

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.406 OF 2023
IN
CRIMINAL APPEAL NO.102 OF 2023**

Jayanand Shetty Applicant
Versus
Union of India & Anr. Respondents

Mr. Sarthak Shetty, Advocate for the Applicant.
Mr. Kuldeep S. Patil, Advocate for Respondent No.1-CBI.
Smt. M.R. Tidke, APP for the Respondent No.2-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 3rd FEBRUARY, 2023

P.C. :

1. This is an application for bail pending the applicant's Criminal Appeal No.102/2023.

2. The applicant has challenged his conviction and sentence recorded by the Special Judge for CBI, Greater Bombay passed in CBI Special Case No.95/2000 on 20.12.2022. The applicant was the original accused No.9. He was convicted for commission of offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of

Corruption Act, 1988 (for short, 'P.C. Act') and under Section 120-B read with 420 of IPC. The major sentence imposed on him was RI for one year besides imposition of fine.

3. Heard Shri Sarthak Shetty, learned counsel for the applicant, Shri Kuldeep Patil, learned counsel for the respondent No.1-CBI and Smt. M.R. Tidke, learned APP for the respondent No.2-State.

4. The prosecution case is that there was an agreement between the Indian Oil Corporation Limited (for short, 'IOCL') and M/s. East West Airlines. The agreement was that the Airlines was to fax copies of the Demand Drafts and only on receiving those copies of the Demand Drafts, the fuel of that value was supplied by the IOCL. The prosecution case is that 29 Demand Drafts were fraudulently used by the Airlines amounting to Rs.1.73 Crores. The *modus operandi* was that after sending copies of those Demand Drafts through fax, those Demand Drafts were cancelled. No money was deducted from the account; and the IOCL did not receive any amount. The fraud was to the tune of Rs.1.73 Crores.

5. The prosecution case is that the applicant was the Assistant Branch Manager, Vijaya Bank, Brigade Road Branch, Bangalore. Five Demand Drafts were issued from this bank out of the 29 Demand Drafts, which were the subject matter of the prosecution case. Out of those five demand drafts issued by the applicant's bank, two demand drafts were having the same serial number. It is also alleged that the commission for issuing those Demand Drafts were not deducted from the account of the Airlines. These are the allegations against the applicant.

6. Learned counsel for the applicant submitted that on merits he has a good case. There is nothing to show that there was conspiracy between the applicant and the beneficiary i.e. M/s. East West Airlines. Nothing was recovered from the applicant. PW-23 Anjana who was working in the same bank has deposed that if one Demand Draft was cancelled then the same number could be allotted to the other Demand Draft. Learned counsel for the applicant relied on this observation which is recorded by the learned Judge in paragraph No.47 of his judgment.

7. Learned counsel, therefore, submitted that there was nothing wrong in issuing two Demand Drafts of the same number if one of them was cancelled. He further submitted that the other allegation of not deducting the commission was discarded by the learned Judge himself.

8. He further submitted that the applicant was on bail during trial. The alleged period of the offence was in the year 1996. The applicant was on bail during trial for a long time. Even after his conviction, he is granted bail under Section 389 of Cr.PC. The applicant has not misused that liberty. There are no antecedents against him. Therefore, bail may be granted.

9. Learned counsel for the CBI opposed these submissions. According to him, the charges stand proved against the applicant. The explanation offered by him is not acceptable. Though there may not be direct evidence of conspiracy, it is quite clear that without help of the applicant the beneficiaries could not have got any benefit from those five Demand Drafts.

10. I have considered all these submissions. The issues raised by both sides will have to be decided at the final hearing stage. The sentence imposed on the applicant is short. The appeal is not likely to be decided within that period. The applicant was on bail for a long period and there was no allegation of misusing that liberty.

11. Considering all these aspects, the applicant can be granted bail during pendency and final disposal of his Criminal Appeal. Hence, the following order :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.102/2023, the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

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by
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