IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 429 OF 2023

Amol @ Avikumar Dhondiram Dhule ..Applicant
Versus
The State of Maharashtra ..Respondent

WITH
INTERIM APPLICATION NO. 932 OF 2023
IN
CRIMINAL BAIL APPLICATION NO. 429 OF 2023

Gautam Purusottamdas Budhrani ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Sudeep Pasbola a/w. Sandeep R. Karnik a/w. Rohan V. Bhosle i/b. Priyanka S. Karnik for Applicant.
Smt. Anamika Malhotra, A.P.P. for State/Respondent.
Mr. Mithilesh Mishra i/b. Agastya Desai for Intervenor.

CORAM : SARANG V. KOTWAL, J.
DATE : 21 APRIL 2023

PC :

1. The Applicant is seeking his release on bail in connection with C.R.No.176 of 2018 registered with Cuffe Parade police station. It was transferred to the Economic Offence Wing and they had registered their own C.R.No.77 of 2018. The charge-sheet is already filed. The applicant is facing trial for the Charges of

commission of offences punishable under sections 465, 466, 467, 468, 471, 472, 473 and 420 of the I.P.C.

2. The Applicant had earlier approached this Court for his release on bail on three occasions. At the first instance, he had filed Criminal Bail Application No.1614 of 2020. It was allowed to be withdrawn after arguing for some time. That order was passed on 11/09/2020. The applicant was permitted to approach this Court again for his release on bail if the trial did not begin before 31/05/2021. After that, he made second application for bail before this Court vide Criminal Bail Application No.1578 of 2020. That application was rejected vide order dated 05/04/2021. After that the applicant made an application vide Criminal Bail Application No.567 of 2022. That application was also allowed to be withdrawn vide order dated 11/04/2022. However, the Trial Court was directed to take up the trial at the earliest and was directed to complete it on or before 31/12/2022. Today, I am informed that, far from reaching its conclusion, the Trial is only at its initial stage and only the first witness is being examined. Considering the scope of the trial, it will take a very long time to reach its conclusion.

3. The applicant was arrested on 20/08/2019 and since then he is continuously in custody. More than three and half years have passed. Though, Section 467 of the I.P.C. provides punishment for life imprisonment, in this case, the trial is proceeding before the Court of Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, who is empowered to impose the sentence of maximum 7 years. The applicant has completed more than half of the sentence of the possible maximum sentence of 7 years which can be imposed by the trial Court; who is at present in-charge of the Trial. In this background, I have considered this bail application. The main contention I have kept in mind is that the applicant is in custody for more than three and half years.

4. Apart from this, another important consideration is that the applicant has filed his affidavit voluntarily and has shown his willingness to deposit 25% of the alleged amount involved in the crime. He has volunteered to deposit Rs.79,67,375/- before the Trial Court. The said affidavit is taken on record and marked 'X' for identification. In this background, it is also necessary to refer to

merits of the matter.

5. Heard Shri. Sudeep Pasbola, learned counsel for the Applicant, Smt. Anamika Malhotra, learned APP for the State and Shri. Mithilesh Mishra, learned counsel for the Intervenor.

6. The prosecution case reflected in the charge-sheet is that the first informant Gautam had purchased around 353 acres of land in the District Raigad in the year 2014. He was looking for an Estate Agent who could obtain the permissions for converting the land into N.A. land, obtain various permissions and for completing the legal formalities in respect of those lands. The first informant came in contact with the applicant through a common friend. The applicant told the first informant that, he was in the business of doing that work for which the informant was looking for an Estate agent. The applicant introduced the informant to the staff of some high officers. The informant believed him and started to engage services of the applicant. It is the case of the first informant that, he transferred an amount of Rs.3,53,10,000/- in favour of the applicant. The applicant, in turn, gave him some documents. The

prosecution case is that, these documents contains three forged documents as follows:

i) An order dated 28/10/2015 purportedly passed by the Additional Collector Pravin Shinde from the office of the Collector at Raigad.

ii) Recommendation of the Forest Officer dated 06/06/2015 recommending transfer of the land as the land did not fall within forest area.

iii) No objection certificate dated January 2016 issued by the Railway Authorities.

During further course of his transactions, the informant came to know that those documents were forged and, therefore, he lodged this F.I.R. The investigation was carried out. After the F.I.R. was registered at Cuffe Parade police station, it was transferred to E.O.W. The applicant was arrested on 20/08/2019 and since then he is in custody. The charge-sheet is already filed. As mentioned earlier, the Trial has commenced and the first witness is in the witness box.

7. Perusal of the charge-sheet shows transfer of amounts and correspondence between various authorities. At this stage, there is nothing to show that those documents are not forged.

However, this fact will have to be conclusively established during trial. The applicant has committed serious offence. There is no doubt about it. Some orders of important officers are forged and if the allegations are true then the offence is quite serious. At this stage, it does appear that the offence is serious, however, the fact remains that the applicant cannot be kept in custody for unreasonable period till the offences are proved against him. As mentioned earlier, he is in custody for more than three and half years. The maximum punishment which can be imposed by the Magistrate's Court is of seven years. The applicant has completed more than half of that sentence. Though there are allegations of commission of offence punishable U/s.467 of the I.P.C., at this stage, the Trial is going on before the Magistrate. The applicant has also volunteered to deposit substantial amount before being released on bail. The offer to deposit said amount is made by the applicant voluntarily. It was neither pursuant to any suggestion from the prosecution or even from the Court.

8. Learned APP submitted that the applicant has nine similar antecedents. Learned counsel for the Intervenor also

submitted that the offence is quite serious. But both of them could not controvert the fact that the trial will take a very long period by which time the applicant will have to suffer substantial part of maximum sentence which the Magistrate can impose. In this background, I am inclined to grant bail to the present applicant. However, looking at the antecedents, some conditions will have to be imposed on him.

9. Hence, the following order:

<u>O R D E R</u>

i) The Applicant is permitted to deposit Rs.79,69,375/- before the Trial Court.

ii) If such an amount is deposited, it shall be kept in a Fixed Term Deposit; to be renewed from time to time.

iii) The Trial Court shall consider disbursing of that amount at the conclusion of the trial in accordance with law.

iv) After such amount is deposited, the applicant is directed to be released on bail, in connection with C.R.No.176 of 2018 registered with Cuffe Parade police station and subsequently registered with the Economic Offence Wing vide their own C.R.No.77 of 2018, on his furnishing P. R. bond in the sum of Rs.100000/- with one or two sureties in the like amount.

v) The Applicant shall deposit his Passport, if any, with the Investigating agency, before being released on bail.

vi) The Applicant shall report to the Investigating Agency once in a fortnight till conclusion of the trial.

vii) The Applicant shall attend every date before the Trial Court and shall co-operate with early disposal of the trial.

viii) The Applicant shall not tamper with the prosecution evidence.

ix) The Application is disposed of.

(SARANG V. KOTWAL, J.)