IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2220 of 2019

Subrati Shaikh @ JavedHanif Shaikh ... Applicant
V/s.
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO. 1 of 2019
(FOR INTERVENTION)

Ashpak Ramzan Pathan … Applicant

V/s.
The State of Maharashtra ... Respondent

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Mr. Mihir Desai, Sr. Advocate i/b Hafeezur Rahman for the Applicant.
Mr. H. J. Dedhiya, APP for the State/Respondent.
Mr. Aniket Nikam i/b Mr. Vivek Arote, for Intervener.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21st JANUARY, 2020.

P.C. :

This is an application for bail in C.R. No. 267 of 2018 registered with Mumbai Naka Police Station, Nashik which was investigated by EOW Nashik. The Applicant was arrested on 12th April, 2019.

2. The prosecution case is that the Complainant is in business of Tours and Travels and runs his business through

partnership firm known as M/s. Al-Khair Tours and Travels based in Nashik and involved in business of sending pilgrims to Saudi Arabia for Haj and Umrah by issuing tickets and visa. In 2017 Complainant was introduced to Abdul Mateen by Amjad Maniar. It was represented that Abdul Mateen is conducting his business in the name as M/s. Jahan International Tours and Travels. He is in business of sending pilgrims and in need of tickets. Abdul Mateen approached Complainant. He requested for tickets. He deposited amounts of Rs. 60, 28, 000/- on 10th August, 2017 and Rs. 50,00,000/- on 16th August, 2017. Tickets were supplied to him. However, thereafter he used to make part payment. He promised that the amount would be paid. In October, 2018 Abdul Mateen again requested for tickets. 312 tickets were booked by Complainant. It was learned that out of 312 tourists 192 tourist were of Applicant and they were proceeding to Umrah. Payment was not made. Complainant visited office of Jahan International and noticed that Abdul Mateen, Applicant and others were in the office. Promise of payment was made. Thereafter, they closed office and disappeared. It is further alleged that the Applicant was also jointly operating with Accused No.1 who was conducting business in the name of Jahan International Tours and Travel. Accused No. 3 and 4 were partners of Accused No.1. According to the Complainant he was duped for an amount of Rs. **1,75,11,328/-.** The statements of various witnesses were recorded. On completing investigation charge-sheet is filed.

3. Learned Counsel for the Applicant submitted that the dispute if any, relates to the commercial transaction. It relates to the accounts in respect to payments towards purchase of tickets. The Applicant cannot be subjected to custody for indefinite period. He is in jail for a period of about 10 months. It is alleged that the Applicant had purchased 192 tickets for which the entire payment is made to the Complainant. Learned Counsel for the Applicant relied upon say filed by the prosecution opposing application for bail before the Sessions Court in which it is stated that M/s. Shiza International had made a payment to M/s. Al Khair Tours & Travels with regards to the 192 tickets. It is submitted that the charge-sheet also mentions that liability of the Applicant was towards 192 tickets. The Alleged amount to be recovered against Applicant is Rs. 59, 14, 078/- out of total amount alleged to have misappropriated by accused. The

Applicant paid Rs. 55, 04, 000/-. No recovery is to be made against the Applicant. There are no criminal antecedents against the Applicant.

4. Learned APP submitted that Accused No. 1, 3 and 4 are absconding. Accused No. 1 was concerned with Jahan International. The payment was made towards 192 tickets. However, the other dues are not paid by the Applicant. The Applicant was jointly conducting business with Accused No.1. So far amount of Rs. 31 lakhs is secured through the payment made to the Complainant and seizure of bank account.

5. Learned Counsel for the Intervener submitted that the dispute is not with regard to 192 tickets only but several other tickets were purchased by the Applicant in connivance with Accused No.1. Jahan International and Bernice Tours and Travels are operating jointly. The Complainant was to receive amount of Rs. 1,75,11,328/-. He relied upon statements of the partner of the Complainant in which it is stated that the Applicant and Accused No. 1 were operating jointly and tickets were purchased by them together. The Applicant had taken responsibility towards the purchase of tickets. He further relied

upon the statement of the employee of the Applicant who has also stated that the accused were having joint business.

6. It is pertinent to note that the documents on record would indicate payment towards 192 tickets. Learned APP submitted that amount of 31 lakhs is secured. The contention of the Complainant and the prosecution is that while working towards joint operation with Accused No.1 the payment towards other tickets was not made. Accused No. 1 is absconding. The Statement of the partner of the Complainant was recorded on 19th April, 2019. The statement of the employee was recorded on 26th November, 2018. On registration of FIR on 12th September, 2018, accused No. 1 absconded. The aforesaid statements were recorded thereafter. On perusal of FIR, it can be seen that the Complainant right from inception had interacted and executed transactions with Accused No. 1. It is relevant to note that the dispute now is only with regards to the payment of tickets allegedly purchased in joint business of the Applicant and Accused No.1. The Applicant had purchased 192 tickets. It is also admitted by the prosecution that towards the said tickets payment was received. Accused No.1, 3 and 4 are

absconding. The Applicant is in custody for a period of 10 months. Considering the nature of transaction and the fact that, the Applicant is in custody for ten months, the offences are triable by the Magistrate, further detention of the Applicant is not necessary.

7. Hence, I pass the following order:

ORDER

a. Criminal Bail Application No. 2220 of 2019 is allowed.

b. The Applicant is directed to be released on bail in connection with CR. No.267 of 2018 registered with Mumbai Naka Police Station, Nashik on their furnishing P. R. bond in the sum of Rs. 50,000/- with one or more sureties in the like amount.

c. The Applicant shall report concerned police station once in a month on first Saturday between 10.00 a.m. to 12. 00 a.m.

d. Bail Application and Interim Application No.1 of 2019 stands disposed of.

(PRAKASH D. NAIK, J.)