

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3810 of 2021

Vipul Chitalia s/o Chunilal Chitalia .. Applicant
Versus
CBI and Anr .. Respondents
...

Mr. Vijay Agarwal with Yash Agarwal, Barkha Rastogi, Nakul Jain, Darshan Upadhyay, Jasmin Purani i/b Rahul Agarwal for the applicant.

Mr.Hiten Venegaonkar for respondent no.1 CBI.

Mrs.Anamika Malhotra, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 11th AUGUST 2022

P.C:-

1 The present Application filed under Section 439 of Cr.P.C by the applicant, seek his release on bail in Special CBI Case No.38 of 2018.

2 Heard learned counsel Shri Vijay Agarwal along with Yash Agarwal for the applicant and learned Advocate Mr.Hiten Venegaonkar for CBI and Mrs.Anamika Malhotra, learned APP for the State.

The learned counsel for the applicant would submit that the applicant deserve his release on bail in the wake of the

long incarceration, he being arrested on 6/3/2018 by the CBI and he would submit that two charge-sheets are already filed in the subject C.R, though the applicant was charged on 16/5/2018, when the first charge-sheet was filed, and the learned counsel would submit that the CBI is on it's way to file third charge-sheet. It is submitted that since till date, the investigation itself is incomplete with 92 witnesses being cited to be examined during the trial, the conclusion of the trial in the nearest future appear to be a remote possibility.

The learned counsel has placed reliance upon the recent verdict of the Supreme Court in case of Satender Kumar Antil vs. CBI, (Special Leave to Appeal CRL No.5191/2021 dated 11/7/2022) and would submit that the Hon'ble Apex Court has, in the said decision, exhaustively considered the scope and ambit of Section 170 of Cr.P.C and the learned counsel would submit that as far as the present applicant is concerned, he came from abroad and submitted himself to the jurisdiction of the Court and in an offence under PMLA, he has been released on bail by the Special Judge on 7/9/2018, by recording that although it is claimed by the Enforcement Directorate that further investigation is in progress, it appears that the applicant had joined the investigation and his statement was recorded, and he was not arrested during the investigation, but he had appeared before the Court in pursuance of the summons issued to him.

The learned counsel Mr. Agarwal has placed on record several orders passed by the Hon'ble Apex Court, where the accused came to be released on bail in absence of possibility of timely trial considering the long period of custody. Reliance is placed on decision of the Apex Court in case of Union of India vs. K.A. Najeed 2021 (3) SCC 713. By placing reliance on the decision in case of Sujay Desai Vs. SFIO, wherein the right to an expeditious trial has been held to be sacrosanct and the accused who was in custody, is an under-trial for two years five months, has been released on bail.

3 Apart from the long incarceration, the learned counsel Mr. Agarwal has also advanced his arguments on merits of the case and by inviting my attention to the sequence of events, he would submit that the co-accused Shivraman Nair is already released on bail in the year 2018, and the role attributed to him in the charge-sheet is identical to that of the applicant and there is no reason why the applicant shall continue to be incarcerated, despite release of the co-accused on bail in the wake of identical accusations.

The learned counsel has submitted a list of the accused persons who have been released on bail, and he would submit that barring Gokulnath Shetty, the Dy. Director of PNB, all other officers holding different portfolios and responsibilities have been released on bail, including accused no.9 Kapil Khandelwal, Joint President, M/s. Geetanjali Gems Limited,

Yashwant Joshi (Accused no.12) Manager with M/s.Geetanjali Gems Limited along with several office bearers of the PNB.

4 The learned counsel would submit that in absence of the prosecuting agency expressing any possibility of the applicant being at flight risk or he being indulging in tampering with the prosecution evidence, the well accepted principle which has time and again re-iterated by the constitutional Courts being, “bail is the rule and jail is an exception”, the applicant deserve his release on bail.

5 Per contra, the learned counsel Mr.Venegaonkar strongly opposed the application, and he would submit that the investigation in the present case is not yet complete and the CBI has filed two charge-sheets, the first one on 16/5/2018 and the second one on 10/6/2021. He would submit that within a span of three to four months, the investigation would be completed and the third charge-sheet is likely to be filed. He would submit that the applicant is attributed a serious role in the charge-sheet and since he was working as a Vice President (Banking Operations) at M/s.Geetanjali Gems Limited, his application do not deserve any consideration. Mr.Venegaonkar would invite my attention to the seriousness of the accusations faced by the applicant by submitting that on the basis of the original charge-sheet as well as the supplementary charge-sheet, the total amount involved, is around Rs.7080.86 crores for the period ranging between 2013-2017.

