IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 743 OF 2020

Mr. David Markas .... Applicant

Versus

The State of Maharashtra .... Respondent

Mr. Ashish B. Baraskar for Applicant.
Ms. P. N. Dabholkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 21st APRIL, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 42 of 2019 registered at Khadakpada police station, Kalyan, under sections 420, 465, 468, 471 r/w. 34 of the Indian Penal Code (for short ‘IPC’) and under section 66(D) of the Information Technology Act.

2. Heard Shri. Ashish Baraskar, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The prosecution case is reflected in the First

Information Report itself filed by Amruta Dhamankar who was the victim. The F.I.R. is lodged on 24/01/2019. Gist of the F.I.R. is as follows:

On 10/08/2017 the informant and her family had gone to Bangkok. After returning to India on 16/08/2017, the informant's husband Swapnil got a friend request on his Face Book account from one Mariyam Khurshid. The informant's husband accepted that and developed friendship with that person. Mariyam told informant's husband that, she was an American citizen and at that time she was residing in Iran. Her husband was in the Military and had died in a war. She had a 12 years old son. Her brother in law was forcing her to marry him. She did not want to marry him. Mariyam told Swapnil that her husband had saved 18 lakhs American Dollars which she wanted to bring to India and for that, informant's husband should help her. The F.I.R. goes on to mention various instances as to how the informant and her husband were made to part with their money. He got a phone call from the person who claimed to be a Customs officer. He asked him to pay various amounts for releasing a box from the custom department sent by Mariyam in the name of Swapnil. He deposited that amount in the account number furnished by the said Customs officer. Thereafter, another person who represented that his name was Jones Scotan; brought a box to the informant's house. There were some currency note bundles and a glass bottle. Scotan told the informant and her husband that solution in the bottle was for cleaning currency notes of American dollars. He gave a small demonstration. He told that price of such bottle was Rs.15 lakhs for half litre and Rs.30 lakhs for 1 litre. The F.I.R. mentions that, on such pretext some further amount was extracted from the informant. The F.I.R. goes on mentioning many such instances when different amounts were taken from the informant and her husband. Amounts were transferred mostly from the informant's and her husband's accounts to various accounts. Ultimately, the informant realized that she was being cheated and by that time she had lost Rs.2,53,00,000/-. On this basis the F.I.R. was lodged. The applicant's name appears in the F.I.R. in the last paragraph.

4. In this matter, the applicant was arrested on 02/02/2019 and since then he is in custody. The investigation is

over and the charge-sheet is filed.

5. Learned counsel for the applicant made his submissions based on charge-sheet and F.I.R. His submissions are as follows:

There were four main accused in the main narration in the F.I.R. in respect of false representations. Applicant's name was not mentioned anywhere. His name suddenly appears in the last paragraph of the F.I.R. without any background. There was no specific role attributed to the applicant.

Learned counsel for the applicant invited my attention to a complaint made by the informant to the same police station on 10/12/2018. In that complaint the informant's name was not mentioned. Learned counsel submitted that, when the applicant was arrested, his passport and Visa were valid, therefore, he was residing in India on valid documents. There was no recovery from the applicant and no amount was paid to him. There is no active role attributed to the applicant. Learned counsel referred to the panchanama carried out when the applicant was arrested on 02/02/2019.

6. Learned APP relied on the charge-sheet and submitted that the offence is serious and panchanama of arrest of the applicant speaks for itself.

7. I have considered these submissions and I am not inclined to grant bail to the applicant because of the following reasons.

REASONS:

8. The F.I.R. explicitly mentions the manner in which applicant and her husband were cheated for a huge amount. Undoubtedly, the informant and her husband should have been diligent and careful but the fact remains that both of them were misled and with clear deceit they were made to part with their huge amount. As far as present applicant is concerned, the prosecution case is that, after registration of F.I.R. the police were investigating the case. During that investigation, the informant had told the police that a particular person was to come to domestic airport of Santacruz for accepting Rs.16 lakhs. Money was to be paid to him for purchase of machine which was to be used for cleaning American dollars. The informant was in touch with the

said person on his mobile phone. That mobile number is mentioned in the panchanama. Police arranged to carry out raid. The informant was constantly in touch with the said person. He called the informant to a particular spot. Police kept watch and as soon as they realized that he was present there, he was apprehended. He was the applicant himself. Most important aspect in this case is that the police verified that he was the same person who was in touch with the informant. The police seized a mobile phone from his possession. The informant was asked to make a phone call on the same number which is mentioned in the panchanama and on which number the informant kept in touch with the applicant. As soon as the informant made a phone call on the applicant's number, his phone started ringing and informant's phone number was displayed on its screen. Thus, there was no manner of doubt that the applicant was the same person who had called the informant to the airport to pay Rs.16 lakhs to him purportedly for the machine which was to be used for cleaning dollars. On this basis the applicant was arrested and since then he is in custody.

As can be seen, panchanama is clear enough. There is no doubt that the applicant himself had called the informant to the domestic airport to collect the amount. Therefore, he obviously is a party to the larger conspiracy of extracting money from the informant by cheating her.

9. The applicant's complicity in the offence is more than clear. The offence is serious. No case for bail is made out. Such instances are on the rise, therefore, it would not be proper to release the accused on bail, who is involved in such offence. Therefore, I am not inclined to grant bail to the applicant.

10. Application is rejected.

(SARANG V. KOTWAL, J.)