IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1618 OF 2021

Miten Anil Pandya	..	Applicant
Versus		
The Central Bureau of Investigation, Bank Securities & Fraud Cell, Mumbai & Anr.	..	Respondents

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Mr.Aabad Ponda, Senior Advocate with Rohan J. Sawant, R.Bhatt and Gopal L. Dalvi for the Applicant.

Mr.H.S.Venegaokar for the CBI/Respondent No.1.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent No.2.

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CORAM: BHARATI DANGRE, J.
DATED : 22nd SEPTEMBER, 2022

P.C:-

1. The applicant is charged in RC.01(E)/2018 registered with CBI, BS & FC, Mumbai, which invoke Sections 409, 420 read with 120-B of the Indian Penal Code **(for short, "the IPC")** and Sections 13(1)(c) & (d) and 13(2) of the Prevention of Corruption Act, 1988 **(for short, "the PC Act")**.

In connection with the said C.R., he came to be arrested on 04/03/2018 and since then, he remains incarcerated.

2. The applicant is accused of being part of the criminal conspiracy, cheating and criminal misconduct in connivance with the public servants of Punjab National Bank **(PNB)**, to cause wrongful gain to Diamonds R US, M/s.Solar Exports, M/s.Stellar Diamond and causing wrongful loss of Rs.280.70 crores to PNB in respect of 8 fraudulent letters of undertaking **(LOU)**.

The investigation reveals that the complainant bank vide letter dated 13/02/2018, had informed CBI that accused Gokulnath Shetty, in conspiracy with other accused persons, including the partner of three accused firms, had dishonestly and fraudulently, issued 150 LOUs to overseas branches of Indian Banks before his retirement year in 2017, total amounting to Rs.6498 crores approx, and the buyers credit obtained against the said 150 LOUs had been siphoned off by the accused persons. The firms and its partners had not provided 100% cash margin, and thereby, PNB has been put to wrongful loss of Rs.6498 crores approx.

On 31/01/2018, the complaint was lodged with the CBI and CBI recorded the FIR vide CR No.RC.01(E)/2018, by invoking offences punishable under Sections 409, 420 read with 120-B of IPC and Sections 13(1)(c) & (d) and 13(2) of the PC Act.

CBI conducted detailed investigation and on 14/05/2018, filed the charge-sheet against the present applicant and other co-accused.

3. Learned senior counsel Mr.Ponda would rely upon an order passed by this Court in Bail Application No.3124 of 2021 in case of the co-accused, Arjun Eknath Patil Vs. Union of India & Anr. on 19/08/2022 and submit that the applicant is similarly situated to the said Arjun Eknath Patil. Apart from this, on merits it is submitted that the applicant has been wrongfully arraigned as an accused and perusal of the charge-sheet would reveal that the applicant has not received any money or commission from the main accused, but as he was merely working as an employee and closely associated with the main accused, he is indicted in the crime.

It is further submitted that except co-accused Gokulnath Shetty, the Manager of PNB, all other bank employees to whom the CBI has assigned specific role as the one who had complete knowledge of alleged fraud, are already released on bail.

Apart from this, it is submitted that the applicant, was working as Manager (Finance) in M/s.Firestar International Pvt. Ltd., the company of Nirav Modi Group and whose immediate boss is one Vipul Ambani (accused No.9), who was President of Finance is also released on bail by the Sessions Court and parity is sought to be drawn with Vipul Ambani by the learned senior counsel, by submitting that the decisions of utilisation of funds were done with the permission of Vipul Ambani and it was he, who used to regularly visit PNB and meet the bank officials and was in regular touch with them. It is also submitted that he ordered shifting of all the documents to the office of Cyril Amarchand Mangaldas, after the offence was registered.

Apart from this, long incarceration of the applicant for last four years is also pressed into service as a ground for release, with no likelihood of trial, being concluded at the earliest.

4. I have heard learned counsel Mr.Venegaokar appearing for the CBI, who would fall back on the affidavit filed by the Additional Superintendent of Police, CBI on 06/09/2021.