Mr.Venegaonkar would submit that the offence is serious, where the bank official Shri Gokulnath Shetty, Deputy Manager of Punjab National Bank in connivance with the accused Directors of Gitanjali Group of Companies, defrauded PNB of the huge amount in the matter of issuance of unauthorized and fraudulent letters of Undertaking (LoUs) from 1/3/2017 to 2/5/2017 in favour of Overseas branches of various Indian Banks and purported letter of Credits (FLC) in favour of foreign suppliers of the accused companies.

6 Focusing on the enormity of the fraud, it is submitted that the applicant was functioning as a Vice President for Gitanjali Group of Companies, and he was one of the authorized signatory to the account of all the accused companies i.e. Gitanjali Gems Ltd, M/s.Gili India Ltd and M/s.Nakshatra Brands Ltd, maintained with Punjab National Bank, Brady House, Mumbai. He is accused of conspiring with Mehul Choksi (Accused no.6) in submitting the applications along with import documents in PNB, Brady House, for issuance of 165 fraudulent LOUs and of submitting applications for fraudulent enhancement of the value of 58 FLCs which are jointly signed by the applicant and Aniyath Shivraman Nair (Accused no.7). The charge-sheet also attribute that he was a close confidant of Mehul Choksi (Accused no.6) and was responsible for maintaining the records of the fraudulent LoUs/FLCs transaction which were subsequently recovered under the Memorandum Panchnama executed u/s.27 of the Evidence

Act from the applicant. Attributing an active role to the present applicant, Mr.Venegaonkar would submit that his role as detailed in the charge-sheet is more serious in nature, as compared to the other accused persons.

In the wake of the material available on record, it is also submitted that the applicant had fled the country prior to registration of the case and he was apprehended at Mumbai Airport based on the LOC. He is also attributed a role of being instrumental in shifting documents and influencing the witnesses.

In the wake of the peculiar facts of the case and the material available against the applicant and compiled in the charge-sheet, it is requested that his application be rejected.

7 In order to appreciate the rival contentions of the parties, it is necessary to briefly refer to the case against the applicant as compiled in the charge-sheet filed by the CBI.

A) On 15.02.2018 CBI, Mumbai registered a case on the basis of written complaint received from Shri Avneesh Nepalia, Deputy General Manager, Punjab National Bank (PNB), Zonal Office, Mumbai against Gokulnath Shetty, Deputy Manager, Punjab National Bank and 15 other persons under Sections 120-B r/w. Section 409, 420 of Indian Penal Code and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988, the substantive offences thereof for alleged defrauding of PNB to the extent of about

USD 754.92 Millions (equivalent to Rs.4886.72 Crores@ Rs.64.00 per USD).

B) On 22.02.2018, Punjab National Bank gave additional complaint whereby the fraud in respect of FLCs increased by another Rs.1251.56 Crores. Thereafter, on 04.03.2018 Punjab National Bank filed another supplementary complaint for defrauding Punjab National Bank in the sanctioned limit of M/s. Gitanjali Gems Ltd., M/s. Gili India Ltd., M/s. Nakshatra Brands Ltd. and M/s. Asmi Jewellery India Ltd. for an additional amount of Rs. 942.18 Crores. The total amount therefore allegedly defrauded by the accused persons till date is about Rs. 7080.86 Crores during the period 2013-2017.

C) The allegation in brief is, the accused Bank official, Shri Gokulnath Shetty in connivance with the accused Directors of Gitanjali Group of Companies and unknown persons defrauded PNB to the extent of Rs. 7080.86 Crores in the matter of issuance of unauthorized and fraudulent Letters of Undertaking (LOUS-143 Nos) between the period 01.03.2017 to 02.05.2017 in favour of overseas Branches of various Indian banks and purported Foreign Letters of Credit (FLC), in favour of foreign suppliers of the accused companies.

