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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 224 OF 2020

The State of Maharashtra
(through Office of EOW, Mumbai)

..... Applicant
(Orig. Complainant)

V/s

Dinesh Brahmanand Jajodia and Anr.

.... Respondents.

Ms. Sharmila S. Kaushik, APP for Applicant/State.

Ms. Manisha Jagtap for Respondent No.2/ED.

Mr. Firoz Bharucha i/b Mr. Abhishek More for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 23, 2021

P.C.:-

1] The State of Maharashtra through Economic Offences Wing, Unit-V, Mumbai has invoked provisions of Section 439 sub-section (2) of Cr. P. C., seeking cancellation of bail of the non-applicant/accused. Non-applicant/accused was ordered to be released on bail vide order dated 16th April, 2018 passed by the Additional Chief Metropolitan

Magistrate, 47th Court, Esplanade Mumbai, directing his release in C.C. No.322/PW/2016 for the offence punishable under Sections 409, 420, 477A, 120B, 34 of the Indian Penal Code.

2] The said order was questioned by the Applicant/State of Maharashtra before the learned Sessions Judge, who, by an order dated 13th August, 2019 rejected the prayer for cancellation of bail. As such, this Application.

3] The necessary facts, in brief, for deciding present Application are as under:-

4] The non-applicant/Respondent No.1 (hereinafter referred to as “the accused”) is added as accused No.4 in the aforesaid crime and is chargesheeted.

5] The case of the prosecution is, M/s. Geodesic Ltd., a Company listed on Bombay Stock Exchange was into business of software and hardware. The accused herein, a Chartered Accountant by profession, was financial adviser to the said Company, whereas Kiran Kulkarni,

Prashant Mulekar and Pankaj Srivastava were in the management in the capacity of Managing Director, Executive Director and Chairman respectively. The said M/s. Geodesic Ltd. raised US\$ 125 million through Foreign Currency Convertible Bonds for which Citibank, London stood as Trustees. The said funds were to be utilized for funding and investing in foreign subsidiaries of M/s. Geodesic Ltd. or for new acquisitions. The Company defaulted in honouring the said Bonds, so also cheated its shareholders, thereby diverting funds to the tax heaven countries such as British Virgin Isle, Panama etc. The Company inflated its software expenses, purchased software from shell companies at much inflated rates, thereby raising fictitious invoices and it is claimed that the present accused, a tax consultant, is a brain behind execution of the offence alongwith co-accused Prashant Mulekar. As such, it is claimed that by using special knowledge of the accused in relation to the finance management, wrongful gain was caused by accused persons in their own interest by causing wrongful loss to the shareholders and Foreign Currency Convertible Bond holders, thereby siphoning of an amount of Rs 250 crores by showing bogus purchases of software, so also failed to honour/redeem Foreign Currency Convertible Bonds of Rs 812 crores.

6] Application for grant of regular bail of Respondent No.1/accused was rejected by a reasoned order by the Court of Magistrate on 9th June, 2016 which was confirmed upto the Apex Court. Since the Court of Additional Chief Metropolitan Magistrate passed the order of release and Sessions Court refused to cancel the bail, prosecution has invoked the present remedy.

7] Ms. Sharmila Kaushik, learned APP while trying to make out a case for cancellation of bail, would urge that the present accused is main brain behind execution of the offence in question. According to her, investigation carried out till this date depicts that the accused has provided complete technical and financial know-how in the matter of commission of offence in the capacity of financial consultant, he being a Chartered Accountant. She has invited my attention to the statements of witnesses to demonstrate that it is the accused who is primarily responsible for commission of offence in question. She would further claim that because of the conduct of the accused in the crime in question particularly of not honouring the Foreign Currency Convertible Bonds, reputation of the Indian Business Community is

internationally maligned, to which this Court is required to be sensitive. She would further urge that grant of bail to other accused i.e. accused Nos. 2 and 3 will be of hardly any assistance, as the said bail was granted on merit, as involvement of the said accused prima facie was not noticed. She would also invite attention of this Court to various orders passed by Division Bench of this Court in a Petition filed by the Citibank.

