

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 10 OF 2020

Mohammad Shadab
38 years of age,
r/o. 510, Gaular Vai Gali,
Saddik Nagar,
Meerut UP 2500, presently lodged
in Judicial Custody,
Central Jail, Colvale,
Bardez, Goa.

... Applicant/ Petitioner

Versus

1. Police Inspector,
Panaji Police Station,
Panaji.
2. State
Through P.P.
High Court of Bombay at
Panaji, Goa.

... Respondents

Shri Arun De Sa, Advocate for the applicant.

Shri S.R. Rivankar, Public Prosecutor for the respondent – State.

Coram :- NUTAN D. SARDESSAI, J.

Reserved on:- 20th January, 2020

Pronounced on:-22nd January,2020.

P.C.:

The applicant invokes the jurisdiction of this Court under Section 439 CrPC for his release on bail in respect of the offences punishable under Sections 489B and 489C r/w. 34 of Indian Penal Code. It was his case that an offence came to be

registered at the Agacaim Police Station on 27/08/2019 at 16.50 hours vide the FIR No.55 of 2019 on the allegation that the applicant alongwith one Muzzamil Hayat had committed the said offence based on the complaint of Prasad Temkar working for Strike Casino Bambolim as a Senior HR Manager. The applicant had furnished his Aadhar Card and PAN Card to the Casino officials while tendering the money and receiving the Casino chips at the said Casino. He came to be arrested on 28/08/2019 on the premise that fake currency worth ₹75,500/- was seized from his person. The second accused Hayat was released on bail by the Sessions Judge while the application of the applicant came to be rejected. A charge sheet has been filed before the JMFC, Panaji. That apart the applicant had filed the counter complainant which was a part of the Final Report dated 25/11/2019.

2. It was his case that prima facie the ingredients of the offence punishable under Section 489B and 489C IPC were not spelt out. The very fact that his counter complaint formed an integral part of the Final Report spelt out that the applicant had no reason to believe that the amounts handed over to him by

the second accused Hayat were counterfeit notes. Even otherwise the statement of facts as set out in his counter complaint was supported by the material/documents collected by the Investigating Officer during his investigation. The applicant had been falsely implicated by the second accused on account of business dealings. The applicant therefore prayed for his release on bail on such terms and conditions as imposed by this Hon'ble Court. He was a law abiding citizen of India, innocent and was ready to stand trial in order to vindicate his innocence and there was no any possibility of tampering with the evidence or tampering with the prosecution witnesses, hence the necessary relief.

3. Heard Shri Arun Bras De Sa, learned Advocate on behalf of the applicant who contended that it was necessary to appreciate whether the applicant at all had any knowledge that the notes were counterfeit in order to attract the ingredients of the offence under Sections 489B and 489C IPC. The principal accused had been enlarged on bail and moreover the charge sheet had already been filed by the Police. The applicant had gone to the casino and used his genuine Aadhar Card and

disclosed his name while obtaining the chips. If at all he had any intention to cheat, he would not have used his genuine Aadhar Card. He adverted to the complaint, some statements on record and otherwise contended that the offences alleged against him were not punishable with life and the maximum punishment was upto 10 years. He placed reliance in **Amit Anand Raikar v/s. State of Goa and another**[20162) Bom.C.R. Cri.) 186], **Mohaadsaeed Ali v/s. State of Gujarat**[Crma (for Regular Bail) No.29631 of 2017, **Abeed Basha v/s. State of Karnataka**[Cri.Petition No.7617 of 2017] and in **Sanjay Chandra v/s. Central Bureau of Investigation**[(2012) 1 SCC 40] in support of his case.

4. Shri S.R. Rivankar, learned Public Prosecutor submitted that no doubt the charge sheet had been filed but the charges were yet to be framed. The attachment panchanama was carried out pursuant to which the fake notes had been attached at the instance of the applicant. The CFSL report too confirmed that 130 notes in the denomination of ₹500 were counterfeit. There was every possibility of the applicant tampering with the witnesses and the evidence if released on

bail and therefore looking to the seriousness and gravity of the offence his application had to be rejected.

5. i have heard Shri Arun Bras De Sa, learned Advocate for the applicant and Shri S..R. Rivankar, learned Public Prosecutor for the respondent - State and besides considered the judgments relied upon.

6. It was nowhere in dispute that the applicant had used his genuine Aadhar Card and PAN Card while at the said casino and to procure the chips on tendering currency. It is another matter that three of the notes so tendered from amongst the many others were found to be suspicious and therefore isolated as counterfeit notes by the person working at the casino. There appears force in the contention of Shri De Sa, learned Advocate that in case the applicant had any intention to cheat, he would have gone under a fake name and produced fake documents to conceal this identity and not used his genuine Aadhar Card and PAN Card while tendering the currency notes at the casino for obtaining the necessary chips. i have perused the complaint which is an integral part of the charge sheet and the attachment panchanama pursuant to which several currency

notes in different denomination were attached by the police under the attachment panchanama. Moreover, it is apparent from one of the statements to which Shri De Sa, learned Advocate invited attention that the applicant was not alone when he had gone to the said casino but had gone as group alongwith 3 to 4 ladies on the evening of 27/08/2019. The statement of one Parvez who happens to be the driver of the second accused Hayat had indicated that the said Hayat had given him the cash of ₹50,000/- and which was handed over by him to the applicant at the instance of Hayat. It is also apparent from the tenor of his statement that the applicant was in business with the second accused Hayat and that they had invested some amounts in that connection. In other words, his statement, to some extent corroborates the version of the applicant in his complaint that there were business dealings between him and the second accused Hayat and that the money found with him was substantially given by the accused no.2 Hayat to him.

