IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 788 OF 2021

Ikechukwu Nathan Onyjelam Applicant

Versus

State of Maharashtra Respondent

Mr. S.S. Bhandary, Advocate holding for Mr. Swapnil Patil, Advocate for the applicant.
Mr. S.B. Narwade, APP for respondent/State.

WITH
BAIL APPLICATION NO. 198 OF 2021

Shri Dipak S/o Rajkumar Chitra Applicant

Versus

The State of Maharashtra Respondents

Mr. A.V. Nikam, Advocate instructed by Mr. R.A. Tambe, Advocate for the applicant.
Mr. S.B. Narwade, APP for respondent/State.

CORAM : M.G. Sewlikar, J.

RESERVED ON : 21st December, 2021.
PRONOUNCED ON : 28th January, 2022.

PER COURT :

1. Both these applications can be disposed of by common order as they arise out of the same crime.

2. Informant is the Branch Manager in Axis Bank, Dhule Branch. Axis Bank, Branch at Dhule, provided 'PAYPRO' facility to Dhule Vikas Sahakari Bank through online portal for RTGS and NEFT transaction on Current Account bearing No. 914020008206406 maintained with Axis Bank, Dhule Branch. This facility has been in operation since 1st August, 2019.

3. It is alleged in the First Information Report that an amount of Rs. 2,06,50,165/- was debited through the account of Dhule Vikas Sahakari Bank despite not entering into any transaction. Upon receipt of this message, the informant conducted internal enquiry and found that on 8th June, 2020, between 7.00 am and 10.15 am, one NEFT transaction and twenty six RTGS transactions were conducted from the said bank account transferring amount to the tune of Rs.2,06,50,165/- to various bank accounts. This information was immediately forwarded to the RTGS Hub of Central Control Unit of Axis Bank to freeze the account. It is the prosecution case that, in the enquiry, it was also revealed that some unknown persons had hacked the system of Axis Bank and committed theft of data, owing to which, amount from the said bank

account was transferred. On these allegations, First Information Report came to be lodged with Dhule City Police Station on the basis of which, Crime No. 111/2020 came to be registered for the offences punishable under Sections 420, 419, 465, 466, 467 of the Indian Penal Code and under Sections 43, 66, 66(c), 66(d), 66(f) of Information Technology Act.

4. Applicant in Bail Application No. 788/2021 came to be arrested on 2nd November, 2020 and applicant in Bail Application No. 198/2021 came to be arrested on 25th October, 2020.

5. Heard learned counsel Shri Bhandary, holding for Shri Swapnil Patil, learned counsel for applicant in Bail Application No. 788/2019, learned counsel Shri Aniket Nikam, holding for Shri R.A. Tambe, learned counsel for applicant in Bail Application No. 198/2021 and Shri S.B. Narwade, learned APP for the State in both the applications.

6. Learned counsel Shri Bhandary submits that applicant in Bail Application No. 788/2021 is a Nigerian national. He has been arrested solely on the statement of accused No. 2. The said

statement being confessional in nature, is not admissible in evidence. Applicant came to be arrested simply because he was living with accused No. 2. Applicant has come to India for medical treatment. He submitted that not a single document is placed on record to indicate that the applicant has any connection with the alleged offence. Applicant is neither the beneficiary nor he is a person who has hacked the Axis Bank account. He submitted that simply because of seizure of a diary from him, he is arraigned as an accused.

7. Shri Nikam, learned counsel for applicant in Bail Application No. 198/2021 submitted that applicant is also not the beneficiary of the amount allegedly transferred from the account of Axis Bank. He submitted that nothing is recovered from the applicant connecting him with the offence. A laptop, some Aadhar Cards and some PAN Cards came to be recovered from the applicant. Simply on the basis of this recovery, applicant cannot be connected with the offence. He submitted that the alleged recovery is not sufficient to connect the applicant with the offence.

8. Learned APP Shri Narwade submitted that applicant in

Bail Application No. 788/2021 is a Nigerian national. A diary has been seized from him in which there are details of names of the accused persons and their phone numbers. He submitted that if he had not been a party to the offence, it was not necessary for him to keep the numbers and names of the accused persons.

