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

## CRIMINAL BAIL APPLICATION NO.1202 OF 2024

Ashish Shivkumar Sharma .. Applicant
**Versus**
State of Maharashtra .. Respondents

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- Ms. Swarali Joglekar, Advocate for Applicant.
- Ms. Pallavi N. Dabholkar a/w. Mr. A.S. Shalgaonkar, APP for State.
- API Ganesh R. Jadhav, Mumbra Police Station present.

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**CORAM : MILIND N. JADHAV, J.**
**DATE : APRIL 29, 2024.**

**P.C.:**

**1.** This Bail Application seeks enlargement on bail of Applicant – Accused No.2 in connection with C.R. No. 358/2018 registered with Mumbra Police Station for offences punishable under Sections 489(A),(B),(C),(D),(E) read with Section 34 of Indian Penal Code,1860 (for short "**IPC**") alongwith Sections 3 and 25 of the Arms Act, 1959 and Sections 37(1) and 135 of the Maharashtra Police Act, 1951. Applicant is 34 years old. Applicant is arrested and in jail since 11.07.2018. Investigation is complete and chargesheet has been filed. Applicant has filed 4 bail applications previously before the Trial Court which stand rejected *vide* orders dated 18.12.2019, 03.03.2021, 25.06.2021 and 21.12.2023 which are appended from page Nos.115 to 127 of the Application. There are total three accused involved and arrested in connection with the present crime. Accused No.1 and Accused No.3 have been enlarged on bail on 31.07.2019 (by order dated 31.07.2019 passed in Bail Application No.3344 of 2018 of this Court) and 03.08.2019 (by order dated 03.08.2019 passed on Exhibit-4 by the Trial Court) respectively which orders are appended at page Nos.128 and 133 of the Application.

**2.** Briefly stated, Applicant was arrested on 05.07.2018 in connection with C.R. No.450/2018 registered with Mumbra Police Station for offences punishable under Sections 307, 323 and 504 of the IPC and under Sections 3, 25(1)(b) and 28 of the Arms Act, 1959. During interrogation and investigation, Applicant disclosed that the pistol used by him in this crime was purchased by him for his protection since he was dealing with manufacturing of counterfeit currency. He disclosed that he also purchased and possessed a *gavthi katta* (country revolver) and live cartridges / bullets which were lying in his house alongwith the machinery used for manufacture of counterfeit currency notes alongwith the counterfeit currency notes. In the 1$^{st}$ incident on 05.07.2018, Applicant fired a bullet on one Mr. Sanjivkumar Gupta (First Informant in C.R. No.540/2018) due to a quarrel / skirmish in the Applicant's house namely the hall of his 1BHK house for return of monies / deposit amount by the Applicant. On that date, after the incident of firing by Applicant, the revolver was snatched from the Applicant's hand by the First Informant's brother Mr. Santosh Gupta and Applicant alongwith the weapon was apprehended and handed over to the Police Authorities. During this incident on 05.07.2018, Accused No.1 alongwith his wife were also present in the Applicant's house.

**3.** While in police custody, Applicant led the Investigating Authorities to his house on 07.07.2018 and after entering through the hall of his 1BHK house, he took the key to the lock put on the bedroom door which was kept above the electric switch box in the hall which was known to him, he opened the lock of the bedroom door and led to recovery and seizure of one scanner / printer of Canon company, 1 pair of scissors, green and silver colour pens, white paper for printing currency notes and counterfeit currency notes of the value of Rs.1,09,650/- from his bedroom alongwith a *gavthi katta* and 1 live cartridge. On 07.07.2018, crime under CR No.358/2018 was registered against the Applicant and the Applicant stood arrested on 11.07.2018 in this crime.

**4.** Ms. Joglekar, learned Advoacte appearing for the Applicant has drawn my attention to the FIR at page No.25 of the Application and after reading the same has expressed the possibility of the prosecution having planted the seized material in the house of the Applicant. She would submit that since Applicant was arrested on

05.07.2018 in connection with the first FIR, Investigating Authorities visited the spot of incident on 05.07.2018 and 06.07.2018 and hence the above possibility cannot be ruled out. This submission is *prima facie* incorrect and unacceptable, since the two spots of incidents of the two crimes are different, namely the hall in the first instance and the bedroom in the second instance. Further, whereabouts of the key to the bedroom was known only to the Applicant as it was locked and hence the theory of planting false material is *prima facie* ruled out. It shall be the subject of evidence in trial.