D) It is alleged that Shri Gokulnath Shetty, Deputy Manager (Retd), Punjab National Bank posted in Forex Department at Mid Corporate Branch, Brady

House, Mumbai, fraudulently issued 143 LOUs (Letter of Undertaking) and unauthorizedly enhanced the value of 58 FLCs (Foreign Letters of Credits) in favour of various overseas Branches of Indian Banks without following the due procedure i.e. by obtaining required request applications, documents, approval of the authorities thereto and without making entries in the Core Banking Solutions (CBS) system avoiding detection of the transactions, so made, and transmitted SWIFT instructions to the overseas branches of Indian Banks for raising Buyers Credit/FLCs and funding the NOSTRO accounts of PNB. The funds so raised for payment of import bills have not been utilized for such purposes.

E) On the basis of investigation conducted in respect of six fraudulently issued Letters of Undertaking (LoUs) and fraudulent and unauthorized amendments made in respect of six Foreign Letters of Credits (FLCs), Charge-Sheet under Section 173 of Criminal Procedure Code has been filed before the Hon'ble Special Court, Mumbai on 16.05.2018 against 18 accused persons including Applicant (accused No.10) under Section 120-B r/w 409, 420 of Indian Penal Code and Section 13(2) r/w. 13(1)(c) and (d) of Prevention of Corruption Act, 1988 and substantive offences thereof and the said charge-sheet is presently pending before the Hon'ble Special Court, Mumbai. The said charge sheet has been marked as Special Case No. 38/2018.

F) That during further investigation conducted, it was established that the total wrongful loss to the bank on account of outstanding 165 fraudulent LoUs of 2017 and 311 bills drawn under 58 FLCs through fraudulent amendments was Rs. 6096.63 crores (USD 952.75 million). Since the accused companies did not repay the amount availed against the fraudulent LoUs and FLCs, PNB had to pay Rs. 6344,85,07,139.99 (USD 965.19 million), including overdue interest, to the overseas banks which had advanced Buyer's Credit against fraudulent LOUs and discounted the bills against fraudulent FLCs issued by Punjab National Bank.

G) Investigation also revealed involvement of four more accused persons and commission of additional offences punishable under Section 201 of IPC, Section 477-A of IPC and Section 7 of PC Act, 1988 by the accused persons including applicant/accused Vipul Chitalia (A-10) and hence, the Supplementary Charge Sheet was filed on 10.06.2021.

H) The investigation reveal that the applicant was functioning as Vice President (Banking Operation and Finance) for Gitanjali Group of Companies. He was also one of the authorized signatories to the account of all the accused companies M/s.Gitanjali Gems Ltd, M/s.Gili India Ltd, and M/s.Nakshatra Brands Ltd maintained with PNB Bank, Brady House, Mumbai. He is charged with hatching a conspiracy with Mehul Choksi and of submitting applications along with import documents

with PNB Bank, Brady House, Mumbai, for issuance of 165 LOUs and for submitting applications for fraudulent enhancement of value of 58 FLCs issued during the period commencing from 23/1/2017 to 15/5/2017, which are jointly signed by the applicant and Aniyath Shivraman Nair (Accused no.7). The investigation also reveal that the present applicant, in connivance with the co-accused Mehul Choksi, had dishonestly and fraudulently shown corresponding liability towards the purported suppliers i.e. M/s.4C's Diamonds Distributors and M/s.Shanayo Gong SI Ltd, Hongkong in the books of the companies and not towards the PNB who had issued the LOUs.

8 The charge-sheet filed against the applicant reveal his role along with the mastermind of the case Mehul Choksi (accused no.6) and it is alleged that knowing fully well that the accused companies have exhausted their limit sanctioned to them, and without their providing their requirement to the 100\$ margin, applications were submitted with PNB for issuance of fraudulent LOUs and the accused persons are charged for hatching a criminal conspiracy and for clandestinely taking back the original applications which were supposed to be in possession of the Bank, with an intention to cause disappearance of the same and it is alleged that the said acts were continued for years together.

The main conspirator Mehul Choksi has fled the country on 4/1/2018 and it is the case of the respondent CBI that

he directed all the dummy partners/Directors/authorized signatories to provide documents to the present applicant for processing their work permit and accordingly, the applicant is accused of conveying the instructions of the main accused.

9 The charge against the applicant is crystallized in the first charge-sheet, though the second charge-sheet is also filed and the CBI proposes to file the third charge-sheet.

