2023:BHC-NAG:12519

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

CRIMINAL APPLICATION (BA) NO.229 OF 2023

Gulam Ashrafi s/o Pyaresahab Ashrafi
Vs.
State of Maharashtra, Through P.S.O. Police Station, Pachpaoli, Nagpur

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Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. A. S. Mardikar, Senior Counsel a/b Mr. S. N. Bawangade, Counsel for applicant.
Mr. I. J. Damle, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 17/08/2023
PRONOUNCED ON : 23/08/2023

1. Present application is for bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.758/2022, registered with Police Station, Pachpaoli, Nagpur for the offence punishable under Sections 294, 384, 385, 386, 403, 420, 419, 421, 422, 424 and 506 read with Section 34 of the Indian Penal Code, 1860. The applicant is arrested on 16.06.2022 since then he is in jail.

2. The accusation against the present applicant is on the basis of report lodged by Gitesh Chandrakant Gotmare. On 07.06.2022 Gitesh Gotemare was working with TATA Motors Finance Limited as Zonal Collection Head. It is alleged that he was looking after as a recovery executive and he has to verify regarding the instalments from the defaulter who obtained the loan from TATA Finance. The present applicant pretended himself to be the agent of TATA Finance and forcibly seized number of vehicles and sold it to the third person. It is alleged that present

applicant and one Mustak Ashrafi were seizing the vehicles illegally and sold it at a higher rate since 2005.

3. On 29.06.2020 the complainant visited the office of the present applicant and asked him to return 14 vehicles which were seized by him illegally from the customer of TATA Finance. But the present applicant threaten him that he had purchased all those vehicles form the customers by entering into an agreement and he will not return the same. As one complaint was lodged on 30.06.2020 and therefore, present applicant handed over 19 vehicles which were kept with him. On the basis of said report police have registered the crime against the present applicant.

4. As per the contention of the present applicant, he was acting as a Sub-agent to seize the vehicle. He has seized the vehicle as the direction of the TATA Finance and handed over the same to the TATA Finance. He is not at all concerned with the alleged offence. Merely on suspicion this false FIR is lodged against him. Now, the investigation is completed and chargesheet is filed against him. In view of that, he be released on bail.

5. The said application is strongly opposed by the State on the ground that during the investigation it reveals that present applicant is running one unregistered Young Force Group and after collecting list of default customers of finance company without any authority, he approached to the said customers pretending that he is the recovery agent of TATA Motor Finance and illegally taken possession of financed vehicle from original

owner by threatening and disposed of the said vehicles to the third person and obtained the monetary gain. The vehicles are owned by the TATA Finance. The applicant is not at all concerned with the said TATA Finance. There are criminal antecedents against present applicant. In view of that, application deserves to be rejected.

6. Heard learned Senior Counsel Mr. Mardikar for the applicant. He submitted that TATA Finance Company for the purpose of recovery possession of the vehicles appointed agents and present applicant was sub-agent. As the present applicant working as a sub-agent of the said agency and recovered the possession of the vehicle and handed over to the agent. Thus, applicant acted as a sub-agent and handed over the recovery of the vehicles to the agent with whom he was working. He is not at all concerned with the alleged crime. Merely on the basis of false allegations, crime is registered against him. As far as the investigation is concerned, it is completed. Further custody of the present applicant is not required. Already more than 16 vehicles are recovered, no purpose will be served by keeping him behind bar. He has cooperated with the investigating agency, therefore, he be released on bail.

7. Learned APP Mr. Damle vehemently submitted that during investigation it reveals that present applicant has formed a group of person and obtained the list of defaulters and by threatening them obtained the possession of the vehicles from them and said vehicles are sold out to the third person. Thus, the

applicant has obtained the monetary gain by selling the said vehicles to the various persons. Now, 16 vehicles are recovered but yet several vehicles are to be recovered, there is a *prima facie* material against the present applicant in the alleged offence, therefore, application deservers to be rejected.

