IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1392 OF 2020

1. Manish N. Kakkar
2. Narendra Pal Kakkar .... Applicants

Versus

The State of Maharashtra .... Respondent

Mr. Sandeep Singh for Applicants.
Smt. A. A. Takalkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 20th JANUARY, 2021

P.C. :

1. The Applicants are seeking their release on bail in connection with C.R.No. 409 of 2019 registered at Jodbhavi Peth police station, Dist. Solapur, on 07/08/2019, under sections 406, 420 and 201 r/w. 34 of the Indian Penal Code (for short 'IPC'). The applicants are brothers. They were arrested on 09/01/2020 and since then they are in custody. The investigation is over and the charge-sheet is already filed.

2. The prosecution case as is reflected in the F.I.R. and

other papers of investigation including documents related to the bank transactions and internet transactions are that the informant Sunil Pawar was a resident of Solapur. He has his own shop where he used to provide services to his customers of online recharging. In the month of October, 2018 while searching on the internet he came to know about M/s. Crowdfinch Cybernetics Pvt. Ltd., Jaipur. The informant sought further information in respect of that company. He came to know that, both the applicants were owners of that company. One Pankaj Kumavat and Mahindra Ranawat were senior employees. The informant contacted the company and after initial discussion, sent certain amounts for taking their services. After he paid around Rs.26,800/- the company gave him a domain by the name 'Swarajyapay.com'. Using that domain the informant started his online recharge services. He used to accept payment from his customers for making payment of electricity bills, mobile recharge, insurance policy payment, land line bill payment etc. through internet. It is the allegation that, initially catering properly to his requirements, subsequently, the applicants' company misappropriated the amounts given to them and did not make payment to various departments for which purpose the money was given to them. The allegations are that, between the period from 08/10/2018 to 20/07/2019 the informant transferred Rs.7,99,395/- in the account of the applicants' company. This amount was misappropriated and, therefore, this F.I.R. is lodged.

3. Heard Shri. Sandeep Singh, learned counsel for the applicants and Smt. A. A. Takalkar, learned APP for the State.

4. The learned counsel for the applicants submitted that, informant's interaction was with the applicants' employees and there was no direct contact between the applicants and the informant, therefore, there was no inducement made on their part. He submitted that the applicants tried to return the amount to the informant, but since both the applicants who are brothers are in custody since about a year, it was not possible for them to return the amount. He further submitted that the applicants are willing to furnish local solvent sureties.

5. The learned APP opposed this application. She submitted that the allegations in the F.I.R. speak for themselves. There is no dispute that the said amount as mentioned in the F.I.R.

is misappropriated by the applicants and therefore the offence is clearly made out.

REASONS:

6. I have considered these submissions. With the assistance of learned counsel for the applicants and learned APP for the State, I have perused the charge-sheet. The prosecution story mentioned in column No.16 of the charge-sheet is restricted to the said amount of Rs.7,99,375/-. At this stage, the applicants have not got any plausible defence for not utilizing that amount for which it was paid to them. Thus, at this stage, there is no reason to doubt the genuineness of the allegations made by the first informant in his F.I.R. However, the investigation is over and the charge-sheet is already filed. The applicants are in custody since 09/01/2019. The charge-sheet pertains to the commission of offence in respect of only one victim, though, there is statement of one more victim Ganesh Sarde. This charge-sheet is not filed in respect of any such grievance of the said witness Ganesh Sarde. Therefore, at this stage, the allegations are restricted to the loss caused to the first informant Sunil Pawar. However, custody of the

applicants will not yield anything. There is no recovery at the instance of the present applicants. Therefore, by keeping them in custody during the entire period of trial will not serve any purpose. The maximum sentence for commission of offence under section 420 of IPC is 7 years. The applicants are in custody for more than a year. The trial is not likely to commence in near future. It is also important to note that the informant himself had contacted the applicants' employees by making search on the internet. It was initially a business transaction. Whether the applicants' intention was dishonest right from the inception or not will be the matter of trial. At this stage, for consideration of bail, the applicants can be granted bail. The main concern will be to secure their presence. The learned APP submitted that, there are three cases pending against them in Gujarat and Rajasthan of similar nature. The learned counsel for the applicants states that the applicants are granted bail in respect of case pending in Rajasthan and about the case in Gujarat he does not have instructions. Therefore, certain conditions will have to be imposed on the applicants.

7. Hence, the following order :

ORDER

(i) In connection with C.R.No. 409 of 2019 registered at Jodbhavi Peth police station, Dist. Solapur, the applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.50,000/- each (Rupees Fifty Thousand each Only) with one or two separate local solvent sureties each in the like amount from Solapur.

(ii) The applicants shall give their residential addresses and telephone numbers to the Investigating Officer.

(iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)