

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 158 OF 2024

Mohd. Arif Bashir Ahmed

...Applicant

**SAYALI
DEEPAK
UPASANI**

Vs.

The State of Maharashtra

...Respondent

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by SAYALI
DEEPAK
UPASANI
Date: 2024.04.18
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Mr. Deepak Gautam, for Applicant.

Mr. S. R. Agarkar, APP for State/Respondent

Ms. Mamta Prabhakar Munjal, Mahatma Phule Chowk Police
Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 15th APRIL, 2024

PC:-

1) Heard the learned Counsel for the applicant and the
learned APP for the State.

2) The applicant, who is arraigned in CR No. 423 of 2022,
registered with Mahatma Phule Chowk Police Station, for the
offences punishable under Sections 489-B and 489-C read with
Section 34 of the Indian Penal Code, 1860 (the Penal Code), has
preferred this application to enlarge him on bail.

3) On 24th July, 2022, pursuant to an intimation a raid was conducted at Room No. 111, Anil Palace, a lodge, situated at Nilam Lane, Kalyan (W). The applicant was allegedly found in possession of 800 counterfeit Indian currency notes of Rs.200 denomination. Suraj Pujari (A2) was found in possession of 100 counterfeit currency notes of Rs.200 denomination and Karan Raju Rajak (A3) was found in possession of 106 counterfeit currency notes of Rs.200 denomination. Those counterfeit currency notes were seized. The applicant and the co-accused came to be arrested.

4) The investigation revealed that the applicant had transported the currency notes from the State of Uttar Pradesh. The applicant and the co-accused were part of a syndicate. Azizur Hafeezur Rehman @ Bablu (A4) had forwarded a Google location of the place to the applicant. The said location was sent by another absconding co-accused Shariq @ Shakal (A5). Financial transactions amongst the co-accused and their family members were also unearthed.

5) Mr. Deepak Gautam, the learned Counsel for the applicant, submitted that this Court has released co-accused Azizur Hafeezur Rehman @ Bablu (A4) on bail by an order dated 9th January, 2024. Though the applicant may not claim absolute

parity with the said co-accused, yet, the material on record does not indicate that an offence punishable under Section 489-B of the Penal Code, 1860 is prima facie made out. Even if the prosecution case is taken at part, it cannot be said that the applicant was found using the counterfeit currency notes as genuine. Thus, the offence would properly fall within the ambit of Section 489-C of the Penal Code, 1860, which is bailable. Mr. Gautam also made an endeavour to assail the very search and seizure of the counterfeit currency notes by pointing out the inconsistencies in the timeline between registration of the FIR and drawing of the seizure panchanama.

6) In opposition to this, Mr. Agarkar, the learned APP, would submit that the material on record unmistakably indicates that the applicant was found in possession of counterfeit currency notes for the purpose of trafficking therein. As the applicant is a resident of the State of Uttar Pradesh and had come to Mumbai along with the counterfeit currency notes, which were allegedly delivered by another confederate, with a view to, in turn, deliver the same to the other co-accused, the intent to use the counterfeit currency notes as genuine is clearly evident and no other inference can be drawn. At any rate, the applicant can be said to have received or otherwise trafficked in the counterfeit

currency notes as genuine. Thus, the case would clearly fall within the tentacles of Section 489-B of the Penal Code, 1860.

7) I have carefully perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. From a perusal of the FIR and the seizure panchanama, it becomes prima facie evident that pursuant to an intimation, Mahatma Phule Chowk police conducted a raid at Room No. 111, Anil Palace in which the applicant, the co-accused Suraj Pujari and Karan Rajak were allegedly found. The applicant had handed over a back sack which contained, *inter alia*, 800 fake currency notes of Rs.200 denomination. Likewise, the co-accused were found in possession of fake currency notes of Rs.200 denomination. Prima facie, a case of the applicant having been found in possession of the counterfeit currency notes can be said to have been made out.

