IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.355 OF 2023
WITH
CRIMINAL APPLICATION NO.1799 OF 2023

Kisan Ashok Khatanhar ...Applicant
(Accused No.2)

vs.

The State of Maharashtra ...Respondent

Mr. Hrishikesh Mundargi i/b. Ms. Swarali Joglekar, for the Applicant.
Ms. Ranjana Humane, APP, for the Respondent/State.
Ms. Vaishali Sawant, for the Intervener.
Mr. Salunkhe, API, Malvani police station.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 24, 2024

P.C.:

1. Heard the learned counsel for the parties.

2. The applicant, who is arraigned in C.R. No. 57 of 2022 registered with Malvani police station for the offences punishable under sections 120-B, 419, 420, 465, 467, 468, 323, 504 and 506(2) read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. Anwar Ansari (A3) was a friend of the first informant. Anwar Ansari (A3) made a representation to the first informant that his friends, Kisan Khatanhar (A1) the applicant, and Niraj Khatanhar (A2) were businessmen. They required funds for the business. If a sum of Rs. 1 lakh was invested, the accused Nos. 1 and 2 would

return a sum of Rs. 15,000/- p.m. by way of profit thereon. Anwar Ansari (A3) introduced the first informant to the applicants who made similar representations.

4. Pursuant to the inducement made by the applicant and the co-accused, the first informant claimed to have invested a sum of Rs. 92,88,000/-, during the period 2016 to 2017. Some of investment was made by the relatives and friends of the first informant. Initially, the accused had credited amounts by way of profit and made the first informant repose confidence in them. In all, a sum of Rs. 9 lakhs was returned to the first informant. However, later on the applicant and the co-accused committed default in payment of profit and in re-payment of the principal as agreed. When the first informant, pursued the matter, Niraj (A2) undertook to pay the amount by February, 2018. Two cheques drawn by Niraj (A2) and Anwar Ansari (A3) were dishonored on presentment. When the first informant had gone to the house of the applicant and Niraj Khatanhar (A2) to recover the amount, the applicant had allegedly threatened to kill the first informant by pointing a pistol.

5. Mr. Mundargi, learned counsel for the applicant submitted that the transaction of the first informant was primarily with Niraj Khatanhar (A2). Niraj (A2) and the first informant had entered into a Deed of Settlement. Out of the allegedly defrauded amount, a

sum in the range of Rs. 50 lakhs had already been secured. The learned counsel for the applicant submitted that the applicant undertakes not to touch the amounts which are standing to the credit of the account of the applicant. Thus, as the investigation is practically complete and a substantial part of the allegedly defrauded amount is secured, the applicant deserves to be enlarged on bail.

6. Mr. Humane, the learned APP resisted the prayer for bail. It was submitted that apart from the first informant there are other 11 victims who have been deceived in similar fashion. Therefore, the applicant does not deserve to be enlarged on bail.

7. Ms. Sawant, learned counsel for the Intervener/first informant also resisted the prayer for bail. It was submitted that the applicant in pursuance of a well planned criminal conspiracy duped the first informant and other unsuspecting investors. Therefore, the applicant may not be released on bail.

8. I have perused the allegations in the FIR and the material on record. It appears that the initial inducement was made by Anwar Ansari (A3). The first informant had invested the amount in the year 2016-17. It seems that initially some amount was returned by way of profit. Later on, when the accused committed default in repayment, Niraj (A2) and the first informant entered into a Deed

of Settlement (page 606). It further appears that the commitments in the said of the Deed of Settlement could not be honoured. Eventually, FIR came to be lodged in the month of January, 2022.

9. The gist of the prosecution case (page 93/94) indicates that a sum of Rs. 38,77,232/- was standing to the credit of the account of the applicant, apart from FDR of Rs. 7,30,000/-. On 15th January, 2022, a sum of Rs. 16,03,500/- standing to the credit of the account of the applicant was debit freezed. On 23rd November, 2022 the applicant had paid a sum of Rs. 1,30,000/- to the first informant. Evidently, a major part of the amount has been secured.

10. The position which thus emerges is that, prima facie, the transactions were between the first informant, Niraj (A2) and Anwar Ansari (A3). The settlement deed came to be executed between Niraj (A2) and the first informant under which the entire liability was cast on Niraj (A2). Even otherwise substantial portion of the amount has been secured. Since the investigation is complete and charge sheet has been lodged, further detention of the applicant appears unwarranted. I am, therefore, persuaded to exercise discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant be released on bail in C.R. No. 57 of 2022 registered with Malvani police station, on furnishing a P.R. Bond of Rs. 50,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence at Malvani police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.

4] The undertaking given on behalf of the applicant that the applicant will not touch the amounts standing to the credit of his account is accepted as an undertaking to the Court.

5] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

6] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the 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.

9] In view of the disposal of the application, the Criminal Application also stands disposed.

(N. J. JAMADAR, J.)