IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.678 OF 2020

Sanjay Satishkumar Sinha .... Applicant
versus
State of Maharashtra .... Respondent

…….

- Mr.R.P. Luthra a/w Gautam Tiwari and Hamdan Weldon i/b. Probus Legal, Advocate for Applicant.
- Ms.Pallavi N. Dabholkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd JUNE, 2021
(Through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.301/2017 registered with Malad Police Station, Mumbai. The investigation was taken over by E.O.W. Unit I, by registering their own FIR vide C.R.No.60/2017 u/s 420, 465, 467, 468, 471, 120-B of the Indian Penal Code. The Applicant was arrested on 17/08/2019 and since then he is in custody.

2. The prosecution case is reflected in the gist of the story mentioned in the charge-sheet filed by the investigating agency, which runs thus;

The FIR was lodged by Chief Regional Officer (Sales), Mumbai, Ashok Kailasnath Upadhyay of ICICI Bank. The FIR was lodged on 08/08/2017 against the Applicant as a Director of M/s Leeway Logistics Ltd. (hereinafter referred to as ‘the said company). The other accused Shrikant Naik was Accounts Manager of the said company. In August 2012 the said company contacted the informant’s bank for loan. Between August 2012 to February 2016 the said company had obtained loan to the tune of Rs.19,97,58,162/- for purchasing 175 forklifts. Out of which the loan for 140 forklifts to the tune of Rs.15,35,66,919/- was repaid and the loan amount of Rs.4,61,85,243/- for 35 forklifts was outstanding. Since 2016, the company stopped making payment of their dues. The bank started making enquiries. The enquiry revealed that the loan was obtained on the basis of forged documents.

3. On 27/10/2015, the Applicant and the other accused had met Ankit Soni, who was Relationship Manager of the bank and had applied for loan of Rs.54,00,000/- for 4 forklifts.

They had submitted invoices of M/s Kamal Sales Corporation. On 29/10/2018, a cheque for Rs.53,75,200/- was given for purchase of forklifts in the name of M/s Kamal Sales Corporation. However, the amount was transferred to the account of M/s Kamal Sales Corporation at Ratnakar Bank, Barakhamba, New Delhi, through RTGS. Hypothecation for the loan was lodged with the Registrar of Companies against the name of said company i.e. M/s Leeway Logistics Ltd. Again fresh application was made for purchase of 31 forklifts. The loan was sanctioned on 23/02/2016 and amount of Rs.4,01,96,150/- was transferred in the bank account of M/s Kamal Sales Corporation, at ICICI Bank, Naya Bazar Branch, New Delhi. In the documents, it was mentioned that the said company was buying forklifts of M/s Godrej Boyce Manufacturing Company Ltd. It was mentioned that M/s. Hyundai Motor India Ltd. and M/s Mercedes-Benz Ltd. had given contracts to the company and to comply with those contracts, forklifts were necessary. Thus, out of the total loan of Rs.4,61,85,243/- only Rs.20,25,155/- was repaid. Rest of the amount was not repaid and the amount of

Rs.4,41,60,088/- was misappropriated. The allegations are that M/s Kamal Sales Corporation was a fictitious company. No such company was found at the given address. The amount deposited in the account of M/s Kamal Sales Corporation was diverted to the account of M/s Leeway Logistics Ltd. and thereafter it was siphoned off. Aforementioned M/s. Hyundai Motor India Ltd. and M/s Mercedes-Benz Ltd. had not given any contracts to the Applicant's company. Some of the amount deposited in M/s Kamal Sales Corporation's account was diverted to various entities viz. M/s Vishal Enterprises, Ram Traders, Jitesh Enterprises, Yuvank Trading, Shreeji Traders etc. Those amounts were withdrawn and the cash was misappropriated. These, in short, are the allegations in the present case.

4. Heard Mr.R.P. Luthra, learned counsel for the Applicant and Ms.Pallavi N. Dabholkar, learned APP for the State.

5. Learned counsel for the Applicant submitted that the said company was incorporated in the year 2010. The company had 27 offices and more than 1000 employees all over India.

The main business of the company was to provide all logistics to their clients. For that purpose, the job was sometimes outsourced to small service providers. The Applicant's company used to get payment from their clients after about 60-90 days. However, the small service provides had to be paid within maximum two weeks. Therefore financial difficulty started as a gap between this payment widened. In addition, the company was expecting to get Rs.190 Crores, which was sanctioned by consortium of Banks led by Bank of India. But the sanctioned loan was not released and that had caused financial crunch for the Applicant's company.

