as such Rs.23 lakhs odd have been secured. Learned Counsel for the applicant on instructions states that the applicant will not file any application for defreezing of the

said bank accounts, till appropriate orders are passed by the trial Court, at the end of the trial.

8. Learned APP relies on the Service Agreement entered into between ‘M/s. Gloria Banquets and Business Centres Pvt Ltd’ and ‘Dark Horse Travel Solutions’, through its Director - Santosh Jeevanlal Bhavsar (applicant) to show the complicity of the applicant. She submits that similar Service Agreements have been entered into with several persons.

9. Perused the papers. A perusal of the cheque issued to ‘M/s. Gloria Banquets and Business Centres Pvt Ltd’ by ‘Dark Horse Travel Solutions’, bears the signature of Sohan Amar, as its proprietor. It is informed that Sohan Amar is still absconding. There are other documents in the compilation tendered by the learned APP today, which compilation is is taken on record and marked `X' for identification. Some of the documents in the said compilation, *prima facie*, show that ‘Dark Horse Travel Solutions’, is a proprietory concern. One such document tendered in the compilation is a Mandate Letter dated 11th July, 2016 to the Branch Manager, IDBI Bank Limited, MIDC Branch by Sohan Amar as the proprietor of ‘Dark Horse Travel Solutions’, authorizing the applicant, to sign the cheques and to honour all the cheques/orders drawn on the said

account, to the extent of the amount lying in the said account. No overdraft was however permitted. The prosecution has not placed on record any document to show that 'Dark Horse Travel Solutions' is a company and not a proprietory concern. *Prima facie,* the documents on record appear to be contrary i.e. it shows that 'Dark Horse Travel Solutions' is a proprietory concern. Be that as it may, it is for the trial Court to decide the same at the time of the trial. The applicant is in custody since July 2016 i.e. for more than 3 years. Investigation is complete and charge-sheet is filed.

10. Considering the aforesaid, the application is allowed on the following terms and conditions:-

ORDER

i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more local solvent sureties in the like amount;

ii) The Applicant shall attend the office of the E.O.W., on the first Saturday of every month, between 10:00 a.m. and 11:00 a.m., till the conclusion of the trial;

iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

iv) The Applicant before his release, shall deposit his passport, if any, in the trial Court;

v) The Applicant shall not leave the country, without the permission of the trial Court.

vi) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;

vii) The Applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;

viii) An undertaking to the aforesaid clauses (ii) to (vii), shall be filed by the Applicant's, in the Registry of the trial Court, within two weeks of his release;

ix) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

11. The Application is allowed and disposed of in above terms.

12. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.