IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1364 OF 2021
WITH
CRIMINAL APPLICATION NO.405 OF 2022

Shamsha Nazim Rajan ...Applicant
versus
The State of Maharashtra and others. ...Respondents

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Mr.Darshit Jain with Prashant Pandey i/by W3Legal LLP, Advocate for applicant.

Adv. Rumman Shaikh, Advocate for respondent no.2.

Ms. Anandini Fernandis, Advocate for respondent no.3.

Mr. Arfan Sait, APP, for State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 12th JULY, 2022.

PER COURT:

1. Applications were heard on 28.06.2022 and kept for passing order today. Advocate Mr. Darshit Jain submits that, learned Advocate Mr. Pandey appearing for applicant in both the applications has given no objection to applicant for engaging another Advocate. It is pertinent to note that applications were heard on 28.06.2022 and kept for passing order.

2. Criminal Revision Application No.1364 of 2021 is preferred by the applicant challenging the order dated 28.09.2021 passed by the learned Metropolitan Magistrate, 37th Court Esplanade, Mumbai in Misc. Application No.555 of 2020.

3. Criminal Revision Application No.405 of 2020 is preferred by the applicant challenging the order dated 08.02.2022 passed by the Court of Sessions, Greater Bombay in Misc. Application No.1837 of 2021.

4. The applicant is the first informant in in C.R. No.168 of 2019 registered with Bandra Police Station for offences under Section 384, 420, 530 of Indian Penal Code. Investigation was transferred to DCB, CID vide C.R. No.20 of 2019. Section 411 r/w Section 34 of Indian Penal Code was added.

5. The first informant/applicant had alleged that, she got acquainted with accused No.1/respondent No.2. In March, 2018 accused No.1 told her that he is in need of fifty Lakhs. Since the first informant was not having cash, she handed over ornaments worth Rs.85 Lakhs to accused No.1. After one month he again demanded 10 Lakhs. The first informant handed over to 10 Lakhs to accused No.1 In spite of demand accused did not return money. He threatened her that he would defame her by saying that she was in illicit relationship with him.

6. Accused Nos.1 & 2 were arrested. Vide order dated 18.07.2019, the learned Sessions Judge, Greater Bombay granted bail to respondent No.3 (Accused No.2) on executing personal bond of Rs.25,000/- with one or two solvent sureties in the like

amount on condition that he shall attend DCB CID Anti Extortion Cell on every Monday till filing of charge-sheet. He shall make himself available for interrogation by officer of DCB CID as and when required under written intimation until further orders. He was directed to deposit the amount of Rs.60,00,000/- in the Court of learned Metropolitan Magistrate. The amount of Rs.60,00,000/- was directed to be kept in fixed deposit in the nationalized bank till the conclusion of trial. The case against accused No.2 was that, during investigation it was revealed that he had purchased golden jewellery from accused No.1 He had deposited 25 Lakhs before Investigating Officer. While arguing application for bail it was submitted that he is ready to deposit 60 Lakhs in Court. It was submitted that amount is deposited to show bonafides without admitting guilt.

7. The respondent No.2/accused No.1 preferred an application for bail. The said application was allowed by the Sessions Court vide order dated 25.09.2019. The Respondent No.2 was directed to be released on bail on executing P.R. bond of Rs.25,000/- with one or two solvent sureties in the like amount. He was directed to attend DCB CID Anti Extortion Cell on every Monday. He was directed to make himself available for interrogation as and when required under written intimation. He was directed to deposit the

amount of Rs.10,00,000/- before the Court of learned Metropolitan Magistrate.

8. The applicant preferred Misc. application No.555 of 2020 for withdrawal of the amount of Rs.35,00,000/- i.e. Rs.25,00,000/- deposited by respondent No.3 with investigating officer and Rs.10,00,000/- deposited by respondent No.2 for securing bail.

9. The Police gave no objection for withdrawal of the amount by applicant. The application was opposed by the accused No.2 by filing reply.

10. Vide order dated 28.09.2021, the Court of learned Magistrate declined to refund the amount to first informant. It is observed that the case of the complainant is that she had handed over ornaments worth Rs.85,00,000/- to accused No.1 – Ali Aziz Madani and thereafter handed over cash of Rs.10,00,000/- in April – 2018. It is not the case of prosecution that the hard cash amount was given by first informant to accused No.1 and the said amount has been seized. On the contrary it appears that the accused No.1 has deposited the cash of Rs.10,00,000/- in order to secure bail bond. The accused No.2 has deposited the amount of Rs.25,00,000/- to the investigating officer and not the ornaments. In such circumstances, at this juncture it cannot be said that the applicant is entitled for refund of the said amount. The Court however

directed that the amount be deposited in fixed deposit with nationalized bank. The investigating officer was directed to keep the amount of Rs.25,00,000/- deposited by accused No.2 in fixed deposit in nationalized bank and the amount of Rs.10,00,000/- deposited by the accused No.1 before the said Court was directed to be kept in fixed deposit in nationalized bank. It was further observed that both the amounts will be returned to concerned person along with interest, subject to final order of the Court by way of judgment.

