IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2868 OF 2021

Azim Shabuddin Bagwan .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Vivek V. Salunke for the Applicant.
Ms.Rutuja Ambekar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 20th JULY, 2022

P.C:-

1. On the last date of hearing, learned A.P.P. was directed to ascertain whether the applicant is entitled to claim parity with co-accused, Sohel Muktar Shaikh and Abhishek Sadashiv Kamble, who were released on bail by this Court on 26/07/2021.

On instructions, the learned A.P.P., informs that no parity can be availed by the applicant, as his role is succinctly different from the one attributed to the co-accused.

2. With the assistance of the learned A.P.P. and the learned counsel for the applicant, I have perused the charge-sheet where the applicant is arraigned as accused No.7 and shown working as an Accountant with M/s.Semister Gloabl Services Pvt. Ltd. The C.R. came to be registered, on the complaint filed by the informant stating that, he was called to the office of M/s.Semister Gloabl Services Pvt. Ltd. and was informed that he has won a lottery. He was asked to attend one session of their company. On attending the same, he was persuaded by the Sales Manager and Agent to invest in a scheme, which would offer him a holiday package. Induced by the said rosy offer, he invested the amount and was duped as no such package was made available to him.

Similarly 31 investors were also induced to invest their money and the charge-sheet allege that the total amount misappropriated by the company is to the tune of Rs.26,34,951/-.

In connection of the said C.R., the applicant came to be arrested on 01/01/2020. Pertinent to note that apart from the offences punishable under Sections 409, 420 read with Section 34 of the IPC, Sections 3 and 4 of the MPID Act were also invoked.

3. I have perused the order passed in case of the co-accused and on it's perusal, it can be seen that the Court had accepted the argument advanced on behalf of Sohel, the Branch Manager of the company and another accused, Abhishek, who executed the rent agreement for obtaining premises for the said company, to the effect that the property of Sohel, which is more than the amount involved, has already been attached during the course of investigation. Recording that there are 28 investors and the amount involved is to the tune of Rs.22,69,950/-, and further recording that the account of Sohel's relative was also freezed, suspecting that the amount involved in the crime was transferred to that account, which carried balance of Rs.26,75,961/- and, since, his immovable property at Lohagaon was also secured, he was entitled for his liberty.

Since, on filing of the charge-sheet, the amount involved has been assessed as Rs.26,34,951/-, but the property which is attached surpasses the said amount, the two applicants came to be released on bail, by recording that they cannot be kept incarcerated for long as the trial is likely to consume some more time, even to commence and then to conclude.

4. The learned A.P.P. tried to distinguish the case of the applicant by pointing out the bank statement of the company, where withdrawal of Rs.9,00,000/- on 18/09/2018, is attributed to the present applicant. Though the complainant states that after he lodged the report, certain other investors came forward and, therefore, the C.R. being registered in the year 2019, the withdrawal of Rs.9,00,000/- dated 18/09/2018 cannot be attributed to the present applicant on that count. The learned A.P.P. states that there are certain other entries of withdrawal, to which the explanation offered is, since the applicant was working as an Accountant of the company, in order to carry out the transactions and day-to-day activities, the amounts were withdrawn. When asked, whether any amount has been transferred from the company's account to the applicant's individual account, the learned A.P.P. states that there is no material to that effect compiled in the charge-sheet.

Since, co-accused Abhishek in whose account some amount was also transferred, has been released on bail, I do not think that the applicant can be denied the benefit of the said order particularly, when the immovable property worth more than the investment made by 31 investors, is already attached and even the bank account with a balance of Rs.26,75,961/- is freezed. The applicant is, therefore, entitled for parity with the co-accused. Hence, the following order.

: **<u>ORDER</u>** :

(a) Application is allowed.

(b) Applicant – Azim Shabuddin Bagwan shall be released on bail in connection with C.R.No.76 of 2019 registered with CBD Belapur Police Station, Navi Mumbai on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties in the like amount.

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

(d) The applicant shall report to the Investigating Officer within a period of one week from the date of his release and furnish his contact number and permanent address.

(SMT. BHARATI DANGRE, J.)