IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3786 OF 2021

Manish Kantilal Bosamiya ... Applicant
versus
Central Bureau of Investigation and another ... Respondents

Mr.A.P.Mundargi, Senior Advocate, with Mr.Subir Sarkar i/by Mr.Ganesh S. Padte, Advocate for applicant.
Mr.H.S.Venegavkar, Special P.P. for CBI.
Mr.Arfan Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th June 2022

PC :

1. The applicant is seeking bail in connection with CR No. RC BSM 2018 E 0001 investigated by Central Bureau of Investigation. The FIR was registered on 31st January 2018 for offence u/s.120B, 420 and 409 of Indian Penal Code and under Section 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act, 1988.

2. The FIR was registered by Punjab National Bank through its Deputy General Manager vide complaint dated 29th January 2018 at the branch office of the bank situated at Brady House, Mumbai against some fraudulent issuance of Letters of Undertakings (`LOUs') for and on behalf of set of partnership firms viz M/s.Diamond R. US, M/s.Solar Exports and M/s.Steller Diamonds, having partners Mr.Nirav Modi, Mr.Neeshal Modi, Smt.Ami Nirav Modi and Mr.Mehul Choksi. It was transpired that the aforesaid firms had approached the bank and presented the set of import documents to the branch

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with request to allow buyers credit for making payment to the overseas suppliers. Since there was no sanction limit in the name of above firms, the branch officials requested the firms to furnish at least 100% cash margins for issuing LOUs for raising buyers credit. The firms contended that they have been availing this facility in the past. However, the bank record did not reveal any such facility having been granted to the said firms. On preliminary checking of records it was observed that Mr.Gokuldas Shetty, Deputy Manager, who was posted at the said branch since 31st March 2010 and was working in the foreign exchange department looking after the import section and Mr.Manoj Kharat, had fraudulently issued the LOUs without following prescribed procedure by obtaining required request applications, documents and approval of the authorities and without making entries in the bank system avoiding directions of transactions so made, transmitted swift instructions to the overseas branches of Indian banks for raising buyers credit and funding the account of Punjab National Bank. The funds so raised for payment of import bills have not been utilized for such purpose.

3. Previous application preferred by the applicant was rejected by this Court vide order dated 29th October 2018. Subsequently the applicant had preferred application for bail before the Court of Sessions which has been rejected by order dated 5th March 2021.

4. Mr.Mundargi, learned Senior Advocate appearing for the applicant submitted that the applicant is in custody from 4th March 2018. There is no progress in the trial. Charge is not framed. The prosecution proposes to examine about 150 witnesses. There are 30 accused in this case. About 16 accused are granted bail and 6

accused are in custody. It is not clear as to when the trial would get over. The co-accused who was attributed prime role namely Amit Magia has been granted bail by Sessions Court vide order dated 30th December 2019. Section 409 of Indian Penal Code could not be attracted against applicant. Although previous application was rejected by this Court vide order dated 29th October 2018, in spite of a lapse of period of about 3½ years thereafter, there is no progress in the trial. The applicant cannot be kept in custody for indefinite period. The charge sheet has been filed on 14th May 2018. Thereafter further investigation was conducted and supplementary charge sheet was filed on 20th May 2019. While rejecting the previous application for bail, this Court had observed that main accused persons are absconding. The investigation is in progress in respect of 1,208 LOUs issued during the period 2011 to 2017 and the entire conspiracy, diversion of funds, acquisition of properties in India and abroad out of ill-gotten funds, are yet to be identified. On receipt of import documents, if the buyers credit is required, as per instructions of the applicant, the buyers credit application was being prepared, along with undertaking, external commercial borrowing form and forwarding it to the co-accused who were the authorized signatories for operating and signing the documents. The investigation proceeded for long time and supplementary charge is filed. The main accused has been apprehended and he is presently at United Kingdom. He is facing extradition proceedings in UK and declared fugitive and economic offender in 2019. CBI filed supplementary charge sheet stating that during the investigation information was retrieved from the server of FIPL which contains e-mails between accused no.1 Nirav Modi and his employees including one Mr.Amit Magia (accused no.28) to whom applicant was reporting, during the period 1st September 2008 to 8th September 2008 which revealed that accused no.1 and accused no.28 were aware about requirement of 100% margin by way of fixed deposit, prior to the issuance of LOUs, in absence of the sanctioned limits for the purpose by complainant bank. Accused nos.19 to 22 who were senior officials of the complainant bank, and were attributed role of conspiracy, had applied for bail and their applications were allowed as there was no objection from prosecution. The name of applicant is not reflected in FIR. The statements of witnesses are contradictory. Further custody of applicant is not required for any investigation.