8. Having heard the learned Counsel for the applicant and on perusal of the investigation papers, it appears that complainant is the officer of the TATA Finance. It further reveals that he was appointed as recovery executive and several persons were working under him. Present applicant pretended that he is the agent of the TATA Finance and obtained the possession of various vehicle and sold it to the third person. Thus, present applicant has duped the finance company to the extent of Rs.1,73,42,168/-. During investigation, the Investigation Officer has recorded various statements of the witnesses from which it reveals that the present applicant pretended himself to be an agent of the TATA Finance and by threatening various peoples obtained the possession of their vehicles and the said vehicles are sold out to the third person. During investigation, the possession of 16 vehicles was recovered at the instance of the present applicant, however, more than 14 vehicles is yet to recovered. After due investigation, the chargesheet was submitted against the present applicant. From the statements of the various witnesses, it reveals that the various persons were appointed by the present applicant to work under him and they have threatened the vehicle owners and obtained the possession of their vehicles and forcefully obtained their signatures on the said agreement. The

said persons have not received any consideration amount against the sale of their said vehicles. Thus, *prima facie* involvement of the present applicant is revealed during the investigation. Now, the investigation is completed and chargesheet is filed. It further reveals from the investigation papers that now the Investigating Officer has carried out the further investigation from which it reveals that one Amod Rai of Rai Enterprises have purchased five vehicles. He has settled the amount with the TATA Finance and deposited the amount with the TATA Finance. Considering that the investigation is completed and chargesheet is filed. As far as the offence under Section 386 of the Indian Penal Code is concerned, from the investigation papers it reveals that the offence under Section 386 of the Indian Penal Code *prima facie* is not made out. It further reveals that all the other co-accused are released on bail, therefore, applicant has claimed the parity.

9. The learned Counsel placed reliance on the observation of the Hon'ble Apex Court in case of **Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh and another** reported in **(2012) 2 SCC 382** wherein it is observed that merely on the basis of criminal antecedents, the claim of the second respondent, cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

10. As per the first information report, total seven accused persons have carried the illegal activities as alleged and

they are working as an association and they sold the vehicles at higher rate and distributes the profit amongst them. The co-accused Javed resident of Yadav Nagar who is accused No.7 is shown as one of the companion whose anticipatory bail application is rejected. It further reveals from the statement of one Amod Rai that since 2021 said Amod Rai was in contact with said Javed and allotted him work of seizing vehicles. Work of seizing vehicles and their data, who defaulted loan, was given to the applicant and accordingly, he has seized the vehicles. The investigation further shows that the bank statement shows that Amod Rai has deposited the amount in the account of said Javed, which clearly shows that no illegal activities have been carried out by the applicant as the said Javed was appointed by the TATA Finance to carry out the work of seizer of the vehicles and present applicant was working for the said Javed.

11. It is well settled that the basic rule is bail not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. It is observed by the Hon'ble Apex Court in **Sanjay Chandra Vs. Central Bureau of Investigation,** reported in **(2012) 1 SCC 40** that in bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a

punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

It is further observed by the Hon’ble Apex Court that apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

12. Admittedly, the investigation papers show the involvement of the present applicant with the alleged offence.

Now, the other co-accused are already released on bail. As far as the investigation part is concerned, which is already completed and chargesheet is filed. Further investigation is still going on and investigation Officer has recorded the relevant statement of the witnesses. Considering this fact as maximum vehicles are already seized. The present applicant has cooperated with the investigating agency and also furnished the information regarding the customers to whom he has sold the vehicles. It is well settled that while considering the bail application, the gravity of the offence involved is to be looked into, however, the basic rule is of bail and not jail. On the basis of which the investigation carried out. Now, further custody of the present applicant is not at all required. However, considering the nature of the offence and the criminal antecedents against the present applicant, bail application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Gulam Ashrafi s/o Pyaresahab Ashrafi** be released on bail in connection with Crime No.758/2022, registered with Police Station, Pachpaoli, Nagpur for the offences punishable under Sections 294, 384, 385, 386, 403, 420, 419, 421, 422, 424 and 506 read with Section 34 of the Indian Penal Code, 1860, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend Police Station once in a month at Pachpaoli Police Station, Nagpur City and shall cooperate with the investigating agency for further investigation and shall remain present as and when required for the investigation purpose.

(iv) The applicant shall not leave the jurisdiction of Nagpur District Court without prior permission of the Court.

(v) The applicant shall furnish his cell phone number and address with the address proof and also shall furnish the names of his two relatives their cell phone numbers and address with the address proof.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate