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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1718 OF 2019

Mohd. Ismail Mohd. Ashfaque Shaikh@ Jacob Joseph ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr.Mubin Solkar i/b. Mr. Mohd. Aamir Farooque Sopariwala, for Applicant.

Mrs. P.P. Shinde, APP, for the Respondent – State.

A.P.I. Mr. Liladhar Patil, Varli Police Station present.

CORAM : REVATI MOHITE DERE, J.

DATE : 25.09.2019

P.C.

1. Heard learned counsel for the parties.

2. By this application, the Applicant seeks his enlargement on bail in connection with C.R. No. 21 of 2019 registered with the Pydhonie Police Station, Mumbai for the alleged offences punishable under Sections 406, 420, 419, 120 (B) read with 34 of the Indian Penal Code.

3. Perused the papers. According to the complainant – Yusuf Valiyakat, he alongwith his partners – Mohd. Nishan Ahmed Kohya and

Sohail Ismail Malathla, were in the business of sale/purchase of mobile, LCD spare parts. The said business was run in the name of 'M/s. United Space Trading LLC' at Dubai. According to the complainant, his partner Sohail through internet got in touch with one Abbas Husain Zariwala (Accused No.3) who was carrying on the business of mobile and LCD's spare parts in the name of 'M/s. Centrium Multiventures Pvt. Ltd.' at Arihant Heights, V.V. Chandan Street, Masjid Bunder. Abbas Zariwala assured to sell mobile and LCD's spare parts to their firm 'M/s. United Space Trading LLC', at wholesale rates. Pursuant thereto, the complainant asked his cousin – Sajuddin Bawa Pulkavitil to visit the office of 'M/s. Centrium Multiventures Pvt. Ltd.' and meet Abbas Zariwala (Accused No.3). Accordingly, the parties met on 02.12.2018 and the deal was confirmed to supply mobile and LCD's spare parts to the complainant's Company. Accordingly, on 04.12.2018, the complainant transferred an amount of Rs.29,41,575/- in Abbas Zariwala's Account i.e. Account No.0612857245 with Kotak Mahindra Bank, Vikhroli Branch, towards purchase of mobile and LCD's spare parts. The complainant received the spare parts as promised.

4. Pursuant thereto, the complainant placed the second order on 06.01.2019 and again transferred an amount of Rs.79,84,724/- in Abbas

Zariwala's account on 08.01.2019. The complainant has stated that Abbas Zariwala (Accused No.3) again contacted him on 15.01.2019 and informed him that he had some more stock of mobile and LCD's spare parts and that if the complainant required the same, he could send the entire goods together. The complainant agreed to the said suggestion and further transferred an amount of Rs.53,50,055/- in Abbas Zariwala's account on 20.01.2019. The complainant has stated that Abbas Zariwala (Accused No.3) had assured that the said goods, as ordered would reach Dubai by 24.01.2019, however, the goods were not received. The complainant has further stated that pursuant thereto, he asked his cousin - Sajuddin to visit the office of 'M/s. Centrium Multiventures Pvt. Ltd.' and make inquiries as to why the goods were not supplied, pursuant to which Sajuddin visited the office and found that the said office was closed. On making enquiry, Sajuddin learnt that the said office had shut two weeks prior. Abbas Zariwala's (Accused No.3) phone was also found to be switched off. The complainant on realising, that he had been cheated by Abbas Zariwala (Accused No.3), lodged the aforesaid complaint. The complainant also learnt that 'M/s. Centrium Multiventures Pvt. Ltd.' had cheated another Israeli lady - Lironi Aslan Kalache by not supplying her mobile and LCD's spare parts, despite making payment of Rs.22,00,000/-. During the course of investigation, Abbas Zariwala (Accused No.3) and

Abdul Gaffar Razzak Shaikh (Accused No.1), the directors of ‘M/s. Centrium Multiventures Pvt. Ltd.’ were arrested. According to the prosecution, an amount of Rs.1,36,34,780/- was transferred by the complainant, in the company’s name with the Kotak Mahindra Bank. Mr. Abdul Gaffar Razzak Shaikh (Accused No.1) was arrested on 13.03.2019 and accused Abbas Zariwala (Accused No.3) was arrested on 26.03.2019. Investigation revealed that the monies i.e. Rs.1,55,69,000/- were transferred by the accused from the account of ‘M/s. Centrium Multiventures Pvt. Ltd.’ to several other bank accounts in Surat, Gujarat and after transferring the said amounts, the amounts were withdrawn and after withdrawing the said amounts, the said amounts were distributed amongst various accused including the applicant. During the course of investigation, it appears that the applicant had disclosed that he had received Rs.22,00,000/- from Mohd. Nasim Abdul Latif Shaikh (Accused No.5) in cash. Accordingly Rs.15,00,000/- were seized from the applicant.

5. Learned counsel for the applicant submits that the complainant has not made any allegations as against the applicant in the FIR nor is the applicant concerned with the alleged transaction entered into between the complainant and Abbas Zariwala (Accused No.3). He further submits that

the applicant is not alleged to have visited Surat and that the only allegation as against him, is that an amount of Rs.22,00,000/- was handed over to him, by co-accused - Mohd. Nasim Abdul Latif Shaikh. Learned Counsel submits that none of the witnesses who have helped in transferring the funds from 'M/s. Centrium Multiventures Pvt. Ltd.' to Surat and thereafter to other banks have disclosed the applicant's involvement in the transfer of the said funds.

6. Learned counsel relied on the statements of Sajuddin, Nasiuddin and Jayesh in support of the said submission. He submits that the applicant is ready to deposit the balance amount of Rs.7,00,000/-, without prejudice to his rights and contentions, in the trial Court prior to his release.

7. Learned A.P.P. submits that although the complainant has not made any allegations as against the applicant in the FIR/Complaint, during the course of investigation, the applicant's name has surfaced. She submits that the account opening form of M/s. Centrium Multiventures Pvt. Ltd. with the Kotak Mahindra Bank, has the mobile number of the applicant on the said form. She further submits that as far as receipts at page nos.153 to 160 are concerned, she fairly submits that the said receipts do not reflect

the name of the applicant, but that of co-accused - Shabbir Nasim and the Account numbers. She further submits that the applicant had impersonated himself as Jacob and had sent e-mails to the complainant's company. Learned counsel for the applicant refutes the said submission. He submits that there is no material to corroborate the same. Whether or not the applicant had impersonated himself as Jacob, is a matter which will be decided by the trial Court. There is another name mentioned in the FIR, i.e. Jenny, however, no investigation seems to have been done with respect to the same. The applicant is in custody since 29.03.2019. The applicant has no antecedents. Investigation is complete and charge-sheet is filed. The amount of Rs.15,00,000/- out of Rs.22,00,000/ allegedly received by the applicant in cash has been seized by the police and the balance amount i.e. Rs.7,00,000/-, the applicant has undertaken to deposit in the trial Court, without prejudice, to his rights and contentions.

8. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or two local solvent sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station, 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 not contact the complainant or any other witness;

(iv) The applicant shall deposit a sum of Rs.7,00,000/-, as undertaken by him in the trial Court prior to his release, without prejudice to his rights;

(v) The trial Judge to pass an appropriate orders on the said deposit, at the end of the trial;

(vi) The applicant shall not leave the country without prior permission of the trial Court;

(vii) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(viii) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(ix) The applicant shall file an undertaking with regard to clauses (ii), (iii), (vi) to (viii) in the trial Court, within two weeks of his release;

(x) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

9. The application is allowed and disposed of accordingly.

10. 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.

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

(REVATI MOHITE DERE, J.)