5. Learned counsel for applicant has relied upon following decisions :

(i) Shaheen Welfare Association Vs. Union of India & others (1996)2-SCC-616;

(ii) Dipak Shubhashchandra Mehta Vs. CBI and another Criminal Appeal No.348 of 2012 (arising out of SLP (Cri.) No.8995 of 2011), dated 10-2-2012 (Supreme Court).

6. Learned counsel for respondent no.1 submitted that there is no change in circumstance to entertain this application. The statements recorded during the course of investigation fortifies the role of applicant in the crime. Previous application preferred by applicant has been rejected by this Court vide order dated 29th October 2018. Thereafter the applicant has approached Supreme Court and the petition preferred by applicant has been rejected by order dated 29th November 2019. This Court has assigned reasons for rejecting the application for bail. The applicant was associated with main

accused. The statement of Dinakaran and other witnesses attributed overt act to the applicant. The prosecution has provided list of 150 witnesses but during the trial the prosecution may not choose to examine all the witnesses. The trial would proceed shortly. Draft charges are ready. The applicant was employee of accused no.1. Applicant's involvement is apparent from the charge sheet filed against him. The role of Amit Magia can be distinguished. Till investigation was completed he was not arrested. He had appeared before investigating agency and thereafter summons was issued to him. In the peculiar facts of the case the said accused, was granted bail by Sessions Court. The respondent no.1 has filed reply opposing this application for bail. It is submitted that in view of involvement of applicant in the crime and the nature of evidence collected against him, the application may be rejected.

7. It is not disputed that applicant has been arrested on 14th March 2018. Applicant is apparently in custody for a period of about 4 years and 3 months. The charge is not framed. The accused no.1 has been apprehended at United Kingdom. It appears that extradition proceedings are pending against him. It is not clear as to when the trial would commence. The prosecution intends to examine about 150 witnesses. It is true that prosecution may not examine all of them but considering the number of witnesses, even if half the witnesses are examined by prosecution, it is not clear as to how much period it would take to complete the trial. The Sessions Court has granted bail to co-accused Amit Magia. It appears that he was not arrested initially and had appeared before investigating agency and considering the said fact, the said accused was granted by Sessions Court. However, the fact remains that according to

prosecution he was associated with accused no.1. While adjudicating previous application for bail this Court had observed that main accused is absconding. The investigation in respect to 1,208 LOUs issued during the period from 2011 and 2017 and the conspiracy hatched between the accused is under progress. Apparently thereafter supplementary charge sheet has been filed. The applicant has continued to be in custody. Although previous application has been rejected on 29th October 2018, for a period of about 3½ years, there is no progress in the trial. The Hon'ble Supreme Court had rejected the Special Leave Petition on 29th November 2019. Two and half years thereafter there is no progress in trial. The charge is not framed. From the factual matrix, it appears that the applicant had jointed the duty of FIPL in October-2005. He left the job in September 2011. The applicant again joined the duties of FIPL in June 2013 and resigned from the job on 14th April 2015.

8. In the case of Shaheen Welfare Association (supra), the Supreme Court had considered grant of bail to the persons who were involved in the offences under the provisions of TADA and were in custody from the dates of their arrest and role attributed to them. In the case of Dipak Shubhashchandra Mehta (supra), the Supreme Court has observed that Court had taken a view that when there is delay in the trial, bail should be granted to the accused. In such circumstances reference is made to the decision in the case of Babba Vs. State of Maharashtra (2005)11-SCC-569 and Vivek Kumar Vs. State of U.P. (2000)9-SCC-443. It is also observed that Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. In paragraph 19 of the said decision it was observed that although the accused was charged for committing

economic offences of huge magnitude, the Court cannot lose sight of the fact that investigating agency has completed investigation and submitted charge sheet including additional charge sheet. Necessary charges have not been framed.

9. Considering the facts of this case and the fact that applicant is in custody for 4 years and 3 months, bail can be granted to the applicant. Hence, I pass following order :

ORDER

(i) Bail Application is allowed and disposed of;

(ii) The applicant is directed to be released on bail in connection with CR No. RC BSM 2018 E 0001 registered by CBI, BS&FC, Mumbai, on executing PR bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount;

(iii) The applicant is permitted to furnish cash security in the sum of Rs.1,00,000/- for a period of eight weeks;

(iv) The applicant shall report CBI, Banking and Finance, Bandra and Kurla Complex, Mumbai once in a month on every first Saturday of the month between 11 am and 1 pm for first three months; and thereafter once in three months on every first Saturday of the month between 11 am and 1 pm till further orders;

(v) The applicant shall deposit his passport before the Trial Court.

(vi) The applicant shall not leave India without prior permission of Trial Court;

(PRAKASH D. NAIK, J.)

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