



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 247/2023

Shehejad Khan Salim Khan,
aged about 38 yrs., Occ. Business,
R/o. Malviyapura, Mangal Gate,
Malkapur, Dist. Buldhana,

.... **APPLICANT**
(ACCUSED NO.7)

VERSUS

1. State of Maharashtra,
through its Police Station Officer,
Malkapur City Police Station,
Dist. Buldhana.
2. Vaibhav Ramesh Deshmukh,
aged about 30 yrs., Occ. Cashier,
HDFC Bank, Malkapur, Dist. Buldhana.

... **NON-APPLICANTS**

Mr. Abdul Shubhan, Advocate for applicant.
Mr. M. K. Pathan, Addl. Public Prosecutor ('APP') for State/Non-
applicant No.1.
Mr. P.G. Mewar, Advocate for non-applicant No.2.

CORAM : VINAY JOSHI AND
M. W. CHANDWANI, JJ.

DATE : 21.12.2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Admit.**

3. By this application, the applicant Shehejad Khan (accused No.7) has invoked our inherent powers vested under Section 482 of the Code of Criminal Procedure ('Code') to quash charge-sheet (S.T.No. 30/2022) pending on the file of District Judge-1, and Additional Sessions Judge, Malkapur, Dist. Buldhana arising out of crime No. 90/2022 registered with Police Station Malkapur City, Dist. Buldhana for the offence punishable under Sections 489-B and 489-C read with Section 34 of the Indian Penal Code.

4. It is the prosecution case in nutshell that on 21.02.2022 around 02.30 p.m., co-accused Irphan Patni went to the HDFC Bank, Malkapur branch for deposit of sum of Rs. 8,37,000/- in the account of proprietary concern namely Bohara Industrial Oil Ltd. The informant cashier of the Bank in routine inserted currency notes in the counting machine, however 38 currency notes having denomination of Rs. 500/- each were rejected. The informant

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verified tainted currency notes and found to be fake. The informant enquired with the accused Irphan Patni as to from where he has obtained fake currency notes on which he replied that his business partner co-accused Sheikh Wasim would be in the position to explain. Co-accused Irphan asked to return 38 fake currency notes, however the informant denied and lodged report with the concerned Police Station. On the basis of said report crime has been registered. Fake currency notes have been seized.

5. The Investigating Officer took both of them in custody. During interrogation, names of other two accused Imran Sheikh and Akbar Beg were revealed. It was disclosed that they handed over those currency notes while purchasing biodigel. In turn, both of them were also arrested. During course of investigation, name of one other and applicant Shehejad was disclosed. The telephonic conversation between co-accused Wasim and witness Haider was procured. It was revealed that applicant Shehejad was indulging into circulation of fake currency notes. In that connection, there was conversation in which name of the applicant was revealed. The investigation was carried, and on completion charge-sheet has been

filed.

6. The learned counsel appearing for the applicant would submit that besides statement of co-accused, there is nothing to implicate the applicant in the case. The material collected during investigation does not make out a prima facie case. It is submitted that the statement of co-accused cannot be used as a substantive evidence to implicate the applicant. The applicant is nowhere concerned with the seized 38 fake currency notes. Nothing was seized from the possession of the applicant and thus, continuation of the prosecution amounts to the abuse of the process of Court.

7. Per contra, Mr. Pathan, learned Addl.P.P. strongly opposed the application by contending that during the course of investigation, link of the applicant was established. Besides statement of the co-accused, there is other material to specify the role of the applicant. Statement of some of the witnesses have been recorded to indicate that the applicant was a preparator of the crime.

8. Concededly, 38 fake currency notes were neither tendered

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by the applicant nor incriminating material has been seized. However, it is the prosecution case that during investigation, it has been revealed that the applicant is a perpetrator of crime. The applicant is very much concerned with the Bohara Industrial Oil Ltd. and to his knowledge counterfeit currency notes have been circulated. Principally, the applicant is charged with the aid of Section 34 of the Indian Penal Code. Statement of co-accused Mohammad Wasim has been recorded. He stated that applicant Shehejad gave him two fake currency notes having denomination of 500/- and said that he would supply fake currency note of Rs.6,50,000/- in consideration of Rs.5,00,000/-. Co-accused Mohammad Wasim stated that the applicant asked him to see the fellow who could help them, in circulating fake currency notes.

9. The learned counsel appearing for the applicant relied on the decision of of the Supreme Court in case of **Dipakbhai Jagdishchandra Patel Vs State of Gujarat and another, (2019) 16 SCC 547** to contend that confessional statement of co-accused cannot be used as substantive evidence. Particularly, our attention has been

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drawn to para 53 of the decision, wherein it is observed that such statement cannot be used as substantive evidence, but it can be used to take into aid provided there exist other material. Learned counsel appearing for the applicant also relied on the decision of this Court in case of **Parthsarathi s/o. Mukund Shukla Vs. State of Maharashtra, 2002 DGLS(Bom.) 2305** which would not render help to the applicant.

10. The learned Addl.P.P. took us through the statement of witness namely Haider Khan who had conversation with co-accused Mohammad Wasim. He has stated that Mohammad Wasim said to him that Mohammad Wasim is having a person indulging into fake currency business. The said person is having fake currency notes and ready to hand over fake currency notes of Rs.6,50,000/- for Rs.5,00,000/-. Particularly, Haider Khan stated that the person who gave such offer to Mohammad Wasim is applicant namely Shehejad. Contextually, learned APP took us through the transcription of telephonic conversation between co-accused Mohammad Wasim and Haider Khan, which *prima facie* supports the statement of Haider

Khan about involvement of the applicant.

11. Learned Addl.P.P. has produced certificate of incorporation of Bohara Industrial Oil Private Ltd. to impress that the applicant Shehejad is nominee of a Company. He was very much in the control of the concern in whose account, the amount was tried to be deposited. The learned counsel for the applicant would submit that M/s. Bohara Industrial Oil is a firm which has no concern with the Company. In response, the learned Addl.P.P. took us through the statement of Chartered Accountant Mr. Laddha. He has stated that he is looking after affairs of both partnership firm as well as private limited company. Particularly, he stated that entire business affairs of both were looked upon by the present applicant. Thus, prima facie, control of the applicant over the said concern in which the amount sought to be deposited has been established.

12. The learned Addl.P.P. would submit that inherent powers are to be exercised sparingly, carefully and only in cases where there exist no material at all. Though the powers of this Court are wide,

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however if prima facie material discloses the involvement they cannot be used. This Court shall not exercise the powers to stifle the prosecution at initial stage. The case of the applicant does not fall in either of the guidelines laid down by the Supreme Court in case of State of **Haryana Vs. Bhajan Lal**, AIR 1992 SC 604 and **R.P. Kapur Vs. State of Punjab**, AIR 1960 SC 866. The offences punishable under Section 489-B and 489-C of the Indian Penal Code are quiet serious as it directly affects the economy of the country. It is a matter of trial to rebut that the accused has direct nexus with said proprietary concern. The opportunity must be afforded to the prosecution to establish the link of the applicant with the seized fake currency notes. In serious offences prosecution cannot be throttled at its initial stage.

13. Having regard to the nature of crime, the link is to be established by various circumstances. At this preliminary stage, we are unable to agree that there exist no material to satisfy the Court about false implication. Material available is sufficient to make out a case to stand trial. Having regard to all above facts and for the

reasons stated, we are not inclined to exercise our inherent powers.
Hence, application stands rejected.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)