**4.1.** Next, she would submit that Accused No.1 has recorded his confession statement on 12.07.2018 which is appended at page No.69 of the Application, *inter alia*, stating that Applicant purchased the Canon scanner / printer and paper bundle for manufacture of counterfeit currency notes and both of them together printed counterfeit currency notes of various denominations on the printer and on the instructions of the Applicant, he circulated the said counterfeit currency notes in the market and out of the said counterfeit currency, some of the printed currency notes were lying at his house. Subsequently, 4 counterfeit currency notes amounting to Rs.250/-were recovered by the Investigating Authorities from the Accused No.1's house. She would submit that Accused No.1 was present at the time of occurrence of 1st incident on 05.07.2018, however his statement was recorded on 12.07.2018 and most importantly despite the charge against accused No.1 being under 489(A),(B) and (D), he has been granted bail by this Court and therefore on parity, the present Applicant / Accused No.2 deserves to be enlarged on bail.

**4.2.** She would submit that trial has not yet begun nor the charges are framed and the Applicant is in incarceration for almost 5 years 9 months and such long incarceration impinges upon his right to personal liberty which stands curtailed due to repeated rejection of his bail applications. She invokes Article 21 of the Constitution of India.

**4.3.** In support of her submissions, Ms. Joglekar has referred to and relied upon the following decisions of the Supreme Court amd the various High Courts:-

(i) **Sameer Khan Vs. State of U.P.**[1];

(ii) **Jafar Kha s/o Aslam Kha Vs. State of M.P.**[2];

(iii) **Amit Krupaldas Valbani Vs. State of Maharashtra**[3];

(iv) **Akash Satish Chandalia Vs. State of Maharashtra**[4];

(v) **Pradeep Dhanpal Choudhary Vs. State of Maharashtra**[5];

(vi) **Shaheen Welfare Association Vs. Union of India**

1 2022:AHC:180935 decided on 01.11.2022 (Allahabad High Court)
2 M.Cr.C.No.21748/2022 decided on 07.05.2022 (Madhya Pradesh)
3 B.A. No.1293 of 2018 decided on 31.08.2018 (Bombay High Court)
4 B.A. No.1779 of 2023 decided on 26.09.2023 (Bombay High Court)
5 B.A. No.1715 of 2023 decided on 02.02.2024 (Bombay High Court)

**and Others**[6];

(vii) **Union of India Vs. K.A. Najeeb**[7] and;

(viii) **Shoma Kanti Sen Vs. State of Maharashtra and Anr.**[8]

**4.4.** She would submit that in the case of *Sameer Khan (1st supra*), accused therein was charged with identical provisions and in jail for a little over 2 years and 2 months and enlarged on bail. She would submit that the learned Single Judge of the Allahabad High Court while allowing the Bail Application in that case, despite observing that manufacturing counterfeit currency is a serious offence which can harm national security and national economy, released the Applicant on bail after accepting submissions of the Applicant on the ground of parity, applicant having no criminal antecedants, he not being a flight risk and there being no possibility of him influencing witnesses or tampering evidence or re-offending. In that case, however there was no independent witness to the recovery memo and therefore it was agitated that the counterfeit currency and other articles were planted. However, such is not the case here. Facts in this case are different as alluded to hereinabove.

**4.5.** In the case of *Jafar Kha (2nd supra),* she would submit that in this case the accused was charged under Section 489 (B) and

6 (1996) 2 SCC 616
7 Criminal Appeal No.98 of 2021 decided on 01.02.2021 (SC)
8 2024 INSC 269 (SC)

(C). In that case it is observed that on receiving information of the said accused attempting to use counterfeit currency notes, he was apprehended in the market spot and 5 counterfeit currency notes of Rs.2000/- were recovered. The facts in the present case are therefore clearly distinguishable from that case.

