IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4417 OF 2021

Hasmukh Lilachand Shah	..	Applicant
Versus		
Central Bureau of Investigation and Anr	..	Respondents

…

Dr.Abhinav Chandrachud with Mahesh Londhe, Saurabh Deorukhkar i/b M/s.Sanjay Udeshi & Co. for the applicant.
Mr.Kuldeep S. Patil with Nikhil Hire and Sushmita Sarkar for respondent CBI.
Mrs.Rutuja Ambekar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 15th NOVEMBER, 2022

P.C:-

1 The applicant being charged for the offence punishable u/s.120B, 409, 420 IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, seek his release on bail on merits of the matter as well as on the ground of his long incarceration, with no chance of CBI Case No.43/2018 being concluded immediately in the near future.

The applicant came to be arrested on 12/3/2018 and an argument is advanced on behalf of the applicant that he is also entitled for the benefit of the provisions of Section 436A of the Cr.P.C.

2 Heard Dr.Abhinav Chandrachud for the applicant, Advocate Kuldeep Patil for the respondent CBI, BF&FC, Mumbai, and Mrs.Rutuja Ambekar for the State.

With the able assistance of the respective counsel, I have perused the entire charge-sheet placed on record which has compiled the material, on completion of investigation in the complaint that was registered by CBI on 24/6/2016, the applicant being charged as Accused no.6 in the subject C.R.

In order to appreciate the contention of the respective counsel, a brief reference must be made to the background in which the subject C.R. is registered.

3 The Deputy General Manager, Circle Office, Canara Bank, Cuffe Parade, Mumbai filed an FIR, alleging that the principal accused Jatin Mehta is the promoter/owner of Su-Raj Group of Companies, and the sister concern of the firm – M/s.Forever Precious Jewellery and Diamonds Limited (FPJDL) and M/s.Winsome Diamonds and Jewellery Ltd. (WDS) The accusations in the complaint revolve around availing of financial facilities by the said group of Companies from Canara Bank by submitting Stand-by Letters of Credit (SBLC's). It was alleged that after availing the financial facilities, the accused persons committed defalcation of approximately Rs.150 crores and by

making false representation, prompted the Bank to advance the aforesaid finance before it was defalcated. It is also alleged that several other FIRs are also filed by other members of consortium of Banks against the same group of companies. The aforesaid allegations resulted in CBI Special Case No.43/2018.

4 The applicant is alleged to be an employee working in the group of companies for more than 30 years, and it is the case of the prosecution that he was next-in command in hierarchy after the principal accused Jatin Mehta, who since he was stationed abroad, was instructing the sub-ordinate staff and was the face of the Company for the Bank to avail the finances. He face accusation of acting as an intermediary in availing the financial assistance from the Bank and in submitting the necessary documents in availing the facility.

5 The charge-sheet summarize the charge against the applicant as under :-

> "That in pursuance to the criminal conspiracy, Shri Hasmukh Leelachand Shah (A-6), who was the key employee of Shri Jatin R. Mehta (A-1), in conspiracy with Shri Jatin R. Mehta (A-1) approached and induced Canara Bank for sanctioning of working capital facilities on the basis of misrepresented turnover. That he signed the documents relating to all the correspondence of the Bank and the opining of the bank SBLCs. That he in conspiracy with Shri Jatin R. Mehta (A-1) controlled export and import transactions of M/s.Forever Precious Jewellery and Diamonds Ltd (A-2) and gave the

> directions to the factory heads of M/s.Forever Precious Jewellery and Diamonds Ltd. (A-2) for export without any value addition to UAE companies belong to Shri Jatin R. Mehta (A-1) and Sonia J. Mehta (A-4). That in furtherance of conspiracy he had/got arranged purchase orders from employees/persons of Jatin R. Mehta (A-1) and Sonia J. Mehta (A-4) in UAE. That he executed the plan of conspiracy of Shri Jatin R. Mehta (A-1) to cheat Canara Bank as a conspirator"

6 In nutshell, the allegation faced by the accused persons in the charge-sheet is, that by hatching criminal conspiracy, commencing from 2009 upto 2013, Canara Bank was misled in the matter of sanction and disbursal of working capital by misrepresentation, by abuse of official position as public servant and criminal breach of trust which resulted into misusing the proceeds of facility for the purpose, alien to the purpose for which the facilities were sought for.