9. So far as applicant in Bail Application No. 198/2021 is concerned, learned APP Shri Narwade submitted that he is the mastermind of the offence. He submitted that on record he is not the beneficiary but he has been benefited from these transactions. According to him, the applicant was in touch with all the accused persons. He has prepared a chart indicating in what manner and how the applicant was in contact with the other accused persons. He submitted that the CDR details and their location show that the applicant is the mastermind of the fraud. He further submitted that applicant is the resident of Delhi. If he is released on bail, his presence cannot be secured. He is not likely to remain present for the trial. Therefore, both the applications deserve to be rejected.

10. So far as applicant in Bail Application No. 788/2021 is concerned, admittedly, he is not the beneficiary of the amount alleged

to be transferred from the account of Axis Bank. A diary is recovered from him indicating the names of accused persons and their contact numbers. Simply on the basis of seizure of this diary, without there being any other evidence, it cannot be said that the applicant has any connection with the alleged hacking of bank account and transferring the amount. There is no record to show that the amount was deposited in the name of the applicant or the amount was transferred by the beneficiary to the account of the applicant. The learned trial Court rejected the application of the applicant solely on the ground that huge amount has been transferred from India by the applicant. Simply on this basis, it cannot be said that he is the hacker or he has any concern with the alleged hacking. Learned trial Court held that applicant has come to India for medical treatment and it is not digestible that a patient is transferring huge amount from India. This will be a circumstance adverse to the applicant if it is shown that he is the beneficiary of the alleged fraud. When there is no evidence indicating that applicant is the beneficiary, this circumstance cannot be used against him.

11. So far as applicant in Bail Application No. 198/2021 is concerned, a cheque book of Yes Bank, copies of Aadhar Cards in the

name of Ashok Kumar, Balram, Rahul, Ratankumar Darshankumar and Prabhash, a Metro pass, a handbag containing camera of Canon company, copies of PAN Cards in the name of Balram, Rahul Pratapsingh and Avatasingh, Debit Cards of Axis Bank, Karnataka Bank, Paytm Payment Bank and Federal Bank along with SIM Cards of Airtel and JIO company, mobile phones, CPU, computer and Wireless transmeter are seized from his possession. Unless it is shown that these Aadhar Cards and SIM Cards were used for hacking the bank account or for transferring the amount, it cannot be said that the applicant was involved in the commission of the alleged fraud and transferring of data. Even if it is accepted for the sake of argument that the applicant was in contact with the accused persons, it cannot be said that he is the mastermind of the offence. There has to be some corroborative evidence to show that he is the one involved in hacking bank account or the seized mobile phones were used for transferring the amount. Simply because he was in touch with some of the accused persons, it cannot be concluded that the applicant is also involved in transferring data in the alleged fraud. It is true that this crime involves huge amount of Rs. 5,06,50,165/-. However, simply because the amount is huge, applicants cannot be kept behind the bars for an indefinite period without there being substantial evidence connecting them with the offence.

12. So far as forgery is concerned, in what manner forgery has been committed and how applicants are involved in forgery is not explained by the prosecution. In this view of the matter, I am inclined to release both the applicants on bail. Hence the following order :-

ORDER

i) Bail Application Nos. 788/2021 and 198/2021 are allowed.

ii) Each of the applicants be released on PR Bond of Rs.1,00,000/- (Rs. One Lac) with one solvent local surety in the like amount in connection with Crime No. 111/2020 (0354/2020) registered with Dhule City Police Station, Dist. Dhule, for the offences punishable under Sections 420, 419, 465, 466, 467 of Indian Penal Code and under Section 43, 66, 66(c), 66(f) of Information Technology Act.

iii) Applicants shall not make any attempt to influence the prosecution witnesses in any manner.

iv) Applicants shall not put any obstacle in the trial and remain present on the dates fixed by the Trial Court and co-operate the Trial Court.

v) Applicants shall deposit their passport, if any, with the Judicial Magistrate First Class, Dhule.

vi) Applicants shall not travel abroad without prior permission of the Judicial Magistrate First Class, Dhule.

vii) Applicants shall furnish their address in detail and mobile phone number with the Judicial Magistrate First Class, Dhule and City Police Station, Dhule, and Police Inspector, Dhule City Police Station to verify the same.

viii) Bail before the Judicial Magistrate First Class, Dhule, Dist. Dhule.

ix) Applicants shall attend the concerned police station twice in a week i.e. on every Wednesday and Sunday between 10.00 am and 4.00 pm, till the conclusion of the trial.

(M. G. SEWLIKAR)
Judge

dyb