IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2541 OF 2022

Mohammed Shamim Akhtar Bashir
Alam Alias Fitu ...Petitioner
Versus
The Senior Inspector of Police and Anr. ...Respondents

Mr. Swapnil Wagh a/w Ms. Vinita Dandekar, Advocate for Petitioner.
Mr. M.G. Patil, APP for the Respondent - State

CORAM : PRAKASH D. NAIK, J.
DATE : 30th SEPTEMBER, 2022.

PER COURT:-

1. The Petitioner is prosecuted vide Sessions Case No.2067 of 2019 for offence punishable under Sections 489(b), 489(c) r/w 34 of Indian Penal Code (for short 'IPC'). The Petitioner preferred an Application for discharge before the Court of Sessions for Greater Bombay under Section 227 of the Code of Criminal Procedure. Vide order dated 21st June, 2022 the said application was rejected.

2. The case of the prosecution is as follows :

i. On 12th July, 2019 the first informant was on his duty at Crime Detection Branch, Unit-3. He has informed that Police Inspector Mr. Gaikwad has received information that one person is likely to arrive at Sant Sawta Mali Marg, near Jamali Bohari Masjid, Byculla (East), Mumbai with counterfeit Indian currency notes.

ii. Panchas were called. Raid was arranged. Instructions were given to the members of raiding team. The members of team proceeded to the spot for conducting raid.

iii. The raiding team waited near the spot of incident in scattered position. Two persons were seen walking on Sant Sawta Mali Marg. Senior Police Inspector pointed out at the said persons and signalled the raiding party to apprehend them. The suspects were surrounded by the raiding team.

iv. The Accused gave their names as Mohammad Shahid Jinu Shaikh and Abdul Hai Abuzae Shaikh. Personal search of Mohammad Shahid Jinu Shaikh resulted in recovery of thirty counterfeit Indian currency notes of Rs.2000/- each. They were arrested.

v. During the course of investigation, Petitioner was arrested on 4th March, 2022. He was produced before the Competent Court and remanded to custody. Investigation was completed and charge-sheet was filed.

3. Learned Advocate for the Petitioner submits that there is no cogent and legally admissible evidence to support the involvement of the Petitioner in the crime. The learned Sessions Judge has erroneously rejected the application for discharge. There is no material to connect to the Petitioner with the crime. The

charge-sheet filed against the Petitioner does not disclose any legally admissible evidence against the Petitioner. No case is made out to frame charge against the Petitioner. In the absence of legally admissible evidence, the Petitioner is languishing in custody. The offence under Sections 489(B) and 489(C) of IPC are not made out against the Petitioner. The Petitioner was not found in possession with counterfeit currency notes. The Petitioner was arrested only on the basis of suspicion. The Petitioner cannot be prosecuted on the basis of inferences.

4. Learned APP submitted that the co-accused were found in possession of thirty counterfeit currency notes of Rs.2000/- each. The offences are of serious nature. The involvement of the Petitioner was disclosed during the course of investigation. The prosecution must be given an opportunity to prove the charge against the accused. The co-accused has disclosed complicity of Petitioner during their interrogation. The grounds urged by the Petitioner cannot be considered at this stage. The learned Sessions Judge has rejected the application for discharge on considering the nature of offence and material against the Petitioner. Petitioner was not available after registration of FIR. He was arrested subsequently.

5. On the basis of secret information received by the Police, raid was arranged. The Police and the Panchas reached the spot. They noticed two suspects. They were apprehended. One of them found in possession of the counterfeit currency notes. The incident had occurred on 12th July, 2019. Although it is alleged by the prosecution that the Petitioner was not available after the registration of First Information Report (for short 'FIR'), there was no reason for the Petitioner to believe that he is sought to be arrested in the case since he was not named in the FIR. The case of the prosecution is that during the course of investigation the co-accused were interrogated and involvement of the Petitioner in crime was revealed. Apparently the prosecution is relying on statement of co-accused which are not admissible in evidence. The order rejecting the application for discharge passed by the learned Sessions Judge is vague. The learned Sessions Judge has observed that counterfeit currency notes were seized from the co-accused. Statements of witnesses shows that the counterfeit currency notes were circulated in the market by the co-accused. Material placed on record, discloses grave suspicion against the Petitioner. It is not disputed that the Petitioner was not found in possession counterfeit currency notes. He was not present at the scene of offence. His involvement was allegedly disclosed during the course of

investigation. Thus, the prosecution is relying on the statements of the co-accused made during the investigation. Such statements has no legal value as they are not admissible in evidence. There is no other independent cogent legal evidence to show the involvement of the Petitioner in the crime. Statement of the Petitioner made during the course of investigation after his arrest has no legal sanctity. It is hit by the law of evidence. The Petitioner is in custody from 4th March, 2022. the entire charge-sheet does not refer to any evidence against the Petitioner to connect him with the crime. There is no *iota* of evidence even to frame charge against the Petitioner. There is no evidence of conspiracy between the Accused. The entire charge-sheet lacks material to remotely connect the Petitioner with the offences. The suspicion however strong cannot take place of evidence. The prosecution has failed to highlight any overtact that can be attributed to the Petitioner either before, during or after the commission of alleged offence. There is no evidence to suggest that before the alleged conspiracy, the Petitioner shared the common intention to commit the offence with any any of the accused persons. The charge-sheet does not show that during the commission of offence by co-accused any overtact can be attributed to the Petitioner to show that he acted in furtherance of common intention with the co-accused. There is no direct or indirect evidence against the Petitioner to suggest his involvement in the crime. If there is no sufficient ground for proceeding against the accused i.e. either there is no legal evidence or that the facts do not make out any offence at all the Court can discharge the accused. While exercising jurisdiction under Section 227 of Cr.P.C. the Court cannot act merely as a post office or a mouth piece of the prosecution, but has to consider broad probabilities of the case, the total effect of the evidence and the documents produced and find out whether a *prima facie* case against the accused is made out.

6. Considering the factual matrix of this case, it is apparent that there is no legally admissible evidence against the Petitioner to proceed against him and hence the petitioner was entitled to be discharged from the proceedings.

ORDER

i. Writ Petition No.2541 of 2022 is allowed and disposed off;

ii. Order dated 21st June, 2022 passed on Exhibit-20 in Sessions Case No.2067 of 2019 by Sessions Court at Mumbai rejecting application for discharge is set aside.

iii. Petitioner is discharged in Sessions Case No. 2067 of 2019 pending before Sessions Court at Greater Bombay.

iv. Petitioner be released from Jail in this case, unless required in any other case.

v. Concerned parties to act on authenticated copy of this order.

[PRAKASH D. NAIK, J.]