IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1181 OF 2021

Iduh Kester Alias Ibrahim
Age: 33 years, Occu.: Business,
R/o. B-37, Phase-1, Aya Nagar,
South Delhi,
Permanent R/o. Ligous, Asabalud,
Nigeria – 112. ..Applicant

VERSUS

The State of Maharashtra
Through Police Station Officer,
Cyber Police Station,
Ahmednagar, Dist.Ahmednagar. ..Respondent

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Advocate for Applicant : Ms.Pradnya Talekar
APP for Respondent : Shri S.D.Ghayal

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CORAM : M.G.SEWLIKAR, J.

RESERVED ON : 15th December, 2021
PRONOUNCED ON : 23rd December, 2021

ORDER :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.022 of 2020 registered with Cyber Police Station, District Ahmednagar, for the offences punishable under Sections 419, 420, 467, 201, 34 of the Indian Penal Code and under Section 66(D) of the Information Technology Act.

2. Informant is a medical practitioner by profession. He has a hospital at Ahmednagar. On 5th September, 2020, he received friend request from one Amelia Meghan Smith. He accepted the friend request. Thereafter, informant started chatting with her on WhatsApp. She introduced her as resident of England and she works in a construction business as Manager. On 2nd October, 2020, Amelia asked the informant to pay Rs.20,000/- to her sister, who was stuck in Delhi in India due to lock-down. Therefore, informant deposited an amount of Rs.20,000/- in the account of the sister of Amelia. Again on 9th October, 2020, informant deposited Rs.20,000/- in the account of sister of Amelia at the instance of Amelia.

3. It is further alleged in the FIR that the said Amelia said to the informant that informant should purchase Ayurvedic raw material from Priyanka Traders and supply it to her father, who has a business of Herbal products. Amelia said to the informant that she would transfer the amount in the account of the informant. On 22nd October, 2020 informant received a call from a person who introduced himself as an Officer from Reserve Bank of India (RBI), Online Transfer Section and told him that in his account 1,00,000/- Dollars had been received and for depositing in his account, processing fees of Rs.48,000/- would be required

to be paid. Accordingly, he deposited Rs.48,000/- from mobile App. A little while later, again he received a phone call from RBI and he was asked to deposit Rs.5,00,000/- towards Reflection Code. Accordingly, informant transferred Rs.2,50,000/- from mobile App and PhonePe account. Every time he got a call from the Officer from RBI to deposit the amount and in this manner he deposited Rs.70,87,000/-. On 28th October, 2020, the informant again got a call from mobile No.8826537352 that again Rs.10,00,000/- Dollars have been deposited in his account. The amount in Indian currency had gone above Rs.10 Crores and for insurance payment guarantee informant will have to pay Rs.89,00,000/-. This aroused suspicion of the informant. He realized that he had been cheated. Therefore, he lodged the FIR. Accordingly, crime came to be registered under the aforesaid Sections.

4. I have heard Ms.Pradnya Talekar, learned counsel for the applicant and Shri S.D.Ghayal, learned APP for the respondent-State.

5. Ms.Talekar, learned counsel for the applicant submitted that charge-sheet has been filed. The bank account in which alleged amount has been transferred was in the name of Renuka

Gusain, Jhoni Taba, Jumto Riba, Monulaxmi Taba and Sunita Patel. None of these persons are arrayed as accused in the alleged crime nor their statements are recorded. There is nothing on record to show that applicant has any relation with the above mentioned persons. The items seized from the applicant do not match with the items used in the crime. It is further submitted that statement of Sunita Patel was recorded and she attributed role to Rakesh Kanojiya for withdrawal of amount. Sunita Patel did not attribute any role to the applicant for withdrawal of money. Look Out Circular (LOC) is issued in the name of the applicant and therefore, there is no chance of the applicant leaving the country.