Learned counsel would submit that the applicant was working as Manager (Finance) in M/s.Firestar International Pvt. Ltd. and he was aware of the fraudulent transactions carried out by Nirav Modi and other co-accused, in furtherance of the conspiracy and it is he, who played major role in concealing the important documents, with an intention to destroy them, by transferring them to the office of the Law Firm at Lower Parel in Mumbai. It is submitted that the statements of PW 30 and PW 29 are to the effect that it was the present applicant, who has brought the documents in the office in the night of 14/02/2018, pursuant to which, search was carried out and voluminous documents came to be seized. It is sought to be argued that the conduct of the applicant, which has surfaced in the charge-sheet, reveal that he was directly involved in committing disappearance of the evidence and Section 201 of IPC has been attracted.

Parity as sought, is denied with Vipul Ambani on the ground that, the applicant is directly involved in concealment of incriminating documents/articles, with an intention to destroy them, in connivance with the main accused Nirav Modi and Nehal Modi and the documents seized from the Firm, included the original applications for LOUs, Airway bills, bills of entry and copies of swift messages, relating to LOU.

5. Pertinent to note that co-accused Manish Bosamiya, who was attributed a major role came to be released on bail by this Court in Bail Application No.3786 of 2021, where by referring to the accusations levelled against the accused persons, submission of long incarceration coupled with staggering progress of trial, being taken note of. Recording that there are about 150 witnesses to be examined and there are 30 accused in the case, the learned Single Judge of this Court (Coram : Prakash D. Naik, J.), by relying upon the decision of the Hon'ble Supreme Court in the case of ***Union of India Vs. K.A.Najeeb***[1], released him on bail on account of he being in custody for four years and three months.

6. Relying upon the said order, co-accused Arjun Eknath Patil was also released on bail in the light of the same analogy that the trial is likely to consume considerable time with 150 witnesses to be examined and he was incarcerated since 20/02/2018.

7. As far as the present applicant is concerned, the role attributed to him has clearly surfaced through the charge-sheet and he has been accused of being responsible for transferring the documents to the office of the Law Firm in order to destroy the evidence. The material to that effect is already compiled in the charge-sheet and though he face the accusations of being acting in connivance with the main accused persons and having knowledge of conspiracy for

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illegally transmitting the LOUs and cheating the PNB by a clandestine operation, since the co-accused are released on bail, I see no reason, why the present applicant should continue to be incarcerated, when he also suffers incarceration from 04/03/2018.

8. With the presumption of innocence of an accused till proven guilty, the onus is on the prosecution to bring home the guilt of an accused. This being a cardinal principal of law, acknowledged throughout the world coupled with a right of accused for a speedy trial, which has been well accepted as a facet of Article 21. Prolonged delay in culmination of the trial will not justify the indefinite incarceration of the accused, however, serious the nature of accusations may be with no exception to economic offences. Once investigation is complete and charge-sheet is filed, presence of the accused in custody is not necessary, though he may be tried for the charges, he face.

On this count, I am satisfied that the applicant deserve his release on bail, on the ground of his long incarceration, awaiting the culmination of trial.

9. Needless to state that the observations made above are, *prima facie,* in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the offences with which he is charged, shall not get influenced by the above observations, in any manner.

: **ORDER** :

(a) Application is allowed.

(b) Applicant – Miten Anil Pandya shall be released on bail in connection with C.R.No.RC.01(E)/2018 registered with CBI, BS & FC, Mumbai (Special case No.37/2018) on furnishing P.R. Bond to the extent of Rs.1,00,000/- with one or more sureties in the like amount.

The applicant shall be released on cash bail of Rs.1,00,000/- for a period of four weeks in lieu of sureties. During the said period, the applicant shall arrange for the sureties.

(c) The applicant shall report to CBI, Banking & Finance, Bandra Kurla Complex, Mumbai once in a month i.e. on first Tuesday of the month between 11.00 a.m. and 1.00 p.m. for the first three months; and, thereafter, once in three months i.e. first Tuesday between 11.00 a.m. and 1.00 p.m., till further orders.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) The applicant shall deposit his passport before the Special Court.

(f) The applicant shall not leave India without prior permission of the trial Court.

(g) The applicant shall regularly attend trial, on every date, unless he is exempted.

(h) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)