IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2895 of 2022

Hemant Dahyalal Bhatt .. Applicant

Versus

Central Bureau of Investigation and Anr .. Respondents

…

Mr.Ashok Mundargi, Sr. Advocate with Subir Sarkar for the applicant.
Mr.H.S. Venegaonkar with Mr.K. Ali Shaikh for respondent no.1 – CBI.
Mrs.Anamika Malhotra, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 3rd APRIL, 2023

P.C:-

1 This is the second Bail Application filed by the applicant, the first being rejected by me on 7/4/2021 (Criminal Bail Application No. 3238/2018) by a detailed order. The order specifically record as under :-

> "17. The entire material available against the applicant, which is compiled in the charge-sheet is the basis on which the application is opposed by filing a reply by the CBI through the Inspector of Police, CBI, BS & FC Mumbai on 1/2/2019 and further affidavit dated 27/09/2019. On perusal of the entire material available against the applicant, the role played by him in the entire

conspiracy is clearly spelt out. The applicant was involved with the company owned by accused Nos.1 and 2 and it is he, who has opened the accounts in the bank and signed on the form for opening of the accounts as an authorised signatory for all the three firms. He was instrumental in diverting the funds within the group of entities, without there being any business transaction and charge-sheet clearly reflect diversion of funds. Huge amounts were diverted in a similar fashion and the applicant is instrumental in the said act. It is worthwhile to mention that accused No.11, who had a similar role to play with the applicant, is released on bail by this Court, but it was not on merits of the matter. The estimate of the financial fraud is huge and the total LoUs runs into approximately 25,000 crores whereas the value of 150 LoUs, which are unsettled is Rs.6498.20 crores.

The charge-sheet and the material placed on record by the CBI pinpoint the involvement of the applicant as an authorised signatory of the three firms and other companies of Firestar Group of Nirav Modi. The gravity of offence and the nature of accusations being the prime consideration for releasing the applicant/ accused on bail, in the present case it tilt against the applicant. As noted in the reply of the CBI and being a part of the charge-sheet, an attempt was made on behalf of the accused persons to transfer the documents and conceal the same and, therefore, the submission of the CBI that on being released on bail, there will be tampering of the prosecution evidence cannot be completely ignored. After lodging of the FIR, attempts were made to shift or destroy the documentary evidence and this conduct of the accused persons does not warrant release of the applicant on bail. Since the key accused in the entire conspiracy are already absconding, CBI is also justified in expressing an apprehension that if the applicant is released on bail, he will flee from the course of justice, particularly when accused Nos.1 and 2 have

> surreptitiously escaped from the country and the applicant is the close confidant of the main accused.
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> On the aforesaid three factors to be considered while exercising the discretion under Section 439 of Cr.P.C., the application seeking his release on bail deserves a rejection and is accordingly rejected. However, it is made clear that the observations made here-in-above are, *prima facie*, in nature and confined to the adjudication of present bail application only".

2 After lapse of more than a year, the second Bail Application is preferred on the ground of delay in commencement of the trial and the period of long incarceration, being projected as a change in circumstance.

Reliance is placed upon the decision of the Apex Court in case of *Union of India Vs. K.A. Najeeb, (2021) 3 SCC 713*, where the long period of incarceration and unlikelihood of trial being completed any time in near future, has been considered to be a satisfactory ground for releasing the accused on bail, despite the statutory restrictions imposed under "the Unlawful Activities (Prevention) Act, 1967. (for short "the UAPA Act").

3 The learned senior counsel Mr.Mundargi would extensively lay emphasis on the liberty guaranteed to all citizens, including the accused under Article 21 of the Constitution, and he would submit that he has a right to speedy trial. However, with the investigation still in progress in the present C.R, though supplementary charge-sheet is already filed on 29/12/2020, the

submission is the trial is not likely to be concluded in the near future, and therefore, the applicant deserve his release on bail.

With the voluminous exercise to be carried out for trying the accused persons, it is submitted that till date, charge has not been framed and the prosecution has cited as nearly as 120 witnesses to prove the guilt against 30 accused along with three companies. He would submit that 21 accused are released on bail and the present applicant along with two others is the only one who are incarcerated, as four of the accused are absconding, which include the main accused.

4 Mr.Venegavkar has once again taken me through the entire charge-sheet, which has compiled the material against the present applicant, and I am unable to persuade myself to take any other view or record any finding, which I have already recorded in the order dated 7/4/2021.

The applicant has played a crucial role in the whole crime as he was closely associated with Nirav Modi and he actually participated in all the affairs as he was Director in 22 companies belonging to Mr.Modi. Apart from this, he was also an authorized signatory of the three accused firms i.e. Diamond R US, M/s. Tailor Diamonds and M/s.Solar Exports, and was thus authorized to sign all the documents and entered into banking transactions on behalf of the firms. He was also authorized to sign the authorized forms for issuance of LoUs to complainant

Bank for availing buyer's credit facility from the foreign banks on behalf of three accused firm, and for that purpose, the staff was directed to prepare these applications. The applicant has signed the applications which were submitted to the Bank, knowing fully well the facts, that the three partnership firms were not having any sanction unit and has not provided 100% cash voucher. It was dishonestly stated in the application that on due date, the funds will be arranged in the accounts of three partnership firms for repayment of the buyer's credit, which actually never happened.

Apart from this, M/s.NDA Enterprises Pvt. Ltd which was brought in as partner of M/s.Diamond R US from 5/4/2000 as it authorized applicant to represent the Company in business of M/s.Diamond R US. Another partner M/s. A.N. Enterprises Pvt.Ltd also authorized applicant to represent the company. The accused no.1 Nirav Modi and the present applicant were the subscribers and the first Directors of NDM Enterprises Pvt.Ltd and ANM Enterprises Pvt. Ltd as well as of Firestone Diamond International Pvt. Ltd.

5 The gravity of the accusations and the seriousness of the charges when juxtaposed against the long incarceration, in my considered opinion, the former would gain a primacy. The offence committed by the accused persons is mammoth in all aspects and is considered to be a gigantic fraud, which has largely impacted economy of the country.

The charge-sheet disclose that the three Companies and the accused persons connived to avail the fund and non-fund based facilities and by committing a fraud, caused the financial loss to Rs.3218.88 crores to the complainant bank. The accusations faced by the accused persons in their subject crime, reveal that the three firms had fraudulently bought 150 LoUs aggregating to US$ 1015.35 million (equivalent to 6,498.20 crores) in the year 2017, including 8 LOUs issued before.

6 Considering the repercussions of the offence, with the specific role being attributed to the applicant, and particularly when the applicant was in close association with the absconding accused, Mr.Nirav Modi, who committed the fraud with the assistance of the present applicant, I am not inclined to entertain the application only on the ground of long incarceration.

Application is therefore, rejected.

(SMT.BHARATI DANGRE, J)

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