rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1179 OF 2022

Amit Kumar Barnwal	]	..	Applicant
vs.			
Union of India & Anr.	]	..	Respondents

Mr.Subhash Jha a/w Mr.Siddharth Jha, Mr.Vimal Jha a/w Dwivendra Dubey i/b Lex Prime Law Firm for the Applicant.

Mr.Kuldeep Patil, for Respondent No.1-CBI.

Mr.S.H. Yadav, APP for the State.

CORAM : BHARATI DANGRE, J
RESERVED ON : 14th OCTOBER, 2022
PRONOUNCED ON : 21st DECEMBER, 2022

P.C.

1] The Applicant is charge-sheeted in CBI Special Case No.1266/2021, filed before the Special CBI Court, Mumbai, and he who is presently in judicial custody, seek his release on bail, by submitting that his detention is unnecessary in the wake of decision of the Hon'ble Apex Court in the case of **Satender Kumar Antil vs. CBI**[1].

The submission advanced on behalf of the Applicant is, the charge-sheet being filed and he not being arrested during the course of investigation of the subject CR and on being released on interim bail but arrested subsequently, warrant his release.

2] Heard Mr.Subhash Jha for the Applicant, Mr.Kuldeep Patil for Respondent No.1 CBI and Mr.S.H. Yadav, APP for the State.

3] Before appreciating rival submissions, it is necessary to make

1 (2022) 10 SCC 51

reference to the factual background in which the CR was registered and the Applicant came to be arrested.

FIR came to be registered by the Economic Offences Bureau, CBI, Mumbai on 15.09.2020, in form of case No.RC.068.2020.E.0005. The FIR was registered on a written complaint filed by Govind Narayan Goyal, Deputy General Manager (B&O), State Bank of India (SBI), South Mumbai Zone against M/s.Vroom Motors, Auto Loan Counsellor, M/s.G3 Motors, M/s.Krishiv Motors, Shri Ganesh Babu Ubhare (Proprietor M/s.Vroom Motors, M/s.G3 Motors and Partner in M/s.Krishiv Motors), Shri Hansdeep P. Bhasin (Partner in M/s. Krishiv Motors), Mrs.Harpreet Sonu Ganesh Ubhare, w/o Shri Ganesh Babu Ubhare, Shri Kashyap Parikh, Associate of Mr.Ganesh Ubhare, Mr.Amit Kumar Barnwal (Public Servant), then Branch Manager, SBI, Mandvi Branch and unknown persons u/s 120-B read with 420, 465, 467, 468 and 471 of the Indian Penal Code and u/s 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

It is alleged that during the period between 2016 to 2018, the accused persons entered into criminal conspiracy with public servant and others, with an intent to cheat SBI in the matter of availing car loans. In pursuance to the said conspiracy, Shri Ganesh Ubhare arranged at least 46 car loans in the name of various persons from SBI, Mandvi Branch, in the capacity of proprietor of M/s.Vroom Motors and received commission out of it. Further, in pursuance of the said criminal conspiracy, it is alleged that the accused persons submitted false and fabricated documents viz. Proof of income and emolument, statement of account to the lender bank. The lender Bank official(s) accepted those false and fabricated documents and sanctioned at least 46 car loans to the tune of Rs.19.86 crores.

The loan proceeds were fraudulently credited into these accounts. Further the accused persons without purchasing 39 vehicles for which loans were sanctioned, created false and fabricated registration certificates purportedly issued by the respective RTOs and submitted the same as genuine to the lender bank. The lender bank official(s) accepted false and fabricated Registration Certificate of vehicles and placed them on record. The car loan proceeds credited to the account of M/s.G3 Motors and M/s.Krishiv Motors were utilized by the accused persons. Due to non-payment of interest and installments, the accounts were classified as NPA with an outstanding of Rs.17,53,11,004.97. The criminal acts committed by the accused persons caused wrongful loss to the SBI and corresponding wrongful gain to themselves, is the accusation.

4] The Applicant who was working as Branch Manager, SBI, Mandavi Branch, is arraigned as Accused No.8 and subsequently charge-sheeted, which attribute the following role to him :-

"It is alleged that Amit Kumar Barnwal, the then Branch Manager, SBI, Mndvi Branch, without verifying the genuineness of the documents related to the employment of the applicant, statement of ICICI Bank Ltd, recorded a Pre-sanction inspection report dated 22.05.2017 wherein he falsely mentioned that applicant Smt.Bhaghyashree Tanawade is working as Quality Manager in M/s. Tech Mahindra Business Services Ltd. It is alleged that Smt.Bhagyashree Tanawade never worked with M/s.Tech Mahindra business Service Ltd. under any capacity.

It is alleged that Amit Kumar Barnwal, the then Branch Manager, SBI, Mandvi Branch, prepared an opinion report wherein he mentioned that Smt.Bhagyashree Tanawade is having networth of Rs.95,00,000/- which was arrived by him, on the basis of false documents submitted along with the loan application without conducting any due diligence.