10 On being arrested, the applicant is confined for over 4 years and the submission on his behalf is that the co-accused who had played a higher role than him, being occupying higher position are enlarged on bail and this include the Director of M/s.Gili India, Aniyath Nair who is released on bail on 20/7/2018. Similarly, Kapil Khandelwal, Joint President of M/s.Gitanjali Gems Ltd and Nitin Shahi, Assistant Finance Officer at M/s.Gitanjali Gems are also released on bail. Yeshwant Joshi, Manager of M/s.Gitanjali Gems Ltd came to be released on bail on 3/10/2018.

11 Parity is sought to be drawn with co-accused Shivraman Nair who face similar accusations in the charge-sheet, and with the assistance of the learned counsel for the applicant when the charge-sheet is perused, it is revealed that he was working as General Manager with Gitanjali Gems Ltd, and later he became the Director in M/s.Gili India Ltd. He was also one of the authorized signatories to the accounts of all the accused

companies and the charge-sheet accuse him for submitting the application in PNB for issuance of fraudulent LOUs and enhancement of FLCs, the document which also bear the signature of the present applicant.

12 When the charge-sheet is carefully perused, and a comparative analysis between the role of the two accused persons is scanned for, both face an identical accusation. They are alleged of submitting an application for opening of an FLC for US\$ of 1,000,000 with the beneficiary as M/s. Crown Aim Limited, Hong Kong and the advising bank with UCO Bank, Hong Kong for purported import of fresh water pearls and the date of shipment being 23/3/2017. An identical role attributed to both the applicants by transmitting a SWIFT message favouring UCO Bank with the beneficiary name for usage period of 180 days.

13 When Mr.Venegaonkar is asked to point out the material in the charge-sheet, which attribute a role distinct to the applicant than co-accused Aniyath Nair (accused no.7), the learned counsel is unable to assign a distinct role to the present applicant. The charge-sheet against the Managing Director Mehul Choksi and his accomplice i.e. Accused no.9, Joint President (Finance) who is in-charge of the Banking Operations, along with the present applicant working as Vice President (Banking Operation) Nitin Shahi (Accused no.8 - Assistant Finance Manager) of the accused companies, accused nos.3, accused no.4 and accused no.5, accuse them of dishonestly and

fraudulently showing the liability in the books of accounts of the companies towards the supplier in all the six transactions and not to PNB, who had issued the LOUs. All the accused, in furtherance of the conspiracy are charged with dishonest and fraudulent act of not reflecting the liability towards PNB, instead of reflecting the transaction as a liability towards M/s. 4C's Diamonds Distributors, Hong Kong and M/s. Shanayo Gong SI Ltd, Hong Kong in their books, causing wrongful loss to PNB.

The entire material against the accused persons is now compiled in the charge-sheet and all the necessary documents which form the basis of the charge are already in the custody of the CBI. The investigation being complete, the incarceration of the applicant is unnecessary, particularly when the CBI do not express it's apprehension in any manner to deny the bail to the applicant, either on the ground of his flight risk or his likelihood of tampering with the case of the prosecution.

The alleged offence is undisputedly in the nature of economic offence which has resulted in loss to the State exchequer, but while considering the Bail Applications, it is not only the gravity of the charges which deserve a consideration, but punishment that could be imposed after trial and continuation is also an important aspect. It contemplate recalibrating the scales of justice.

14 In Manoranjana Singh @ Gupta Vs. CBI, 2017 (5) SCC 218, the Hon'ble Apex has observed as under :-

“This Court in Sanjay Chandra Vs. Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment”

Merely because the offence is in the nature of economic offence, would be no ground to refuse the bail, as it is not imperative that in every case of economic offences, bail should invariably be refused.

Since the co-accused who has been assigned a similar role in the charge-sheet is already released on bail, I am convinced with the arguments advanced on behalf of the learned counsel for the applicant that the applicant deserve a similar treatment.

15 Another ground which made me favourably consider the prayer for releasing the applicant on bail, is the absence of possibility of the timely trial and his long incarceration.

Recently, the Hon'ble Apex Court in case of Union of India vs. Najeed, 2021 (3) SCC 713, has once again reiterated that, Liberty guaranteed by Part-III of the Constitution, shall bring within its protective ambit not only due procedure and fairness but also access to justice and speedy trial.