7 Dr.Chandrachud, the learned counsel for the applicant would submit that on 24/6/2016, a complaint was filed, alleging the fraud on the Bank, revealed on 11/4/2015 and initially Section 120B and 420 of Cr.P.C was invoked along with the relevant provisions of the Prevention of Corruption Act. Subsequently, section 409 came to be added and charge-sheet came to be filed on 7/6/2018, which now, 22 accused persons out of which accused no.1, 3, 4 and 5, other accused are absconding. It is strenuously urged that accused nos.7 to 14 who were charged

u/s.409 are enlarged on bail and it is only the applicant who presently continue to languish in jail since the date of his arrest i.e. 12/3/2018. The bleak prosecution of the case is also highlighted before me by submitting that the prosecution has cited 105 witnesses and though non bailable warrant is issued against the main accused, despite strenuous efforts, the promoter and owner of Su-Raj group, continue to abscond.

8 The learned counsel for the applicant has specifically argued that on an earlier round of litigation, the Bail Application of the applicant was rejected by the Sessions Court on several occasions and even this Court, on 24/4/2019 has rejected the application on merits.

He would, however lay his emphasis on the change in circumstances being enlisted as under :-

(a) Detention of more than 3 ½ years approx. 44 months.

(b) Advance age and precarious health condition of the applicant.

(c) Detention merely an accusation u/s.420 of IPC, wherein maximum punishment of 7 years is provided and under other stricter provisions and under Section 409, other persons are already released on bail.

(d) Substantial compliance of requirement of Section 436A of Cr.P.C.

(e) Meager chances of trial being concluded expeditiously since even, it has not commenced till date.

9 Per contra, the counsel for respondent no.1 Mr.Patil would vehemently oppose the application by submitting that he was a key Managerial Personnel and since he was projected as the face of the group of companies and was a close confidant of Shri Jatin Mehta, Promoter and Guarantor of M/s.Forever Precious Jewellery and Diamond Ltd. He would submit that the investigation has revealed that it is the applicant who instructed and pressurized the other employees for becoming authorized signatories and his signatures are found on various documents submitted to the Banks for availing credit facilities. It is alleged that he, in conspiracy with accused no.1 approached the Bank for sanctioning of working capital facilities on the basis of misrepresented sales turnover, and he controlled the export and import transactions of M/s.Forever Precious Jewellery with UAE companies and it it he who gave directions to the Factory Heads of the said company for exports, without much value addition to the UAE companies. It is also alleged that he arranged for purchase orders in the UAE and played a key role in executing the plan of conspiracy to cheat the Bank.

10 The role of the applicant, in the entire conspiracy has clearly surfaced on record through the charge-sheet. From the charge-sheet, it can be clearly discerned that he acted as an authorized signatory and dealt with several banks. From the charge-sheet, it can be seen that the applicant was not conferred

with any specific power to take major policy decision and/or frame any policy for the Company. Dr. Chandrachud is right in submitting, that he was merely authorized by the resolution of the Company to act as an authorized signatory and the Company was professionally managed by it's Board of Directors and it was the Managing Director who was empowered to take day-to-day and policy decisions. It is not in dispute that working capital facilities wee sanctioned pursuant to the master agreements executed between the company and the bullion banks. However, to none of the agreements, the applicant is a signatory. Disbursement of working capital is a subsequent step that followed the master agreement. In fact, the Managing Director of the Company Mr.Sai Kumar Begani is attributed a more serious role in the whole charge-sheet but though he is named as an accused, he is not charge-sheeted.