6. Learned counsel for the Applicant submitted that the Applicant was mislead by his financial advisor. In connivance with bank officers, the advisor obtained the loan and the amount was deposited with M/s Kamal Sales Corporation. It was transferred to Applicant's company. The said amount was used in making payments to small service providers. The Applicant himself has not received anything from these transactions. He

submitted that M/s Kamal Sales Corporation is an existing company having sales tax registration number and it is not a fictitious company. He submitted that the Applicant is almost 67 years of age and he is in custody for almost 2 years. His further custody is unnecessary. He stressed on the fact that the Applicant had already deposited Rs.1 Crore with the informant's bank i.e. ICICI Bank. In addition, the Applicant has deposited Rs.1.30 Crores in this Court and that, the Applicant has no objection if the said amount is also withdrawn by the complainant bank i.e. ICICI Bank.

7. According to learned counsel for the Applicant, the Applicant will be completing 67 years of age on 18/07/2021.

8. Learned APP opposed this application and relied on the affidavit of the investigating agency. In the affidavit, statements of various witnesses are mentioned. There are witnesses connected with M/s Mercedes-Benz Ltd., Pune Ltd. and M/s. Hyundai Motor India Ltd. namely Sudipta Mukharji Ltd. and

Kartikeyan Rajkkal Gopal. These companies had not given contracts to the Applicant's company. Learned APP submitted that the entity M/s Kamal Corporation is a fictitious entity and it was only used to get the amount deposited in those accounts. After that, it was siphoned off by the Applicant by transferring it to his own company's account and to those of various other fictitious companies. Learned APP submitted that there are similar antecedents against his name. The loan was obtained on the basis of forged documents.

9. I have considered these submissions. Undoubtedly, at this stage, the prosecution has sufficient material against the present Applicant. Prima facie it is difficult to observe that the amount of loan disbursed was actually used for purchasing forklifts. The amount was transferred from M/s Kamal Sales Corporation's Account to the Applicant's company's account. That itself was irregular. However, I am taking following factors in consideration in favour of the Applicant; to take a lenient view. M/s. Hyundai Motors India Ltd. and M/s Mercedes-Benz

Ltd. had not given any contract. M/s. Kamal Sales was not authorized dealer of M/s Godrej Boyce Manufacturing Company Ltd.

(i) The Applicant's age is 67 years.

(ii) He is in custody since 17/08/2019 i.e. almost for two years.

(iii) Investigation is over and the charge-sheet is filed.

(iv) The Applicant has returned Rs.1 Crore to the complainant's bank and has deposited Rs.1.30 Crores in this Court.

(v) The Applicant has no objection if the amount of Rs.1.30 Crores is withdrawn by the complainant's company.

(vi) The trial is likely to take a very long time even to commence.

(vii) After investigation, nothing substantial was recovered as personal property of the present Applicant. Therefore there is substance in the contention that the amount involved was possibly used to make payments to small service providers. However, this fact will have to be established conclusively during trial. This may not wipe out the offence but will show that the Applicant has not gained substantial illegal monetary benefits for himself personally.

10. Considering these factors, I am inclined to take sympathetic approach and grant bail to the present Applicant in the present crime. It is made clear that the trial Court should conduct the trial on its own merit without being influenced by any of the observations made in this order. The observations are made only for the purpose of deciding this bail application.

11. To take care of apprehension of the investigating agency about non-availability of the Applicant and possible tampering with the evidence by the Applicant, certain conditions can be imposed on him.

12. Hence, the following order :

O R D E R

(i) In connection with C.R.No.60/2017 registered with E.O.W. Unit I, (previous C.R.No.301/2017 registered with Malad

Police Station, Mumbai), the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one or two sureties in the like amount.

(ii) The Applicant shall deposit his passport, if any, and if not deposited already with any other investigating agency; to the Investigating Officer of this case before being released on bail.

(iii) The Applicant shall not leave India without prior permission of the trial Court.

(iv) The Applicant shall furnish his residential address and contact details and also change in those in future, if any, to the Investigating Officer.

(v) The Applicant shall attend all the dates in the Court diligently.

(vi) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)