IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3254 OF 2018

Sachin Rajaram Harmalkar .. Applicant
Vs.
State of Maharashtra .. Respondent

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Mr.Shyamrishi Pathak, Advocate for the Applicant.

Ms.A.A. Takalkar,, APP for Respondent – State.

Mr.S. D. Rane, PSI, Vikhroli Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : JANUARY 28, 2019.

P.C.

Applicant is seeking bail in connection with C.R.No.193 of 2017, registered with Vikhroli Police Station, Mumbai, for the offences punishable under Sections 420, 465, 467, 468, 471, 120-B read with 34 of Indian Penal Code ("IPC", for short). First Information Report ("FIR", for short) was lodged on 8th July, 2017. Applicant was arrested on 11th January, 2018.

2 The prosecution case is that the complainant had lodged the complaint on 8th July, 2017. In 2015, the complainant was in search of new house. He was informed that the applicant provides premises from MMRDA/Spark Quota to needy persons by

charging money. Since the complainant was in need of money, he decided to approach accused applicant. Complainant was introduced to him by Ramsurat Tiwari. Accused informed the complainant that NGO, namely, Spark is providing premises to poor persons from Government Quota and if the complainant is interested in purchasing the room through such NGO, he will have to spend Rs.20,00,000/-. Since the complainant wanted to get married and purchase house, he agreed for the proposal. Applicant – Accused demanded Rs.5,00,000/-, to be paid by cheque in his name. He informed that the process of allotting room to him would commence after depositing the said amount. Applicant also showed the room in MMRDA Building situated at Karve Nagar, Kanjurmarg (East). On 12th September, 2015, the complainant met applicant. He was also accompanied by Ramsurat Tiwari. The complainant handed over chque of Rs.5,00,000/-, to applicant. He also provided copies of Aadhar Card, Pan Card, photographs etc. Cheuqe of Rs.5,00,000/-, was credited to the account of applicant. Although he had promised that he would execute a writing on stamp paper about receipt of amount, applicant tried to avoid giving such writing. On 13th September, 2015, the complainant met Mr.Sanjay Pande, who stated that the applicant had represented him that he is MMRDA Officer and would provide room premises through NGO Spark. In November 2015, applicant informed the complainant that he will have to part with rs.1,40,000/-. On 20th November, 2015, the complainant gave Rs.1,40,000/- to the applicant. Subsequently, he demanded further amount of Rs.5,00,000/-, from the complainant and Mr.Sanjay Pandey. Hence, Mr.Pandey had handed over cheque of Rs.5,00,000/-, to the applicant. In December 2015, applicant further stated that balance amount of Rs.13,60,000/-, be provided in cash for expeditious allotment of the room. Complainant then parted Rs.13,60,000/-, by cheques. On 13th December, 2015, the complainant and Mr.Pandey met the applicant who introduced to one person, namely, Ramchandra Mhatre and stated that he is MMRDA Officer. The complainant was also introduced to another person, namely, Taufique, who was represented to be a person associated with NGO Spark. However, the room was not provided to the complainant. The accused kept on giving evasive reply. It was revealed that the persons who were represented to be the officers of MMRDA and NGO Spark were fake persons.

3 Applicant was arrested on 1st February, 2018. On completing investigation, charge–sheet is filed. Learned counsel for the applicant submitted that the First Information Report was lodged on 8th July, 2017, prior to that the applicant has lodged complaint against some of the accused alleging harassment on 29th April, 2017. It is submitted that the applicant is entitled for bail on parity. Applicant accepted the money with bonafide intention. The case of the applicant is similar to the case of co accused Ramchandra Balkrishna Mhatre, who has been granted bail by this

Court. It is submitted that to some extent the applicant stands on a better footing as the co-accused has given his undertaking in writing and issued a cheque which was dishonoured and proceedings under Section 138 of Negotiable Instruments Act were initiated against the said accused. It is submitted that the investigation revealed that the applicant is not involved in the forgery or fraud of any document. Applicant is in custody from February 2017. Investigation is completed and charge–sheet is filed.

4 Learned APP submitted that the applicant has played a vital role in the crime. Money was credited into the account of the applicant. Cheques were deposited into his account. Learned APP pointed out statement of Sanjay Kumar Pandey, wherein it is stated that the applicant has collected the documents from the accused Toufique and the same were handed over to Mr.Pandey. The said documents relating to the family details of Kusum Sanjay Pandey, wherein the Identity Card, Map and description of the premises. Other documents relates to the letter dated 11th December, 2015, purportedly issued by MMRDA with regards to allotment of the premises and the documents appearing the family photo of Sanjay Pandey. Learned APP further submitted that there are two cases registered against the applicant for the offence of cheating and forgery with Park Site Police Station and Kanjurmar Police Station, Mumbai. Learned counsel for the applicant, however, submitted

that the applicant has been falsely implicated in the earlier cases and he has been granted bail.

4 It is, therefore, submitted that the applicant is case is different from the co-accused who has been granted bail, and, therefore, the accused cannot pray for parity.

5 On perusal of the FIR that on 13th September, 2015, complainant was introduced by Mr.Ramsurat Tiwari to the applicant as MMRDA Officer. It was also represented that NGO, namely, “Spark”, is distributing houses from the Government quota to poor persons and that he would arrange the room premises for consideration of Rs.20,00,000/-. In the FIR, it is stated that the complainant was induced to part with amount of Rs.5,00,000/-. It is apparent that the applicant has played a major role in the said crime, and, he cannot claim parity with the co-accused. Considering the aforesaid circumstances, no case for grant of bail is made out. Bail Application stands rejected.

(PRAKASH D. NAIK, J.)