**4.6.** Next, in the case of *Amit Valbani (3rd supra),* a decision of this Court (Coram: Smt. Anuja Prabhudesai, J), the accused was charged under Sections 489(B),(C),(D) and (E) of IPC. He was a vegetable vendor who was apprehended for dealing with counterfeit currency notes when he gave one such counterfeit currency note to the First Informant. In that case, 47 counterfeit currency notes of Rs.100/- denomination were recovered form the accused. She would submit that in that case this Court held that only material collected by the Investigating Agency is a printer cum scanner of HP company which is otherwise readily available in almost all houses / offices. However the facts clearly in that case reveal that the printer was recovered from the house of accused in Akola when the accused was residing in Pune and there was no material to establish that the printer was used for manufacture of counterfeit currency. These facts thus are clearly distinguishable from the facts in the present case.

**4.7.** In the case of *Akash Chandalia (4th supra)*, reliance is placed on long incarceration and delay in completion of the trial and thus thrust is placed on deprivation of personal liberty without ensuring a speedy trial and violation of Article 21 of the Constitution of India. She would submit that in this decision, the Court has held that since the Applicant has undergone a significant period of the proposed conviction period in incarceration, Court would ordinarily be obligated to enlarge him on bail keeping aside the seriousness of accusations faced by him. She has invoked this proposition and urged the Court to enlarge the Applicant on bail subject to appropriate stringent terms as deemed fit by the Court.

**4.8.** The decision in the case of *Pradeep Chowdhary (5th supra)* is in similar circumstances, for offences punishable under Section 489(A),(B),(C),(D),(E) of the IPC, the accused therein, 1 out of 7 being in custody for more than two years was enlarged on bail. In that case 7 accused were apprehended in a raid conducted in the hotel room and counterfeit currency of Rs.2 crores was recovered and since trial was not likely to conclude soon, he was enlarged on bail. Facts in that case are different than the present case. Here the Applicant's role is clearly spelt out as the manufacturer of counterfeit currency notes.

**5.** Ms. Dabholkar, learned PP in her response would submit that the role of the Applicant in the present crime is that of the main accused; that he is instrumental in manufacture of counterfeit currency notes. While relying on the statement of accused No.1 on page No.58 of the Application; she would submit that nexus of the Applicant to the principal act of manufacture of counterfeit currency is *prima facie* established by accused No.1 in his statement. Hence on the ground of parity, accused No.1 and present Applicant / accused No.2 cannot be compared with the same role since substantial recovery has been made from Applicant's house and more specifically his locked bedroom that was opened by Applicant himself to establish role of Applicant. She has drawn my attention to Report dated 04.09.2018 prepared by Currency Notes Press, Nashik Road on the genuineness of counterfeit currency seized which is appended at page No.89 of the Application which establishes that the entire currency seized from Applicant was counterfeit in nature. On antecedants, she would submit that Applicant being the mastermind has to be treated as a habitual offender in view of his offence on 05.07.2018 under Section 307 and recovery of one *gavthi katta* (country revolver) and 1 live cartridge from his own house. She would submit that this Court should visualize the gravity of the offence being committed by Applicant which is with cool and calculated planning which would resultantly affect the economy and economic stability of our country. Hence, she would urge the Application to be dismissed.

**6.** In rejoinder, Ms. Joglekar would submit that the antecedants of the Applicant have not been established nor he is a national security threat. She would submit that Applicant seeks parity with accused No.1 only and not with accused No.3. She would candidly submit that accused No.3 is absconding after being enlarged on bail and hence there may be delay in completion of trial as charge is still not framed. She would therefore urge the Court to enlarge the Applicant on bail on terms and conditions deemed fit by the Court.

**7.** I have considered the submissions advanced by the learned Advocates and perused the record of the case. The two incidents namely, 1st incident of 05.07.2018 is linked to the 2nd incident of seizure on 07.07.2018 through the weapon used by the Applicant during the incident on 05.07.2018. Recovery of counterfeit currency is of 22 currency notes of Rs.2000/- denomination; 118 notes of Rs.200/- denomination; 332 notes of Rs.100/- denomination; 145 notes of Rs.50/- denomination; 53 notes of Rs.20/- denomination and 54 notes of Rs.10/- denomination alongwith one scanner / printer of Canon company, two colour pens, 1 pair of scissors, 1 *gavthi katta* (country revolver) and 1 live cartridge. In the disclosure panchnama, which is appended at page Nos.58 and 59 of the Application is the statement of accused, wherein he has confessed having acquired the above two fire arms for protection of his counterfeit currency manufacturing business. The statement of accused No.1 recorded on 12.07.2018 specifically indicts the role of present Applicant as being the principal person behind manufacture of counterfeit currency notes.

