

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

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CRIMINAL APPLICATION (BA) NO. 253/2023

Santosh s/o Gulab Beldar

.. Applicant

versus

The State of Maharashtra

Th: Its PSO PS Dhamangaon (Badhe), Dist.Buldana

.. Respondent

.....
Mr.R.M.Daga, Advocate for the applicant

Mr.M.J. Khan, APP for Respondent
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CORAM: ANIL L. PANSARE, J.

DATED : 13th April, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 02.11.2020 in Crime No.288/2020 registered with Police Station, Dhamangaon (Badhe), Dist.Buldana, for the offences punishable under Sections 489-B, 489-C read with Section 34 of the Indian Penal Code.

2. Briefly stated, the case of the prosecution is that the Branch Manager- Rajesh Sonwane, lodged a FIR wherein he has stated that on 26.10.2020 at around 1.00 pm, when he was present at his Bank, the Cashier, namely, Pragyanand Paden came to him and informed that Dnyaneshwar (ori. accused No.1/ co-accused) has brought an amount of Rs.2,65,000/- cash for depositing in the bank through slip and in the said cash, 11 notes of Rs.200 denomination, 244 notes of Rs. 500 denomination, 365 notes of 200 denomination, 473 notes of Rs. 100 denomination, and 14 notes of Rs. 50/- denomination, to deposit in the account bearing No. 32357534495. The cashier further informed that

while counting of notes given by Dnyaneshwar for depositing, 181 notes of Rs. 200/- denomination amounting to Rs. 36,200/- are to be found counterfeit currency notes. The informant given the said counterfeit notes to be checked on counting machine. It was noticed that those 181 notes of Rs. 200/- denomination were found to be counterfeit currency notes. The informant enquired from Dnyaneshwar as to from where he had got those fake currency notes, to which he has given evasive reply. Therefore, the informant called the *panchas* and again rechecked the fake currency notes of Rs. 200/- denomination and seized and lodged the FIR.

3. The learned APP submits that during the course of investigation, the involvement of the other accused is revealed. It is further revealed in the investigation that the applicant has prepared the counterfeit currency notes by means of printing machine and other articles and that he used to supply the same to the co-accused for the purpose of using in open market.

4. The learned APP further submits that there is another crime registered against the applicant on 28.11.2020 having similar allegation of making counterfeit currency notes. A crime has been registered vide Crime No.234/2020 with Shirpur city Police Station Dist.Dhule, for the offences punishable u/s 489-A, 489-C, 498-D, 498-E and 201 r/w. 34 of the IPC. According to the prosecution, the applicant is the mastermind of the crime committee at Dhule. In the house search of applicant five counterfeit notes of Rs. 200/- denomination, 2 mobile phones, one deposit slip of Axis Bank and three counterfeit currency notes and printing machine etc. were seized.

5. The learned counsel for the applicant, however, has rightly pointed out that the charge against the applicant in the present case is framed u/s. 489-B and 489-C. Section 498-B reads thus:

“ 498-B. Using as genuine, forged or counterfeit currency- notes or bank-notes- Whoever sells to, or buys or received from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

6. The learned counsel for the applicant submits that there is no admissible evidence against the applicant to prove the aforesaid offence. He submits that the co-accused Dnyaneshwar was allegedly found using the counterfeit notes at the Bank. It is noody's case that the applicant was found using counterfeit notes as genuine, knowing or having reason to believe that the said notes are counterfeit. He further submits that Section 489-C, is a bailable offence. Lastly, he submits that the applicant has been released on bail in the offence that was registered at Shirpur Police Station.

7. At this stage, the learned APP suggests that though charge is framed u/ss. 489-B and 489-C, the applicant could be tried for the offence u/s 489-A of the IPC was well.

8. This submission is unacceptable. The trial Court who is otherwise said to be assisted by able Prosecutor has framed the charge u/ss. 489-B and 489-C of the IPC. One cannot presume that the

Prosecutor before the trial Court is unaware of the facts of the case or, for that purpose, even the trial court is unaware of the facts of the case so as not to frame charge u/s 489-A of the IPC. Be that as it may, the submission of learned APP cannot be considered in the application seeking bail in as much as the trial court has already commenced its trial. It is nobody's case that the applicant has counterfeited the currency notes under question.

9. The learned APP intends to rely upon the seizure panchnama of the articles seized in the house search of the applicant in another Crime i.e. Cr.No.234/2020 registered at Shirpur Police Station. However, that seizure panchnama being not part of the present proceeding, one cannot rely upon the same in support of his contention that the applicant has countefeited the currency notes.

10. The contentions of learned counsel for the applicant that there is no admissible evidence against the applicant has not really been refuted by the learned APP. No documentary or other evidence is shown by the learned APP to suggest that the applicant has committed offence u/s 489-B of the IPC. Nonetheless, the trial has already commenced and the first witness has been examined. The prosecution will get opportunity to put forth its version which will be tested by the defence through cross-examination.

11. The report of the learned Judge of the Court below was sought as to how much time will it take complete the trial. The report indicates that the trial may take substantial time for the obvious reason that the accused persons have been lodged in different jails and that

their Advocates are insisting for their physical presence before the trial Court.

12. The record shows that vide order dated 20.04.2021, this Court in Criminal Application (BA) No.350/2021 was pleased to reject the bail application on the count that the offence is serious and that charge sheet indicates that applicant is a person who used to print counterfeit notes in Dhulia District and used to distribute the same across Maharashtra. The Court observed that the offence has potential to affect the economy of the country and accordingly, rejected the application.

13. The applicant approached the Hon'ble Supreme Court in Petition for Special Leave to Appeal (Cri) No. 5122/2021. The Hon'ble Supreme Court vide order dated 07.10.2021 has declined to grant the bail to the applicant but considering the fact that the applicant is/was in custody since 31.10.2020, liberty was granted to renew his application for bail before this Court after examination of first prosecution witness by the trial Court.

14. This is how the applicant is before this court now. As stated earlier, the case of the prosecution is that the co-accused Dnyaneshwar was using the counterfeit notes. It appears that the name of the applicant has been disclosed by him in interrogation. The learned counsel for the applicant submits that nothing has been recovered from the applicant in this case. Thus, it appears that only on the basis of statement of the co-accused, which is not admissible in evidence, the applicant has been languishing in jail. Furthermore, the foundation of the case is recovery

of articles in the house search of the applicant in Crime No.234/2020 registered at Shirpur Police Station. The applicant has been released on bail in the said case. Thus, if the applicant is released in the case which is the basis of filing the present case, to my mind, there is no reason why the applicant should not be granted the relief in the present case, more so, in the light of submissions made by the learned counsel for the applicant on the point of evidence against him which, *prima facie*, appears to be in favour of the applicant.

15. Considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty and the fact that the applicant is a permanent resident of Dhulia District, as stated by the learned counsel for the applicant, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

16. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

17. Resultantly, following order is passed :-

ORDER

- (i) The application is allowed.
- (ii) Applicant – Santosh s/o Gulab Beldar be released on bail in Crime No.288/2020 registered with Police Station, Dhamangaon (Badhe) Dist.

Buldana, for the offence punishable under Sections 489-B, 489-C read with Section 34 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offences. The applicant shall not seek adjournment, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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