IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 826 OF 2020

Khadar Basha Valisaheb Shaikh .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Sujit B. Shelar for Applicant.
Mr. P. H. Gaikwad, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 31st JANUARY 2022
(through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.223 of 2018 registered at Amboli police station, Mumbai on 30/04/2018, under sections 420 and 406 r/w. 34 of the Indian Penal Code (for short 'IPC'). Subsequently, Section 120-B is also added. The applicant was arrested on 24/08/2019 in connection of this offence and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Shri. Sujit Shelar, learned counsel for the applicant and Shri. Gaikwad, learned APP for the State.

3. The prosecution case, as mentioned in the charge-sheet in short is that, the applicant was a Director of M/s. Priority International Holiday Club Pvt. Ltd. He along with co-accused Tushar Chaudhary, Ahamad Shaikh and Wasi Mohammad in collusion and by conspiring with each other induced 73 victims to pay different amounts, made agreements with them and without giving them any facilities or services etc. have misappropriated Rs.94,67,500/-.

4. Learned counsel for the applicant submitted that, in the entire charge-sheet there is not a single victim who had either met the applicant or had interacted with him. The charge-sheet only mentions some statements wherein the victims have claimed that they came to know that the applicant was a Manager of the company. He submitted that, there is no involvement of the present applicant. There is not a single documents which is signed by him and which is seized during the investigation. The applicant was arrested on 24/08/2019 and since then he is in custody. The investigation is over. There is no necessity of his further custody. The other accused are yet to be arrested. He relied on the order

dated 27/08/2021 passed in B.A.No. 181 of 2020 by this court (Coram: Prakash D. Naik, J.) granting bail to the applicant in connection with C.R.No.124 of 2019 registered at Malad police station U/s.409, 420, 465, 467, 468, 471, 506 and 120-B r/w. 34 of IPC. He submitted that, by a reasoned order, on similar allegations the applicant was granted bail in another case and, therefore, the same principles should apply in the present case, as well.

5. Learned APP opposed this application. He submitted that, number of the victims and total amount involved are big. Many victims are cheated. Their amounts are misappropriated. Many other accused are involved. The offence is serious. There are 11 antecedents against the present applicant at various places in Telangana and Navi Mumbai. Therefore, bail should not be granted to the applicant.

6. I have considered these submissions. With assistance of both learned counsel I have perused the charge-sheet. The F.I.R. is lodged by one Pradeep Dalal on 30/04/2018. He has stated that, In January 2016, he had gone for shopping at Infinity Mall, Malad

(W). At that time, some persons were distributing coupons for lucky draw. The informant had given his information on one of the coupons. He had given his name and mobile number. In June 2016, he received a phone call on his mobile phone and he was informed that he was a winner of the lucky draw and he should collect his gift. The applicant went to a place at Veera Desai Road. The Manager Sohail Mulla met the informant. He gave information about their company by the name Priority International Holidays Club Pvt. Ltd. He told the informant that, he could take membership of their holiday package for Rs.1,80,000/- for a period of 10 years. The informant could get various facilities like hall for birthday celebration, summer camp, ticket for Dandiya etc. He was told that, other Directors were Tushar Chaudhary, Ahamad Shaikh and Wasi Mohammad. He was told that the present applicant and one Sameer Shaikh were the Managers. The informant paid Rs.1,80,000/-. He was given a copy of the agreement on stamp paper. He was given membership number. After that, absolutely no facilities were offered. The company's employees including Sohail avoided his calls. The informant went to Veera Desai road. He found that the office was closed. He realized that, he was cheated. On this basis the F.I.R. was lodged.

7. Similar to the first informant, there are more than 70 victims who were similarly cheated for various amounts. Not all the victims have mentioned the applicant's name in their statements. Some victims like Ankit Patel, Deepak Varma and Mariyam Surve make a reference to the applicant's name in their statements. However, their information about the applicant is based on hearsay information provided to them. There is a substance in the arguments of learned counsel for the applicant that, none of the victims had actually met the applicant. There was not a single document collected during the investigation which is signed by the present applicant. There is hardly anything in the charge-sheet to show the applicant's involvement.

8. In this backdrop, the observations made by the co-ordinate bench of this court in B.A.No.181 of 2020 are also important. There also arguments were advanced that the applicant had criminal antecedents. But it was observed that he was released on bail in those cases. His long period of detention as under trial

prisoner cannot be a pre-trial punishment. With such observations and other reasons the applicant was granted bail in that case. The same reasoning applies to the present case, as well. The applicant is already in custody since 24/08/2019. The trial has not yet begun. It will take long time to conclude. The investigation is over. The charge-sheet falls short of required material against the present applicant to deny him bail. Therefore, the applicant deserves to be released on bail. Learned APP submitted that the applicant is not resident of Maharashtra. However, learned counsel for the applicant offered local sureties. In this view of the matter, there is no reason as to why bail should not be granted to the present applicant in this case.

9. Hence, the following order :

ORDER

(i) In connection with C.R.No. 223 of 2018 registered at Amboli police station, Mumbai, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two local sureties in the like amount.

(ii) The applicant shall deposit his Passport with the investigating officer before being released on bail; if it is not deposited already.

(iii) The Applicant shall attend the concerned trial court on every date, unless prevented by any reasonable cause.

(iii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)