It is alleged that after preparation of false Pre-sanction inspection report and Opinion report, Amit Kumar Barnwal mentioned in the Appraisal-cum-Control Report that the applicant/borrower would purchase the vehicle from M/s. G3 Motors Pvt. Ltd. and sanctioned a car loan limit of Rs.13,90,000/- to the borrower Bhagyashree Tanawade on 26.05.2017 under his delegated financial powers on the basis of false and fabricated documents. On the same day, the sanction was communicated to Bhagyashree Tanawade in writing by Amit Kumar

Barnwal himself and the same was accepted by Bhagyashree Tanawde."

5] The charge-sheet allege that the same modus operandi was adopted in case of all the 46 car loans, which were either sanctioned by Amit Kumar Barnwal or recommended by him for sanction to next higher authority as per delegated financial powers, while he was working as Branch Manager, SBI, Mandvi Branch, during the relevant period. In case of recommendations made by Amit Kumar Barnwal for sanction of car loans by the Competent Authority, i.e. Regional Credit Committee or Chief Manager (Credit), RBO-1, South Mumbai Zone, the same were processed and recommended in the name of prospective borrowers on the basis of false and fabricated documents in similar manner as discussed above. After sanction of the car loans, Amit Kumar Barnwal disbursed the car loans in defiance with the terms and conditions of the sanction order including the prevailing banking guidelines/circulars. Thus, Amit Kumar Barnwal facilitated siphoning of Bank's funds by the accused mediators and borrowers, who availed the car loans fraudulently and caused wrongful loss to the Bank and corresponding wrongful gain to themselves.

It is alleged that Amit Kumar Barnwal received undue benefits in the form of hospitality services, air travel facility from the borrowers as a reward for facilitating sanction of said car loans; thereby misusing his official position. Whereas, it is alleged that Amit Kumar Barnwal did not conduct Pre-sanction Inspection and Post-sanction Inspection meaningfully, otherwise non-purchase of the vehicles out of the loan proceeds and misappropriation of Bank's funds would have come to notice.

6] The Applicant face allegation that out of 46 car loans, 26 loans were processed and sanctioned by Amit Kumar Barnwal himself under his delegated financial powers in similar fashion as discussed above. It is case of CBI that, out of 26 car loans sanctioned by Amit Kumar Barnwal, no vehicle was purchased except in one case, where vehicle was purchased. However, false Registration Certificates were submitted as if vehicles were purchased by utilizing the loan proceeds."

7] The above material is now compiled against the present Applicant, on filing of the charge-sheet.

The learned counsel for the Applicant Mr.Jha has placed before me a Chart, on the basis of which he would submit that the Applicant was only a recommending officer, though he was described as "Branch Manager" and after his recommendation the loan which was to be sanctioned was processed by the Processing Officer and then sanctioned by the Sanctioning Officer i.e. Chief Manager (Credit) RBO/ Regional manager (AGM) RBO. He would submit that it was the duty of the Assistant Manager of the Branch to verify KYC details and post sanctioning documents.

The submission advanced is that, though in his Branch Rs.4.33 Crore loan was processed, for 25 high end cars, in fact 15.55 crores is sanctioned by other persons than him.

Mr. Jha would submit that his complicity in the entire charge-sheet is superficial without going into the actual working of processing of the loans.

8] Apart from this, another submission of Mr. Jha is, since the purpose of arrest is to complete investigation and once, investigation is complete, accused need not be detained till conclusion of trial, particularly when the trial is likely to consume considerable time.

He would place reliance on the decision of Delhi High Court in **Court on its own Motion vs. CBI**[2], where process to be followed while charge-sheet is presented has been culled out and the logic behind the directions has been supplemented by a reasoning to the effect that if a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by denying bail suddenly, merely because charge-sheet has been filed, is completely unwarranted.

---

2 2004(72) DRJ 629

He would further rely upon the decision of the Apex Court in **Satender Kumar Antil vs. CB**I (*supra*), where process to be followed under Section 170 of the Code of Criminal Procedure is contemplated and Mr. Jha would lay his emphasis upon the observations recorded in Para 36 of the said law report, to the effect that there is not even a need for filing Bail Application, as the accused is merely forwarded to the Court for framing of charges i.e. issuance of process for trial. The specific wording to the following effect is fulcrum of Mr.Jha's argument being "for due compliance of Section 170 of the Code there is no need for filing of Bail Application."

In short, the submission advanced by Mr. Jha in the wake of accusation faced by his client is that, since the case of the Applicant falls within category A or B as formulated in Satender Kumar Antil (supra), he deserve his release on bail.

9] Mr. Patil, the learned counsel for CBI would emphasis upon seriousness of the offence and would invite my attention to the specific role that has been attributed to the Applicant in the charge-sheet.