As far as Section 409 is concerned, the charge-sheet attribute a limited role to the applicant. It can be seen that apart from the applicant, other three persons enjoyed similar power in the Company to sign the applications for SBLC's, but they are not even charged. In any case, the application for grant of SBLC is a procedural step, subsequent to the master agreement and sanction letter, and the applicant though has signed the applications for SBLC, on the basis of the power conferred on him by the Board Resolution, the Managing Director/Board of Directors is responsible for a higher conspiracy. Though the applicant was appointed as Addl. Director, for M/s.Forever Previous Jewellery in 1996, the investigation has revealed that he has resigned from the said post in 2012. The applicant has not been named as a person, who was responsible for managerial affairs of the Company, relating to export and banking work, but the statements of the witnesses in the charge-sheet, reflect upon he performing clerical and insignificant duties. Moreover, even it is not the allegation of the prosecution that he received any amount or exercised any control/stake in the entities which are accused of siphoning the money.

10 On an earlier occasion, i.e. 24/4/2019, the application came to be rejected by making reference to the role of the applicant surfacing through the charge-sheet. Recording that the type of offence that the applicant was charged, would fall within the category of economic offence which was required to be dealt differently and considering that huge amount of Rs.150 crore was defalcated which belong to the public sector bank, the application was rejected by focussing upon the nature and gravity of the offence.

Subsequent to the passing of the said order, one important change has occurred, which can be considered to be a change in circumstances, being release of the co-accused on bail by the Special Judge and two such orders placed on record are dated 15/1/20220 and 29/7/2022.

In form of discharge applications filed by the co-accused, being accused nos.7,8,10,11,12, 13 and 14, the applicants sought their discharge from the accusations faced by them u/s.409 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. The aforesaid accused being the public servants were working with Canara Bank on different posts and were accused of committing breach of trust by recommending loan proposal to higher authority, without carrying out independent assessment and by their acts and omissions, putting the Bank to heavy risk and eventually leading to default and grossful loss to the Bank. Both the orders placed on record, has a finding recorded, that the applicants being Bank employees have processed the applications at their end, but the final decision was taken by the Managing Committee/Board of Directors i.e. higher-ups and they have not been implicated as accused and not indicted by the CBI. Recording that there was no sufficient reason to proceed against them, for framing charge, they are all discharged u/s.239 Cr.P.C, by recording that the charges against them are groundless and not sufficient to frame charge.

11 In the wake of the aforesaid development, the prosecution case against the applicant now revolve only around Section 420 r/w Section 120-B of the IPC. The applicant has suffered long incarceration and all other co-accused are released on bail or discharged. The conclusion of the trial appear to be a distant reality with 105 witnesses being cited. The investigation

being complete, and the charges being crystallized against the respective accused persons, the further incarceration of the applicant has become unnecessary.

He is also entitled for extension of the benefit of the provisions of Section 436-A, a beneficial provision based on the touchstone of personal liberty as he faces charge u/s.420 IPC and undergone nearly more than half of the punishment. His advancing age and the age related ailment also deserve consideration, particularly in the wake of the fact that no apprehension is expressed by the respondent that he is at flight risk or that he may not face the trial for the charges framed against him.

The aforesaid events, featuring as a change in the circumstances, persuade me to entertain the application despite it's earlier rejection in the year 2019. No doubt, the economic offence deserve to be treated on a different footing, but with the aforesaid change in circumstances and the long period of incarceration with the bleak future of the trial. I deem it appropriate to release him on bail, subject to the following stringent conditions :-

ORDER

(a) The Applicant – Haasmukh Lilachand Shah in connection with Special CBI Case No.43/2018 registered with CBI, BS & FC, Mumbai, shall be released on bail on furnishing P.R. bond to the extent of Rs.1,00,000/- with one or more sureties of the like amount.

The applicant shall be released on provisional cash bail of Rs.1,00,000/- in lieu of sureties for a period of six weeks and during the said period, the applicant shall arrange for the sureties.

(b) 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 and shall not tamper with evidence.

(c) The Applicant shall attend the trial on regular basis on every date, unless exempted.

(d) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated of any change.

(e) The applicant shall surrender his passport with the CBI on his release within a period of two weeks, if not already confiscated.

(f) The applicant shall not leave the country without prior permission of the Special Judge.

The Application is allowed in the aforestated terms.

All concerned to act on an authenticated copy of the order.

(SMT. BHARATI DANGRE, J.)