8) The learned Counsel for the applicant submitted that the mere factum of possession of the counterfeit currency notes without anything more does not justify an inference that the accused used the counterfeit currency notes as genuine. There is no material to indicate that the applicant had circulated the counterfeit currency notes. To lend support to this submission, Mr. Gautam placed reliance on the orders passed by this Court

in the cases of **Pradeep Dhanpal Choudhary Vs. The State of Maharashtra** in BA No. 1715 of 2023, dated 2nd February, 2024, **Rahul Dinkar Vachkal Vs. The State of Maharashtra** in BA No. 1205 of 2020, dated 22nd December, 2020 and **Naved Ahmad Ubaid Shaikh Vs. State of Maharashtra** in BA No. 2868 of 2022, dated 12th September, 2023 and order passed by the Delhi High Court in the case of **Mohd. Kamil Vs. State of NCT of Delhi** in BA No. 2604 of 2023, dated 16th August, 2023.

9) From the text of Section 489-B of the Penal Code, 1860, it becomes abundantly clear that the said provision would be attracted when forged or counterfeit currency notes or bank notes have been used as genuine. Section 489-B of the Penal Code, 1860 punishes the act of using forged or counterfeit currency notes or bank notes as genuine. A person, who was found in possession of the forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine is liable for punishment under Section 489-C of the Penal Code, 1860.

10) In addition to the *mens rea* in the form of knowledge or reason to believe, to fall within the ambit of Section 489-B of the Penal Code, 1860, the accused must have sold or purchased or

received from, any other person, or otherwise trafficked in or used as genuine, any forged or counterfeit currency-note or bank-note. This further act, in addition to the factum of possession of the counterfeit currency notes with the requisite mental state, entails enhanced punishment for imprisonment of life or imprisonment which may extend to 10 years.

11) A useful reference in this context can be made to the decision of the Supreme Court in the case of **Umashanker Vs. State of Chhattisgarh**¹.

“...7. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency-notes or bank-notes. The object of Legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency-notes and bank-notes. The currency-notes are, inspite of growing accustomedness to the credit cards system, still the backbone of the commercial transactions by multitudes in our country. But these provisions are not meant to punish unwary possessors or users.

8. A perusal of the provisions, extracted above, shows that mens rea of offences under Section 489-B and 489-C is, "knowing or having reason to believe the currency-notes or bank notes to be forged or counterfeit". Without the afore-mentioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes, is not enough to constitute offence under Section 489-B of I.P.C. So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under Section 489-C in the absence of the mens rea, noted above....”

1 (2001) 9 SCC 642

12) Reverting to the facts of the case, the material on record, prima facie indicates that the applicant and the co-accused were found in possession of the counterfeit currency notes. There is prima facie no further evidence to show that the applicant had used the counterfeit currency notes as genuine or circulated the counterfeit currency notes as genuine. The question as to whether, the applicant had received or otherwise trafficked in the counterfeit currency notes with the requisite mens rea, appears debatable and a matter for evidence at the trial.

13) The applicant has been in custody since 24th July, 2022. Having regard to the nature of the accusation, it is extremely unlikely that the trial can be concluded within a reasonable period. The investigation seems to be complete for all intent and purpose. The chargesheet has been lodged. The Court is not informed that the applicant has antecedents.

14) In the aforesaid view of the matter, I am persuaded to exercise discretion in favour of the applicant. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

15) Hence, the following order.

: O R D E R :

- (i) The application stands allowed.

(ii) The applicant be released on bail in CR No. 423 of 2022, registered with Mahatma Phule Chowk Police Station, for the offences punishable under Sections 489-B and 489-C read with Section 34 of the Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount, to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at Mahatma Phule Chowk Police Station on the first Monday of every alternate month between 10.00 am to 1.00 pm for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) The applicant shall not indulge in the identical activity for which he has been arraigned in this case.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the

guilt or otherwise of the applicant and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]