6. Shri Ghayal, learned APP for the respondent-State submitted that mobile No.8376036022 has been used in the offence. Tower location of this mobile number was revealed at Delhi. Accordingly, applicant was apprehended. Applicant was arrested on 20th December, 2020. Five mobile handsets and one tax invoice of purchase of Techno mobile have been seized from the applicant. It is further submitted that IMEI Nos.355821094036407 (Nokia) and 353418095493471 (Nokia) were used for SIM card number 8376036022. SIM number 8527152469 has been used by the accused for opening

WhatsApp and Facebook accounts in the name of Amelia. This SIM card was used in three IMEI numbers and one of the IMEI number is 359439106479832. Tax invoice of this number has been seized from the applicant. IP address of account of Amelia Smith was sought from Facebook. Facebook provided IP address as 2401:4900:2a82:e28a:c2b3:f038:201a:f600. After receipt of above IP address, it was sent to Airtel Nodal Officer seeking details about the above IP address. The Nodal Officer furnished call details of above IP address and the mobile SIM number, which was used by IP address holder i.e. Amelia. It is further submitted that to trace out the accused, one link *https://ezstat.ru/2KwRw6.html* was prepared. Informant sent that link on WhatsApp number, which was used in the name of Amelia. That link was clicked by the applicant. On opening of the above link, IP address of the person, who opened the link was revealed. IP address provider was detected as Airtel Company. Investigating Officer sent this IP address to Nodal Officer, Airtel Company and sought details about the said IP address to find out as to who, when and on which date this IP address had been used. Airtel Company submitted CDR of 8527152469 used by Amelia for WhatsApp. From this technical evidence, it is crystal clear that applicant accused has used SIM number 8376036022 for commission of crime and that has been used by him in the mobile handsets which have been seized from his possession. The amount involved in this crime is Rs.70,87,000/-. He submitted that applicant is a foreign national and resident of Delhi. If he is released on bail, he is not likely to be available for trial. Trial has commenced and if applicant is released on bail, he will not be available for trial.

7. According to the prosecution, role of the applicant was revealed as the Investigating Officer prepared a link mentioned above and it was sent by the informant on WhatsApp number, which was used in the name of Amelia. The said link was clicked by the accused. When the accused opened the above link, IP address of the accused was revealed which was of service provider Airtel Company. Details of IP address were sought from Airtel Company. These documents have been provided to the applicant alongwith charge-sheet. It appears that Airtel Company submitted CDR of IP address of mobile number 8527152469 used for WhatsApp in the name of Amelia. From this IP address, CDR details of IMEI No.864669049746404 was revealed. Similarly, from the CDR details, IMEI Nos.35582109406407 and 353418095493471 were revealed to be of mobile No.8376036022. Similarly, from CDR details, IMEI No.359439106479832 was found to be of mobile

No.8527152469. However, copy of these CDR details are not part of charge-sheet. In terms of Section 173(5)(a) of the Code of Criminal Procedure, Investigating Officer shall annex with the charge-sheet all documents or relevant extracts thereof on which the prosecution proposes to rely. It appears that when the prosecution has not annexed these CDR details, it goes to show that prosecution does not want to rely on them. The material which is not annexed with the charge-sheet cannot be considered at the time of bail. It is not the case of the prosecution that these documents have been tendered in the Court by way of supplementary charge-sheet. So far as IMEI No.359439106479832 is concerned, mobile handset has not been recovered from the applicant. The only tax invoice has been recovered from him. Thus, it appears that applicant was not in possession of the handsets at the time of his arrest. Therefore, it is difficult to find out as to whether these messages were sent from the handsets bearing IMEI No. 359439106479832. CA report is still not received. In this view of the matter, it cannot be said that applicant is involved in the alleged offence. In this view of the matter, I am inclined to release the applicant on bail. Hence, the order.

ORDER

1) Bail Application is allowed.

2) Applicant be released on P.R.Bond of Rs.70,000/- (Rs.Seventy Thousand only) with one solvent surety in the like amount, in connection with Crime No.022 of 2020, registered with Cyber Police Station, Dist.Ahmednagar, under Sections 419, 420, 467, 201, 34 of the Indian Penal Code and under Section 66(D) of the Information Technology Act and on condition that,

(i) he shall report to the concerned Police Station twice a week i.e. on every Wednesday and Sunday between 12:00 Noon and 03:00 p.m. till the conclusion of the trial,

(ii) he shall not leave the country without prior permission of the concerned Court,

(iii) he shall not leave the jurisdiction of the concerned Court without prior permission of the concerned Court,

(iv) he shall give his SIM card number to the concerned Police Station and if he changes his number, the changed number should also be provided to the concerned Police Station and,

(v) he should not indulge in similar activities again.

3) Bail Application is disposed of.

4) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(**M.G.SEWLIKAR**)
JUDGE

SPT