7. **Amit**(supra), had been arrested in a Crime of Porvorim Police Station for the offences punishable under Sections 489B, 489C apart from 489A IPC amongst others and

who had filed an application for bail which was resisted by the Investigating Officer and the intervenor on various grounds set out in the application for intervention. It was alleged against the said applicant that he alongwith the Manager of Goa Urban Co-operative Bank Ltd, St. Inez Branch and other unknown persons, with their common intention, dishonestly induced the complainant to deliver Casino gaming chips worth ₹6 Crores by taking a sum of ₹6 Crores in cash from the complainant in lieu of Pay Orders for the sum of ₹80,00,000/-, ₹60,00,000/- and ₹90,00,000/- as genuine, drawn on the Goa Urban Cooperative Bank and when the same was deposited in Ratnakar Bank, Porvorim, they were returned back dishonoured on the ground that the same were fake / forged. Further two more pay orders for ₹2,00,00,000/- and ₹1,70,00,000/- were returned from the bank on the ground that the same were fake/forged and therefore it was alleged that the accused persons had cheated the complainant to deliver cash to the tune of ₹6,00,00,000.

8. The initial bail application filed by the the said applicant came to be dismissed mainly on the ground that the investigation was not complete. It was found that the present

position was that the entire investigation had been completed and the case had been charge sheeted before the JMFC, Mapusa and committed to the Court of Sessions. It was found that almost all the witnesses, who were the staff members of the Goa Urban Co-operative Bank Ltd. or of the Casino Pride knew the applicant and the applicant was not stated to be having any criminal antecedents. The case, otherwise, would mostly depend upon documentary evidence. The fear of the Investigating Officer that the applicant would threaten the complainant and other witnesses, if released on bail, appeared to be fanciful and without any force. In those set of circumstances and considering the judgment in Sanjay Chandra(supra), the application for bail was allowed by putting the applicant to certain terms and conditions.

9. In **Mohaadsaeed Ali**(supra), a Single Judge of the Gujarat High Court was seized with an application seeking bail under Section 439 CrPC in respect of the offences punishable under Sections 489B, 489C and 120B of IPC. It was noticed by the learned Judge that the applicant was facing the charge under Section 489B and 489C IPC for possessing fake notes. In

those set of circumstances and considering that the applicant would be offering surety and disclosing the addresses of all of his relatives, he was ordered to be enlarged on bail.

10. **Abeed Basha and others**(supra), were arrested by the Police in connection with the offences punishable under Sections 489B, 489C, 420A, 511 r/w. Section 34 IPC on the allegations that the Inspector of Police, Kolar Town Police Station, received credible information that fake currency notes were sought to be transported from Bangalore to Tirupathi via Kolar in two cars. Accordingly, the complainant and his staff came near Chockka Conventional Hall on the highway and having found two cars coming from Banagalore side, stopped the cars and made a search and found currency notes valuing ₹35,32,500/- packed in two plywood boxes and attached under a panchanama at the spot, seized the currency notes seized apart from arresting the accused. The learned Single Judge found that the offences under Sections 489B and 489C IPC got attracted from the allegations made in the complaint, and this offence was otherwise bailable. In any event, the investigation was completed and the charge sheet filed and therefore ordered

the release of the applicants on bail by putting them to terms and conditions.

11. In **Sanjay Chandra**(supra), the Hon'ble Apex Court observed that generally the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail and which is neither punitive nor preventative. A deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. It further reiterated at paragraph 27 that bail is the rule and committal to jail an exception and the refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India. It also considered the Judgment in *Siddharam Mhetre v/s. State of Maharashtra* [2011) 1 SCC 694] where it was observed at paragraph 116 that personal liberty is a very precious fundamental right and it should be curtailed only when it

becomes imperative according to the peculiar facts and circumstances of the case.

12. **Sanjay Chandra**(supra), lastly, considered the judgment in State of UP v/s. Amarmani Tripathi [(2005) 8 SCC 21] where it was held at paragraph 18 as below:

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

13. Coming back to the facts of the case, the offence with which the applicant stands charged is not punishable with life or death but the maximum punishable extends upto 10 years. Admittedly, the applicant has no criminal antecedents and he is otherwise an Indian citizen. The question whether the applicant did have knowledge that the notes could be counterfeit or otherwise would be borne out during the course of the trial before the learned Trial Court and which fact cannot be deduced at this stage. At the same time the cross complaint filed by the applicant against Hayat cannot be ignored which gives an indication of the nature of their business relationship and how the money transaction took place between them which would have a bearing on the outcome of this case. The said accused has been enlarged on bail and therefore on the ground of parity too the applicant would be entitled to be enlarged on bail, notwithstanding the report of the CFSL which indicates that 130 notes were found to be counterfeit. The case against the applicant is primarily based on documents and there would be no scope for tampering with the witnesses or interfering with the course of justice.

14. i am therefore inclined to order his release on bail.

In the result therefore i pass the following :

O R D E R

1. The applicant shall be enlarged on bail on executing bail bonds in the amount of ₹50,000/- (Rupees Fifty Thousand only) and furnishing one local surety in co-extensive amount to the satisfaction of the learned JMFC.
 2. He shall not tamper with the witnesses or otherwise hinder the course of trial as and when it proceeds upon the framing of charge.
 3. He shall not leave the State of Goa without the prior permission of the Trial Court.
 4. He shall furnish the detailed address of his local residence and otherwise ensure his presence at the trial on the dates of hearing.
15. In these terms the application stands disposed off.

NUTAN D. SARDESSAI, J.