The following observations by their Lordships of the Apex Court deserve a reproduction :

“Liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. Undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

It is true that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent’s prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant’s right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent’s rights guaranteed under Part III of our Constitution have been well protected”.

16 Reiterating the principle of presumption of innocence of a person accused of an offence and placing the onus on the prosecution to prove the guilt, the Apex Court recently in case of Satendar Kumar Antil vs. CBI & Anr (supra) has reinforced the fundamental right of an accused for a speedy trial by recording as under :-

“One must read this provision from the point of view of the dispensation of justice. After all, right to a fair and speedy trial is yet another facet of Article 21. Therefore, while it is expected of the court to comply with Section 309 of the Code to the extent possible, an unexplained, avoidable and prolonged delay in concluding a trial, appeal or revision would certainly be a factor for the bail”.

17 The Hon’ble Apex Court in case of *Sujay Desai Vs. SFIO*, has considered the submissions advanced on behalf of the appellant who was in custody as an under-trial for two years five months, and since no other accused continued to remain in custody, the appellant was released on bail by recording as under :-

“Having regard to the position as it remains regarding non-service of summons on foreign entities, the period of custody already undergone and no immediate possibility of the trial commencing, we are of the considered view that the appellant would be entitled for grant of bail”

18 Considering the long incarceration, and particularly by keeping in mind the principle of assumption of innocence of

accused unless proven guilty, the fact of an imprisonment before the conviction, as a substantial punitive content, it would be improper for any Court to refuse bail and keep the accused incarcerated indefinitely. The requirements of seriousness of the accusations and whether the witnesses are likely to be influenced by the applicant on being enlarged on bail during trial, and whether he is likely to flee from justice, if released on bail, will have to be weighed as against the right of an accused to be presumed to be innocent, till the charge is proved against him by the prosecution. Incarceration of the accused cannot be treated as synonymous with a punishment and assuming that the accused is prima facie guilty for a grave offence, bail cannot be refused in an indirect process of punishing the accused, before he is convicted of the charge framed against him.

19 The charge-sheet being filed against the present applicant on completion of investigation and the entire material crystallized therein, it would suffice to secure the presence of the applicant at the time of his trial and he need not remain incarcerated by way of a punishment, till he face the trial for the charges levelled against him, however, serious may be the accusations faced by him.

I may gainfully refer to the observation of the The Apex Court in case of Sanjay Chandra Vs. CBI, 2012(1) SCC 40, in relation to 2G Spectrum case, which read as under :-

“Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction, has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct, whether the accused has been convicted for it or not, or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson”

20 In light of authoritative pronouncements, I am of the view opinion that the accusations against the applicant being crystallized in the charge-sheet, he deserve his release on bail and merely because he is to face a trial in an economic offence, he cannot be robbed of his liberty. His long incarceration for more than 4 years also deserve to set him at liberty, pending the trial for the accusations faced by him.

Apart, it is to be noted that the applicant is already released on bail on 7/9/2018 by the Special Judge for PMLA in the PMLA Case No.9/2018, by recording that he had joined the investigation.

The applicant was also released on bail temporarily on 1/4/2022 for stipulated period and on availing his liberty, he has surrendered within the time prescribed by this Court.

21 In the wake of the aforesaid circumstances, being weighed in favour of the applicant, he deserve his release on bail, on considering the merits of the accusations faced by him and also in the wake of his long incarceration with no time line for

conclusion of the trial, considering large number and witnesses and complexity of the accusations to be tried. Hence, the following order :-

ORDER

- (a) Application is allowed.
- (b) The Applicant – Vipul Chitalia in connection with Special Case No.38/2018 and Special case No.641/2021 (RC No.02(E)2018 CBI BS &FC, Mumbai) registered with CBI, shall be released on bail on furnishing P.R. bond to the extent of Rs.1,00,000/- with one or two sureties of 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 Deputy Superintendent of Police, CBI, Bank Securities, Fraud Branch, once in every month on every first Saturday between 11.00 am to 1.00 pm for a period of three months and thereafter, once in

trimester on every Saturday between 11.00 am to 1.00 pm.

- (e) The applicant shall deposit his passport with the Special Court.
- (f) The applicant shall not leave India without prior permission of the Special Court.

(SMT. BHARATI DANGRE, J.)