Dealing with the submission of Mr.Jha that co-accused have been released on bail, the submission is, role attributed to them is limited and hence there can be no parity available to the Applicant.

10] With the able assistance of the respective counsel, I have perused the charge-sheet placed on record which attribute a very grave and serious role to the present applicant.

The Applicant working as Branch Manager, is alleged to have submitted pre-sanction inspection report without verifying genuineness of the documents in the case of Fuljaha Khan and even in the Appraisal-cum-Control Report he reported that borrower would purchase vehicle from M/s.G-3 Motors Limited and sanction was forwarded to the Chief Manager (Credit) (RBO-1) for the purpose of controlling. It is the Applicant, who communicated the sanction to Fuljaha Khan in writing which was accepted by her.

The charge-sheet reveal similar role being attributed to the

Applicant in case of disbursement of loan to distinct persons and he face same accusation against all the loan transactions, which are routed through the branch, in which he was working.

The act of conspiracy which is alleged in the charge-sheet clearly reveal that State Bank of India, a Public Sector Bank was cheated by the Applicant by disbursing the car loans sourced by M/s.Vroom Motors during 2016-2018 and the manner in which the entire conspiracy has been hatched and given effect to, has particularly surfaced through the charge-sheet.

The investigation reveal that accused persons without purchasing the vehicles for which the loan was sanctioned, created false and fabricated Registration Certificates, abruptly issued by RTO and then submitted the same as genuine to the lender Bank. The lender Bank officials including the present Applicant, accepted the same and used them for processing the loan, despite having clear knowledge that they were not genuine. The car loan proceeds were credited to the account of M/s.G3 Motors and Krishiv Motors which was utilized by the accused persons.

Due to non payment of interest and installments, the accounts were classified as NPA with outstanding of Rs.17,53,11,005.95. The criminal act of the accused persons have caused wrongful loss to the public exchequer corresponding to wrongful gain.

11] The seriousness of the accusation are clearly reflected through the charge-sheet and it can be inferred that a whopping sum has been swindled of and the Applicant played a major role in the whole scenario.

Reliance on the decision of **Satender Kumar Antil** (*supra*) though justified in peculiar scenario which was deliberated upon by their Lordships of the highest Court, however, do not deserve to be extended to the present Applicant.

While enunciating the position revolving around Section 170 of the Cr.P.C., the scope and its ambit was discussed in great detail and two categories were specifically carved out, one being, where the prosecution does not require custody of the accused, then there is no need for arrest. When the case is sent to the Magistrate under Section 170 of the Cr.P.C. in such a situation, the Apex Court has ruled that there is no need for filing Bail Application, as the accused is merely forwarded to the court for framing of charges and issuance of process for trial. However, in a case where the court is of the view that there is no need for remand, the Court can fall back upon Section 88 of the Cr.P.C. and complete the formalities to secure presence of the accused for commencement of trial. However, third category is carved out where remand can be required, when the accused will have to be heard.

12] The decision of the Delhi High Court in case of **Court on its Own Motion**(*supra*), which has received imprimatur by the Supreme Court in Siddharth vs. State of U.P. and the observations are to be read in the wake of sanctity being attached to the liberty of an individual. It has been held that Section 170 of the Cr.P.C. do not impose an obligation on the Officer in charge to arrest, each and every accused, at the time of filing of charge-sheet, particularly, in a case where accused has co-operated with the investigation throughout. However, when the decision of Delhi High Court is carefully perused, Justice J.D. Kapoor has himself carved out a class, where it is necessary to have custodial interrogation for recovering incriminating articles or weapons of offence or eliciting information as to his accomplice etc. or for other purposes that may help in gathering evidence to prove the guilt.

Apart from this, the directions to the police/investigating agency issued by Delhi High Court also carved out a particular category "Class 3" as under :

> "Arrest may be necessary, if the offence alleged is of grave nature and prescribe severe punishment and there is a likelihood of an offender either absconding or not appearing on being summoned or his fleeing away from justice or judgment."

13] It may, therefore, be concluded that the accused who has been involved in commission of a heinous and grave offence, should be investigated and arrest would be necessary if the prosecution apprehend that the offender may flee away from justice.

14] In the instant case, the Applicant is accused of commission of serious economic offence which has resulted in serious dent to the public exchequer and impaired financial health of the State. The material against the Applicant is now been crystalized in form of charge-sheet which clearly point out to his culpability and complicity. Hence, though he is not arrested at the time of investigation, when taken into custody, the learned Judge has rightly refused to release him on bail when prima facie case against him has been emerged through the charge-sheet.

15] Therefore, I am not impressed by the submission of Mr.Jha that since the Applicant was never arrested during the course of investigation, he ought not to have been arrested and if at all arrested , he should have been released on bail.

Upholding the impugned order, Bail Application is rejected.

[BHARATI DANGRE, J]