

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.935 OF 2023

Sartaj Alam Mohd. Yasin ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Akhilesh Singh i/b. Ms. Neetu Singh, for the Applicant.

Ms. G.P. Mulekar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 16, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant, who is arraigned in C.R. No. 55 of 2022 registered with Andheri Railway police station for the offences punishable under sections 120-B, 354-A, 509, 419, 420, 465, 468, 471 and 384 read with 34 of Indian Penal Code, 1860 and sections 67A and 67B of the Information Technology Act, 2000 seeks to be enlarged on bail.

3. On 3rd February, 2022 the first informant lodged report with the allegations that she had received obscene videos and photographs on her mobile phone purportedly sent by an unknown person from mobile No. XXXXX3466. The said person had also called her and sent voice messages containing abusive words. During the course of investigation, it transpired that the said

number was in the name of one Ram Singgaya and it was used by Harsha Battehi (accused No. 1), a representative of an online lender. Further investigation revealed that, a number of persons were induced to avail loan online, on usurious terms. When the borrower failed to repay the loan, they were threatened by sending obscene photos, videos and using abusive language. The loan was granted by Paytm account connected to the bank account of one Olazhikathun IT Solution Private Limited, a firm based in Kerala of which Shad Bashir (accused No. 7) and Hasim Mohd, the wanted accused, were Directors. It further transpired that the operations of the said company were being run from a place at Delhi, which belonged to the applicant. In the house search of the applicant, a number of gazettes and other incriminating articles were seized. The applicant and his son Shoaib Iqbal (accused No. 3) were arrested. The prosecution alleges the applicant was the kingpin of the operations.

4. Mr. Singh, learned counsel for the applicant, submitted that so far as the allegations of forwarding the obscene photographs and videos, it is the prosecution case that those videos were forwarded from the mobile phone of Harsha Battehi (accused No. 1). Co-accused were stated to be the Directors of the company who had advanced loan. Shad Bashir (accused No. 7), the Director of the

alleged fraudulent company has not at all been arrested and rest of the accused have been released on bail. The applicant has been in custody since 12th July, 2022. Investigation is complete. The applicant be, thus, released on bail.

5. An affidavit in reply came to be filed on behalf of the prosecution indicating the role of the applicant.

6. The genesis of the alleged offences is in the obscene photographs and videos sent on the mobile phone of the first informant. Prima facie, the said role is attributed to Harsha Battehi (accused No. 1), who has been released on bail.

7. The prosecution alleges that the applicant was the kingpin of the Online loan operations. The applicant is sought to be roped in on the basis of the incriminating articles which were allegedly seized in the house search of the applicant. It is pertinent to note Shoiab Iqbal (accused No. 3) who has been released on bail was also an occupant of the said house, where from those articles were seized. In these circumstances, can the applicant alone be fastened with the liability for having allegedly been found in possession of those incriminating articles would be a matter for trial.

8. The prosecution alleges that the co-accused Shad Bashir (accused No. 7) was the Director of the company which indulged in fraudulent loan transactions online. In the report submitted by the

investigating officer, the role attributed to the applicant appears to be that of being a perpetrator of the offences along with Vikram Rajput, the wanted accused. The same role has been attributed to Shoaib Iqbal (accused No. 3), who has been released on bail.

9. In the aforesaid view of the matter, at this length of time, when the investigation is complete qua the applicant and the charge sheet has been lodged and the applicant has been in custody since 14th July, 2022, further detention of the applicant does not seem warranted. The major offence with which the applicant has been charged entails punishment which may extend to seven years.

10. The apprehension on the part of the prosecution of tampering with evidence and fleeing away from the justice can be taken care of by imposing conditions.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Sartaj Alam Mohd. Yasin be released on bail in C.R. No. 55 of 2022 registered with Andheri Railway 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 Andheri Railway

police station on the first and third Monday of every month for a period of two years and, thereafter on the first Monday of every alternate month between 11 am to 1 pm till conclusion of the trial.

4] The applicant shall not leave the limits of Mumbai, Mumbai Suburban and Thane District without the prior permission of the trial Court.

5] The applicant shall surrender his passport before the trial Court and shall not leave the country without the prior permission of the trial Court.

7] 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.

8] 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.

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

10] 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.

Application disposed.

(N. J. JAMADAR, J.)