IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1917 OF 2022

Mujib Abdul Miya @ Niyaz Khan @
Abdul Riyaz ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

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Mr. Chetan S. Damre for the Applicant.
Mr. Mahesh D. Pol for Respondent No.2.
Ms A.A. Takalkar, APP for Respondent No.1-State.
Mr. C.D. Dalvi, PSI, Malad Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 24th JULY, 2023.

P. C. :-

1. This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who is facing trial in RCC No.2830/PW/2021, pending on the file of Court No.24, Borivali Court, Mumbai. Said case arises from C.R. No.235 of 2019 registered with Malad Police Station, Mumbai, for the offences punishable under Sections 406, 419, 420, 465, 467, 468 and 471 r/w 34 of the IPC and Section 66(c) and (d) of the Information Technology Act, 2000.

2. Heard Mr. Chetan S. Damre, learned counsel for the Applicant, Ms A.A. Takalkar, APP for Respondent No.1-State and Mr.

Mahesh D. Pol, learned counsel for Respondent No.2. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Rohan Agarwal. The facts narrated in the FIR prima facie reveal that the First Informant was in financial doldrums. He was informed that the Applicant herein could arrange a loan. Accordingly, the First Informant met the Applicant at Chennai. The Applicant explained to him the process and informed him that he would charge 10% of the loan amount towards processing fees. The First Informant agreed to pay the said amount. It is stated that the Applicant informed the First Informant that he would not be able to withdraw the loan amount unless the entire loan amount was credited in the account. He further told him that he could utilise the loan amount on payment of 10% of processing fees.

4. The Applicant introduced the First Informant to another person by name -Balaji - accused No.3. The absconding accused-Balaji gave some forms of the SBI Bank to the First Informant, which were filled by the First Informant and handed over to the Applicant herein.

On 18/12/2017 he received a welcome email from SBI Bank and on 22/12/2017 the First Informant received one email from SBI Bank, wherein they gave the details of account as Account No.60979826511, customer ID-83127562 and further informed that PIN of internet banking and other details would be shared subsequently. About half an hour later he received another email containing a link. He was asked to click on the link for login to internet banking. The said link opened a webpage of SBI bank, wherein he created a password and opened online account. The First Informant claims that within about a month several companies credited money in his account. He could see the details of the money credited to his account but was unable to withdraw or utilise the said money.

5. The First Informant contacted the Applicant and at his instance transferred an amount of Rs.03,90,00,000/- into seven different accounts from his account and from the account of his father towards 10% processing charges. On 23/02/2018 the First Informant received an email from the SBI Bank stating that verification process was completed and that he could start the online transaction within 7 days. The First Informant has stated that he was unable to transfer the money into his account. When, he contacted the Applicant, he asked

him to take Demand Draft and to credit it from his account. Accordingly the Applicant handed over a Demand Draft No.503282 for Rs.49 crores. The First Informant was told that the said Demand Draft was received from SAP Lab India Pvt. Ltd and was further informed that the confirmation letter would be sent by the Bank on mail. He received a mail from samu197381@gmail.com from the ICICI bank confirming the said Demand Draft. When he deposited the said Demand Draft into his account of the HDFC Bank, he realised that the same was forged and fabricated. The Applicant assured him that the said Demand Draft was not fake and it could be a technical issue and assured him to give another Demand Draft. The First Informant waited for two days for a second Demand Draft, however, he neither received any response from the Applicant nor the money. The First Informant realised that he was cheated and hence he lodged the FIR.

6. The material on record prima facie indicate that the Applicant had not only induced the First Informant in paying an amount of Rs.03,90,00,000/- but he had created fake webpage and fake email id in the name of SBI bank. The Applicant had also issued forged and fabricated Demand Draft and thereby cheated the First Informant to the tune of Rs.03,90,00,000/-.

7. It is stated that the Applicant is also involved in similar crimes being C.R. No.R.C.1/E/2002/CBI/EOW/CNI registered with CBI, EOW, Chennai and C.R. No.219 of 2022 registered with Kengeri Gate, Sub Division Police Station, Bengaluru, for the similar offences.

8. Considering the criminal antecedents as well as the nature of the offence and the material in support thereof, in my considered view, this is not a fit case to exercise discretion under Section 439 of the Cr.P.C. Hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)