8] As such, contentions are, learned Magistrate while granting bail, has failed to consider that there was hardly any change in circumstances after rejection of earlier bail application. She would claim that since the earlier bail application was rejected upto the Apex Court, learned Magistrate was not justified in granting bail. She would also urge that an amount of Rs 1062 crores is involved in the crime and since the nature of offence being economic, it is required to be viewed very seriously, therefore court below ought not to have granted bail to the accused. She would further claim that offence under Section 409 is punishable with life imprisonment and that being so, bail granted needs to be cancelled.

9] While countering the aforesaid submissions, learned Counsel for the accused would urge that the bail granted to Respondent No.1/accused cannot be cancelled as parameters/principles governing cancellation of bail are altogether different than the one considered for granting bail. According to him, learned Magistrate, so also Sessions Court is very clear, as the court below while granting bail has dealt with and also explained subsequent development and reasons for grant of bail. As such, according to him, Application is liable to be rejected.

10] Considered submissions,

11] The accused came to be arrested in 2016 and has suffered incarceration for a period of more than two years before his release was ordered by the learned Magistrate is not a fact in dispute. Fact that in earlier round, prayer for grant of bail was rejected upto the Apex Court is also not in dispute. However, if we consider the reasons furnished by the Magistrate in granting bail, what can be noticed is, learned Metropolitan Magistrate has recorded reason that in the investigation, particularly in view of e-mail of witnesses Dipali

Gokhale, Girish Borkar and accused Prashant Mulekar, there is ample chance to rely on the accounts of the Company which were handled by Prashant Mulekar and staff of M/s. Geodesic Ltd. The accused has shared his password with the Investigation Officer and has cooperated in investigation as can be noticed from his say dated 24th October, 2017. Accordingly, as directed by EOW and Enforcement Directorate, e-mails were sent by the accused on 7th February, 2018 and communication received from the Bank in response to the said e-mails were produced before the Court. All the information was furnished by the accused to the Investigating Agency, and has given details as to how the amount was siphoned off. The Magistrate noticed that the present accused has not operated accounts of the Company. The Magistrate proceeded to consider the investigation and noticed that the investors with the Citibank and trail of the amount siphoned off is not investigated. In the aforesaid background, Magistrate has proceeded to direct the release of the accused.

12] Similarly, Sessions Court has dealt with the considerations made by the the Magistrate while granting bail and noticed that all the contentions raised by the prosecution were duly considered while

granting bail. The Sessions Court then considered that the present Applicant/State has failed to make out any case for cancellation of bail, as no grounds to that effect are established.

13] The law on the issue of cancellation of bail is well established. The principles or parameters governing grant of bail are altogether different than the one for cancellation.

14] Once the Magistrate has exercised discretion on relevant considerations while granting bail, generally and normally, higher court does not interfere with such discretion, unless it is demonstrated that exercise of discretion was for extraneous considerations and/or the merits of the matter viz relevant factors were not taken into account or the merits of the matter were ignored or bypassed.

15] If we consider the case in hand in the backdrop of aforesaid principles laid down by the Apex Court in the matter of *State of Bihar vs Rajballav Prasad* reported in (2017) 2 SCC 178, what can be noticed is, Magistrate, while granting bail in his discretion, has recorded sound reasons. Amongst other, he has considered that the

accused, apart from facing prosecution, has suffered incarceration without trial for a period of two years.

16] The material which is pointed out by the learned APP has been duly considered by the Magistrate, so also the Court of Sessions. As such, it cannot be said that there are cogent or overwhelming circumstances, which warrants interference in the discretion exercised by the court below. Apart from above, the accused has enjoyed liberty under Article 21 after he was ordered to be released on 16th April, 2018 for almost more than three and half years. During this period, he has not violated bail conditions. Rather, it can be noticed that the accused, a Chartered Accountant by profession, has very existence in the society and is verymuch available for facing prosecution case. As such, there is no apprehension that of accused getting absconded or he is likely to tamper with evidence, as he is verymuch available for facing trial.

17] In the aforesaid background, discretion exercised by the Magistrate is substantiated by cogent reasons and it cannot be inferred that such discretion is exercised for extraneous considerations or

relevant factors are not taken into account. No supervening circumstances are demonstrated by the Applicant/State of Maharashtra which warrant exercise of power under Section 439(2) of the Cr.P.C. for cancellation of bail.

18] In the aforesaid backdrop, in my opinion, no case of cancellation of bail is made out. Application as such fails and same stands rejected.

(NITIN W. SAMBRE, J.)