11. The applicant preferred Misc. Application No.1837 of 2021 before Sessions Court for withdrawal of Rs.60 Lakhs application was opposed by respondent Nos. 2 & 3. The application was rejected by order dated 08.02.2022.

12. Learned Advocate for the applicant submitted that the applicant is the first informant. She has been cheated by the accused. She was compelled to part with the gold ornaments and cash. Substantial amount has been deposited by the accused. Some of the amount has been deposited with the Investigating Officer. The applicant is entitled for obtaining the said amount. The applicant cannot be compelled to wait till decision in the trial.

13. The respondents have opposed the applications. The amount was deposited in the Court by way of condition for granting bail.

There is no link between the deposited amount and the crime. The applicant is not entitled for withdrawal of the said amount. The applications were rejected by the lower Court by assigning reasons. The case of the complainant is that she had parted ornaments worth Rs.85,00,000/- and cash of Rs.10,00,000/-.

14. While rejecting Misc. Application No.555 of 2020 for withdrawal of Rs.35 Lakhs the learned Magistrate has observed that as per charge-sheet, applicant had handed over ornaments of Rs.85, Lakhs to accused No.1 It is not the case of the prosecution that hard cash was given by first informant to accused No.1 and that the said amount has been seized. The accused No.2 has deposited cash of Rs.10 Lakhs to secure bail. The accused No.2 deposited Rs.25 Lakhs with investigating officer and not the ornaments. The application was rejected and Court directed that amount of Rs.25 Lakhs be kept in fixed deposit with nationalized bank. The amount of Rs.10 Lakhs kept in fixed deposit in nationalized Bank. The amount will be returned to concern person with interest, subject final order of Court by way of judgment. The respondent No.3 in Criminal Application No.1364 of 2021 has filed reply stating that, he was arrested on 06.07.2019 and during his police custody his father was made to deposit Rs.25 Lakhs with investigating officer. The amount deposited was not in pursuance

of any alleged recovery jewellery items belonging to applicant. The amount has no connection with crime. The amount of Rs.25 Lakhs deposited by his father from cash in hand of jewellery business and duly reflected in audited balance sheet of business. He preferred application for bail. Order granting bail mentions that he is ready to deposit additional amount of Rs.60 Lakhs to show his bonafides, without admitting any guilt. The said amount was withdrawn by his father from the bank account of Choksi Arvind Jewellers. While rejecting Misc. Application No.1837 of 2021 the Sessions Court has observed that, order dated 28.07.2019 mentions that, accused No.2 showed his readiness to deposit Rs.60 Lakhs in the Court. There is observations that amount was deposited only to show bonafides without admitting guilt. It was request of accused to keep the amount in fixed deposit. The request was accepted by the court and amount is directed to be kept in fixed deposit. While passing order dated 18.07.2019, the Court was conscious that the amount has been deposited only as bonafide act and non admission of guilt. It is not that the said amount is recovered by Police in consequence of information disclosed by accused under Section 27 of Indian Evidence Act. The respondent No.3 in Criminal Application No.405 of 2022 filed reply opposing this application with similar objection as urged in Affidavit in reply filed in Criminal Application No.1364 of 2021.

15. I do not find any infirmity in the impugned orders. The respondent Nos.2 and 3 were arrested in C.R. No.20 of 2019. Respondent No.3 was granted bail by the Sessions Court by order dated 18.07.2019. Respondent No.2 was granted bail by order dated 25.09.2019. The case of complainant is that value of ornaments is 85 Lakhs. Respondent No.3 deposited 25 Lakhs with with investigating officer. He showed willingness to deposit 60 Lakhs. The order granting bail indicate that 60 Lakhs is deposited to show bonafides. The amount of Rs.25 Lakhs was not by way of recovery under Section 27 of Indian Evidence Act. The Respondent No.2 showed willingness to deposit amount of Rs.10 Lakhs during hearing of bail application as a condition for bail. As a condition for bail, he was directed to deposit Rs.10 Lakhs in Court. It was not recovered amount during investigation. The orders under challenged contains reasons for not granting prayers of applicant. No case is made out to interfere in the said orders.

ORDER

(i) Criminal Application No.1364 of 2021 and Criminal Application No.405 of 2022 are rejected and disposed off.

(PRAKASH D. NAIK, J.)