2024:BHC-AS:13292

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1022 OF 2024

Zakir Sajjad Hussain	...	Applicant
versus		
The State of Maharashtra	...	Respondent

WITH
INTERIM APPLICATION NO.6018 OF 2024
IN
BAIL APPLICATION NO.1022 OF 2024

Anis Chawaniwala	...	Applicant
and		
Zakir Sajjad Hussain	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Ashok Mundargi, Sr. Advocate with Mr. Niranjan Mundargi, Mr. Keral Mehta, for Applicant.
Mr. Shailesh S. Ghag, APP for State.
Mr. Dilip H. Shukla, for Intervener.

CORAM: N.J.JAMADAR, J.
DATE : 14 MARCH 2024

P.C.

1. Heard the learned Counsel for the parties.

2. The applicant who is arraigned in C.R.No.28 of 2023 registered with DCB-CID, AEC Mumbai (Original C.R.No.85 of 2023 registered with Wadala T.T. Police Station), for the offences punishable under Sections 386, 397, 506(2) read with Section 34 of the Indian Penal Code, has preferred this application to enlarge him on bail.

3. The first informant works as a Sales Executive in Kuwait since 1993. In

the year 2023, the first informant became acquainted with the applicant, who was dealing in the businesses of tobacco and medical products in an illegal manner to earn additional profits. In the year 2016, while the first informant was in Kuwait, the applicant allegedly demanded a sum of Rs.1.5 Crores from the first informant on the pretext that he had suffered losses to the tune of the said amount in the business on account of the acts of the first informant. The first informant alleged, the applicant in conspiracy with gangsters started to demand extortion from the first informant since the year 2017. In the year 2017, by putting the first informant in fear of death, the first informant was made to pay 5000 Kuwait Dinar to wanted accused Hoshdar Khan. The wanted accused Burhan and Salim had allegedly sent threatening video clips to the first informant. In the year 2022, the applicant again demanded a sum of Rs.1.5 Crores. Another wanted accused Rafiq Shaikh, a hireling of dreaded gangster Javed Chikana, called the first informant and gave a threat of dire consequences if the amount was not paid to the applicant. Hence, the first informant lodged the report on 21 March 2023.

4. Mr. Ashok Mundargi, learned Senior Advocate for the applicant, submitted that, first and foremost, there is an inordinate delay in lodging the FIR. Second, the FIR indicates that there was some sort of transaction between the parties while both were in Kuwait. Thirdly, in the FIR, there is no allegation that the first informant was put in fear to part with any amount. To fill up the lacunae, a

supplementary statement of the first informant came to be recorded on 23 March 2023, in which allegations were made that the first informant was made to deliver 500 Kuwait Dinar to Hoshdar Khan. However, no report was lodged about the said occurrence till the lodging of the instant FIR. Mr. Mundargi urged that the applicant has been falsely roped in to wreck vengeance, and that becomes clear from the fact that a criminal writ petition filed by the first informant seeking direction to police to invoke the provisions of the Maharashtra Control of Organized Crime Act, 1999 was disposed by this Court by an order dated 7 August 2023.

5. Mr. Ghag, learned APP and Mr. Shukla, learned Counsel for the Intervener have resisted the prayer for bail. Learned APP submitted that the applicant has conspired with the gangsters to extort a sum of Rs.1.5 Crores from the first informant. Since threatening calls were made and audio clips were forwarded to the first informant, there is an imminent threat to the first informant and his family members, in the event the applicant is released on bail.

6. Mr. Shukla submitted that in the supplementary statement itself, the first informant has offered an explanation for not disclosing the fact that 5000 Kuwait Dinar was paid by way of extortion, in the year 2017. Mr. Shukla also invited attention of the Court to the statement of a witness in whose presence the amount was allegedly paid to Hoshdar Khan. Taking the court through the transcript of the conversation and the call data records, Mr. Shukla submitted that a very strong prima facie case is

made out against the applicant and, therefore, the applicant does not deserve to be released on bail.

7. I have perused the report under Section 173 of the Code and the documents annexed with it. Evidently, a demand was first made by the applicant in the year 2016, while both the applicant and the first informant were in Kuwait. Prima facie, the cause for the demand was alleged loss suffered by the applicant in the business due to the acts of the first informant. It is the allegation of the first informant that, in the year 2017, wanted accused Burhan and Salim threatened the first informant out of his life and he was coerced to pay 5000 Kuwait Dinar to Hoshdar Khan.

8. Prima facie, the said allegation of making the first informant to pay 5000 Kuwait Dinar to Hoshdar Khan by putting him in fear of death does not find mention in the FIR. Since the first informant had narrated the incidents that transpired from the year 2016, failure to mention the delivery of the amount in the year 2017 under the fear of death, is such a notorious fact that, ordinarily, the first informant could not have missed to state the same.

9. The time lag also assumes significance. Evidently, the demand was first made in the year 2016.

10. The transcript of the conversation sought to be relied upon by Mr. Shukla is between the first informant and third person. In the said transcript as well,

there is a reference to the dispute between the applicant and the first informant over the alleged loss in the shipment of the goods.

11. In the aforesaid view of the matter, at this stage, when the investigation is practically complete and the chargesheet has been lodged qua the applicant, further detention of the applicant does not seem to be warranted as the applicant has been in custody for almost one year. The applicant appears to have roots in society. The apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions.

11. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Zakir Sajjad Hussain be released on bail in C.R.No.28 of 2023 registered with DCB, CID, AEC on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before DCB, CID, AEC on first Monday of every month in between 11 am to 1 pm for a period of two years or till the conclusion of the trial whichever is earlier.

(iv) The applicant shall not contact the first informant and any of his family members in whatsoever mode and for whatsoever purpose and shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) On being released on bail, 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.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) 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.

(viii) Interim Application also stands disposed.

(N.J.JAMADAR, J.)