IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 16 OF 2020

Yasar Ayub Kapadia .... Applicant

Versus

The State of Maharashtra .... Respondent

Mr. Aabad Ponda, Senior Advocate i/b Mr. Ashish R. Raghuvanshi for Applicant.
Mr. S. R. Agarkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd OCTOBER, 2020

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.157 of 2017 registered with Oshiwara Police Station on 10/05/2017, under sections 420, 467, 468, 471, 120-B, 406, 506 (2), 504 r/w 34 of the Indian Penal Code.

2. The FIR is lodged by one Sajid Bhajikhada on 10/05/2017. He has stated in his FIR that, in May, 2014 his sister's daughter Fareen was to get married with the present applicant and hence, the informant got acquainted with the applicant's family. The applicant's father represented that he was a

rich and respectable resident of Surat having big business. It is mentioned in the FIR that, he showed two flats No.802 and 803 and one bunglow in Surat to the first informant. He told the informant that, flat could be purchased for a lesser price. The FIR mentions that, the applicant paid Rs.1,65,00,000/- through RTGS transfer to the applicant's father Ayub Kapadia and one Mohammed Natik Kapadia. The applicant's father gave him documents purported to be in respect of the transaction of bunglow situated on Plot No.48 and 49 situated at Adajan Patia, Surat. At that time, the informant gave him Rs.77,00,000/- in cash. It is further alleged that, in August 2014 when the informant had gone to Surat for discussion about marriage, he insisted that, the applicant's father should show him those flats. However on some pretext the informant was not taken those two flats. He further told the informant that if Rs.1,70,00,000/- further were paid, he could get licence for importing scrap material from abroad. The informant agreed to enter into that business in partnership and then paid Rs.64,00,000/-. At this stage, this amount of Rs.64,00,000/- was actually transferred in the account of the present applicant on 15/09/2014, 20/09/2014, 25/09/2014 and 07/10/2014. Subsequently, the informant kept asking the applicant's father about progress in his transaction. However, the applicant's father on some pretext or the other continued avoiding giving any answers or returning the amount. In March, 2015 the informant was told telephonically by applicant's father that he had gone to Tuticorin Port and there was some confusion about a container. On the same day, the informant was told that applicant's father was arrested and thereafter his phone was not reachable. The informant then called the present applicant asking about further information. At that time, the applicant told him that, there was income tax raid at his house and the officers were asking for the informant's number. The informant insisted that, he should be allowed to talk with the officers but the applicant did not allow him. The FIR further mentions that, on 17/03/2015 the informant went to meet the applicant's father and to take possession of two flats and bunglow. At that time he was told that no such flats or bunglow were purchased and no steps were taken for getting a licence for importing scrap. The Power of Attorney and other documents which were given to the informant were forged. The informant inquired with the applicant, at that time the applicant removed a revolver and threatened the informant. The informant was convinced that, he was cheated and his money was misappropriated. Thereafter, this FIR was lodged. The applicant was arrested on 05/05/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. Heard Shri. Aabad Ponda, learned senior counsel for the applicant and Shri. S.R. Agarkar, learned APP for the State.

4. Shri. Ponda submitted that, the entire FIR shows that the inducement was made by the applicant's father and the applicant himself had no role to play in the transaction between his father and the informant. He submitted that the applicant is needlessly arrested because of acts of his father. The applicant is the victim of the acts committed by his father. He submitted that, in the entire FIR there are only three allegations. The first allegation was that, an amount of Rs.64,00,000/- was transferred in the applicant's account by the informant. The second allegation is about income tax raid and the third allegation was about threats

issued by showing revolver. He submitted that no offence under Arms Act is mentioned in the charge-sheet, therefore that incident is not true. He submitted that, income tax raid purportedly was conducted at the applicant's house and it has nothing to do with the informant's case. He submitted that, out of the aforesaid amount of Rs.64,00,000/-, amount of Rs.58,00,000/- was transferred in the account of Mohammed Natik Kapadia. Said Natik is already granted bail therefore even the applicant deserves to be released on bail. He submitted that, as per the prosecution case Natik was also used by the applicant's father and ultimately the beneficiary was the applicant's father. He therefore submitted that, the applicant deserves to be released on bail.

5. Shri. Agarkar, Learned APP on the other hand submitted that, the FIR is supported by the statements and other documents from the charge-sheet. He submitted that, the applicant's wife Fareen supported the informant's case and allegations. He submitted that, huge amount of Rs.64,00,000/- has come in the account of the present applicant and there is no explanation offered by the applicant.

6. I have considered these submissions. The allegations in the FIR are supported by the documents in the charge-sheet. The amount of Rs.64,00,000/- has gone in the account of the present applicant. Out of which Rs.58,00,000/- were transferred to Natik who was also connected with the applicant's father. As far as informant's money is concerned he has suffered loss because of acts of all the accused including the applicant.

7. The statement of applicant's wife shows that, in the year 2018, the applicant and his father had forced her and her parents to sign one bond paper showing that, there was talaq between her and the applicant. At that time, the applicant had threatened Fareen and her parents.

8. The informant has lost huge amount. There are definite allegations against the present applicant. The money has gone in his account which is not returned to the first informant. There is sufficient material against the present applicant in the charge-sheet. The applicant's conduct of threatening the informant, his own wife and her parents is another strong factor against him. He has actively participated in commission of crime.

The applicant is arrested on 05/05/2019. But looking at the conduct of the applicant and the evidence against him, no case for his release on bail is made out. Hence, the following order :

ORDER

Application stands rejected and is disposed of accordingly.

(SARANG V. KOTWAL, J.)