**8.** Though Applicant has relied upon the decisions of the Supreme Court in the case of *Shaheen Welfare Association and Shoma Kanti Sen (6th and 8th supra)*, it is seen that there is a clear distinction with respect to the role of the accused in those cases even though both those cases were under the Special Acts and role of the Applicant in the present case. Though it may be contended that long incarceration entitles an accused to liberty, the same cannot and should not be applied universally in all cases and more specifically in cases where there is a grave and imminent threat to national economy. The Applicant is apprehended for being the principal conspirator / manufacturer of counterfeit currency notes in the present case.

**9.** Though Applicant may be right in pleading ground of long incarceration and right to bail and personal liberty as also right to a speedy trial are sacrosanct and deserve acceptance, this is a case where role of Applicant is clearly defined as being the principal conspirator behind the act of manufacturing and circulation of counterfeit currency notes. Recovery of such notes is from his own house i.e. bedroom. Such act carried out by Applicant is a very serious act having repercussions on the economic system of the country and the magnitude of the financial impact involved is not even known to anybody. Applicant's act is an economic offence carried out with a deliberate design regardless of its consequences which strikes at the economic stability of the country. Further such an act is an act of the skill-set of the Applicant. It is not an act committed by Applicant in the spur of the moment, rather it is a calculated and planned act of striking the economic stability of the Nation. Economic stability is the absence of excessive fluctuations in the macro-economy. Currency is one of the principal ingredients of macro-economy. Such counterfeit currency is used to finance illegal activities such as human trafficking, drugs and even terrorism. Hence, this forms a class apart.

**10.** Keeping in view the threat posed by circulation of high quality Fake Indian Currency Notes (**FICN**), to destabilize economic security of the Nation, the Government of India has made certain amendment in the year 2013 to the Unlawful Activities (Prevention) Act, 1967 (for short "**UAPA**") making the production (*emphasis supplied)* or smuggling or circulation *(emphasis supplied),* a terrorist act under Section 15(1)(a)(iiia) for which punishment is laid down in Section 16 of the UAPA. Such *prima facie* conclusion is drawn in the Forensic Currency Press, Nashik's Report which is appended at page No.89 of the Application.

**11.** If left unchecked, circulation of counterfeit currency can undermine National economy, weaken financial institutions and jeopardize people's livelihoods. Such act fuels underground economy and slowly and steadily leads to National instability. Such an act is an act which can be carried out from not only within the country but even from cross-border territories to destabilize the economic structure of the country. Such act of manufacturing counterfeit currency affects the economic structure of the country. Applicant in the present case though may be indicted for offences mainly under IPC, role of the Applicant as the manufacturer of counterfeit currency and recovery from his house i.e. bedroom disentitles him for enlargement on bail. Such an act on the part of Applicant, of committing an economic offence of such serious nature and disseminating it to Accused No.1 and Accused No.3 constitutes a class apart and needs to be revisited with a different approach. It is rather a grave offence. Such an applicant does not qualify the Tripod Test as enumerated by the Supreme Court in case of ***Gurwinder Singh Vs. State of Punjab and Anr.***[9]. Due to the nature of accusation and severity of punishment of life imprisonment in case of conviction under Section 489(B) of the IPC, there is reasonable apprehension of the Applicant failing the Tripod Test. Role of Applicant cannot be on parity with Accused No.1 and / or Accused No.3. It is more grievous.

**12.** Hence, I am of the clear opinion that in the facts of the present case, there is reasonable ground for believing that on the basis of the nature of accusations, severity of punishment which conviction

9 Criminal Appeal No.704 of 2024 decided on 07.02.2024 (SC).

shall entail, circumstances peculiar to the Applicant, reasonable possibility of securing the presence of Applicant during the Trial, reasonable apprehension of the witnesses being tampered and above all, the larger public / State interest involved, the Applicant does not deserve to be enlarged on bail.

**13.** Resultantly, the Criminal Bail Application stands comprehensively dismissed.

**[ MILIND N. JADHAV, J. ]**

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