IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.477 OF 2020
(Ahmad s/o Abdulabhai Jiwani Vs. The State of Maharashtra thr. PSO PS Sitabuldi, Nagpur and another)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	*Court's or Judge's orders.*

Shri Shashibhushan Wahane, Advocate for Applicant.
Shri N.B. Jawade, APP for Non-Applicants/State.

CORAM: ROHIT B. DEO, J.
DATE: 3rd SEPTEMBER, 2020.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2] The applicant is seeking release on bail in Crime 332/2015 registered with the Sitabuldi Police Station, Nagpur for offence registered under sections 406, 409 and 420 read with section 34 of the Indian Penal Code.

3] The applicant is presently employee at Atlanta, United States of America and holds work permit issued by the United States of America government which is valid till 14.12.2024.

4] According to the applicant in view of the Covid-19 pandemic he returned to India taking advantage of the Vande Bharat scheme and landed at Delhi on 30.06.2020. In view of the lookout notice he was detained at the Delhi Airport and was quarantined at Red Fox Hotel.

The investigating team of the Crime Branch (EOW), Nagpur arrested the applicant from Delhi on 06.07.2020 and after obtaining transit remand produced the applicant before the Judicial Magistrate First Class, Nagpur on 10.07.2020. It appears that at the time of production the Investigating Officer did not seek police remand and sought magisterial custody reserving the right to seek police remand. According to the learned APP Shri Jawade PCR was subsequently sought. However, the Central Jail authority refused to produce the applicant in view of the Covid-19 pandemic.

5] Adverting to the allegations, the applicant was a Director of Phoenix Infra Estate International Ltd. which company was engaged in real estate, till the applicant resigned w.e.f. 31.05.2014. The offence was registered on the complaint of one Col. Sharma who alleged that the said company induced him to pay certain amount as consideration for purchase of plot and not only failed to execute the sale-deed as assured, further issued cheques towards refund of the amount which cheques were dishonoured. According to the prosecution, subsequent to the registration of the offence several other persons lodged similar complaints.

6] A co-accused, who was also a Director, one Vijay Gautam was arrested in 2018 and released on bail by the learned Magistrate who held that offence punishable under sections 406 and 409 of IPC is not made out and that the only offence which is made out is under section 420 of IPC.

7] It may be noted that while the first information report is lodged on 09.09.2015 Vijay Gautam was arrested in 2018 and till date there is no charge-sheet filed. Even if it is assumed that some co-accused were absconding, nothing prevented the Investigating Officer from filing the charge-sheet under section 299 Cr.P.C. The learned APP Shri Jawade would submit that the other accused Gitesh Nashine, Yogesh Nashine, Mahesh Nashine and Chandrashekhar Deshbhratar are still absconding. In response, Shri Wahane states that Chandrashekhar Deshbhratar did apply for anticipatory bail and since the prosecution did not file reply, the anticipatory bail application was disposed of by the learned Sessions Judge with the observation that in the event the Investigating Officer decided to arrest Chandrashekhar Deshbhratar 72 hours notice shall be given of the intention to arrest. The steps taken by the Investigating Officer thereafter, as regards Chandrashekhar Deshbhratar are not discernible from the record.

8] Shri Wahane, the learned counsel for the applicant points out that the dispute between the informant Col. Sharma and the company is amicably settled. My attention is invited to the memorandum of settlement. Since no charge-sheet is filed, it is difficult to ascertain the course which the investigation has taken so far. It appears that the investigation was in a sense lying in cold storage.

9] In so far as the entitlement to bail, the applicant appears to be educated and earning livelihood as a professional. While there are certain offences registered, all pertain to the same company of which he was the Director and are the outcome of complaints lodged by disgruntled customers who presumably did not get the plot as promised. Having given my anxious consideration to the material on record, I do not see any reason why the applicant should languish in jail. While the first information report is lodged in 2015 no charge-sheet is filed till date and an early trial is therefore, a remote possibility and indeed impossibility. It is not the case of the prosecution that the applicant is likely to tamper with evidence or for that matter there is any evidence which at this stage can be tampered. The apprehension is that since the applicant has been a frequent traveler, he is a flight risk. This apprehension can be allayed by directing the applicant not to leave the country without the previous permission of the jurisdictional court. The pass-port of the applicant is already seized by the immigration authority at Delhi and the same shall continue to be in the custody of the said authority. It is made clear that the Crime Branch (EOW), is at liberty to seek custody of the pass-port from the said authority. It is further made clear that no authority shall handover the pass-port to the applicant unless so directed by the competent court.

10] Considering that the allegation stems from the failure of the company to honour its commitment of executing sale-deed, of which company the applicant was a Director, I am satisfied that the applicant has made out a case for grant of bail, particularly as no charge-sheet is filed against the arrested accused who is released by the learned Magistrate on 26.09.2018 and whose release is not challenged by the Investigating Agency. It may further be noted that in so far the role attributed in the commercial transaction there does not appear to be any significant difference between the role attributed to Vijay Gautam who was also a Director and the role attributed to the present applicant.

11] The application is allowed subject to the following conditions:

[i] The applicant shall furnish personal bond of Rs.50,000/- with a solvent surety of like amount. In view of the prevailing situation the surety may be furnished within four weeks of the release.

[ii] The applicant shall not leave the country without the previous permission of the jurisdictional Court.

[iii] The pass-port of the applicant shall not be returned to the applicant unless so directed by a competent Court.

[iv] The applicant shall furnish, within 48 hours of the release, his current address and cell phone number to the Investigating Officer and if the address or cell phone number changes, the intimation thereof shall be given to the Investigating Officer within 24 hours or such change.

[v] Any breach of the conditions imposed supra may entail cancellation *ipso facto* cancellation of bail.

[vi] The applicant shall not make any attempt to influence any witness or to otherwise obstruct the course of investigation.

12] The order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

NSN