

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2195 OF 2018

Aslam Rafiq Panchal, Age 52 years,
Occ.Business, R/o.A-1001, Silver Star,
Sector 18, Kamothe, Navi Mumbai

Applicant

versus

The State of Maharashtra

Respondent

Mr.S.G.Rajput for applicant.

Mr.A.R.Kapadnis, APP, for State.

Mr.Vijay Kadbane, Police Inspector, Crime Branch, Navi Mumbai,
present.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th January 2019

PC :

1. This is an application for bail. The applicant is arrested on 18th May 2018 in connection with CR No.219 of 2017 registered with CBD Belapur Police Station for offences punishable under Sections 417, 419, 465, 466, 468, 471, 120B of Indian Penal Code r/w Section 12 of Passport Act, 1967. Subsequently investigation was transferred to Crime Branch, Unit-3, Navi Mumbai.

2. The case of prosecution is that on 23rd December 2017 FIR was lodged with aforesaid police station. It is alleged that CR No.17 of 2017 was registered with Crime Branch under Section 370(5), 419, 420, 465, 467, 468, 471, 201 of Indian Penal Code r/w Sections 12(1)(2) of Passports Act. During investigation it was transpired

that the applicant-accused, his wife Banu Panchal and Mumtaj Panchal by showing false address, obtained passports. It is further alleged that during the course of investigation it was revealed that the applicant had obtained passport in the name of Anand Gurav, Vivek Agarwal and Kiran Agarwal. It is further alleged that the co-accused Banu Panchal had obtained passport in the name of Kavita Gurav and other accused Mumtaj had obtained passport in the name of Kavita Agarwal. The information was received from Regional Passport Office. It is the case of prosecution that by furnishing false information and false documents, passports were obtained by the accused. The Joint Commissioner of Police, Crime Branch issued letter dated 14th June 2017 to the Commissioner of Police for the purposes of investigation on which the Crime Branch was directed to investigate the matter. The applicant was arrested during the course of investigation. Identification parade was conducted. In the identification, witness Smt.Nirmala Gulve and Rajendra Barve had identified. The investigation revealed that the applicant had approached the persons in the name of Anand Gurav. Witness Vinod Sharma is resident of Nandanvan Co-operative Housing Society at Kamothe. He has identified the applicant as a person residing in the name of Vivek Agarwal. On completing investigation charge sheet was filed.

3. The applicant had preferred an application for bail before the Sessions Court which has been rejected vide order dated 24th July 2018.

4. The contention of the applicant is that he is in custody from 18th May 2018. Investigation is completed and charge sheet is

filed. Further detention of the applicant is not necessary. There is no cogent evidence showing involvement of the applicant in crime. All the documents are in the custody of investigating machinery. The applicant cannot be kept in detention for indefinite period. It is further submitted that the applicant is also entitled for bail u/s 167(2) of Code of Criminal Procedure. In the present case although offences are not punishable with more than seven years imprisonment, therefore, the charge sheet ought to have been filed within statutory period of 60 days period. It is submitted that the charge sheet was not filed within the stipulated period. The applicant had preferred application on 7th July 2018. The said application was heard on 24th July 2018. It is submitted that during the course of arguments, in addition to merits of matter, bail was also sought on the ground that charge sheet was not filed within stipulated period of 60 days. It is submitted that till that date, it was not known to the applicant as to whether the charge sheet was filed or not. Therefore, it was argued that as the charge sheet was not filed, he is entitled for bail u/s 167(2) of Cr.P.C. It is submitted that the Sessions Court had also calculated the days from the date of arrest and the Court was inclined to grant bail, however, the prosecutor submitted that the charge sheet was filed within stipulated time and hence the application was rejected.

5. It is submitted that the charge sheet was filed belatedly on 23rd July 2018. Thus, it was filed beyond statutory period and therefore the applicant is entitled for bail.

6. In support of his submission learned counsel for applicant relied upon the decision of Hon'ble Supreme Court of India in case of

Rakesh Kumar Paul Vs. State of Assam (2018-CRI.L.J.-155). Learned counsel for applicant relied upon three documents viz case status, Roznama.

7. Learned APP submitted that there is sufficient evidence against the applicant showing his involvement. The applicant has fabricated the documents and on completing false information and forged documents obtained passports. There is sufficient evidence in the form of identification parade against applicant. He is involved in three other cases. It is submitted that on completing investigation charge sheet has been filed on 13th July 2018 before the Trial Court. Reliance is placed on certified copies of documents which according to the prosecution indicate that the charge sheet was filed on that date. It is submitted that the applicant was arrested on 18th May 2018 and charge sheet was filed on 13th July 2018. Learned APP pointed out several documents showing complicity of applicant in the crime.

8. I have perused the documents on record. During the course of investigation cogent evidence has been collected against applicant showing his involvement in the crime. The applicant is involved in serious crime. During the course of investigation it was transpired that the applicant in collusion had committed serious offence. The applicant has obtained three passports by furnishing false information and forged documents. Applicant was residing in the name of Anand Gurav at Navi Mumbai in 2012. He prepared forged documents on the said address and submitted to passport office and obtained passport. He was residing at Navi Mumbai with false name Vivek Agarwal and Kiran Agarwal and obtained passports by

submitting false documents. There are three antecedents against the applicant. The applicant hides his identity. Passports were obtained in different names. Considering the evidence collected by the investigating agency and also considering the antecedents, the applicant is not entitled for bail on merits. As far as issue relating to bail u/s 167(2) of Cr.P.C is concerned, the contention of the applicant is that the arguments were advanced before the Sessions Court seeking bail u/s 167 of Cr.P.C. The order of Sessions Court rejecting bail is silent in that regard. According to applicant charge sheet is filed on 23rd July 2018 which is beyond 60 days. The case of prosecution is that the charge sheet was filed on 13th July 2018 and in that regard prosecution has relied upon certified copies of documents. Learned counsel for applicant submitted that the documents produced by the prosecution are not cogent evidence indicating that the charge sheet was filed on 13th July 2018. The case of prosecution is that the charge sheet was filed within a period of 60 days. It is also pertinent to note that in the application preferred before the Sessions Court, there is nothing to indicate that prior to filing of charge sheet, the applicant has prayed for bail u/s 167(2) of Cr.P.C. The application was filed earlier but there is nothing to establish that oral submissions were made in that regard. The contention of the applicant is, however, that he had made oral submission. The order of Sessions Court is also silent in that regard. The certified copy provided by prosecution mentions the date as 13th July 2018 which according to prosecution is the date of filing charge sheet. According to applicant from documents relied by him inference can be drawn that charge sheet was not filed on 13th July 2018. It is not possible to arrive at a finding that the charge sheet was not filed within stipulated time and that the applicant had

claimed bail u/s 167(2) prior to filing of the charge sheet. In the aforesaid circumstances case for grant of bail is not made out. Criminal Bail Application No.2195 of 2018 is rejected.

(PRAKASH D. NAIK, J.)

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