IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1440 OF 2024

Jay Chimanlal Desai ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Prasad L. Gajbhiye , for the Applicant.
Mr. R.M. Pethe, APP, for the Respondent/State.
Mr. Dombale, API, Borivali police station.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 08, 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. 106 of 2023 registered with Borivali police station for the offences punishable under sections 120-B, 406, 420, 467, 468 read with 34 of Indian Penal Code, 1860, seeks to be enlarged on bail.

3. The gravamen of indictment against the applicant and the co-accused is that the first informant was in need of money. Rajesh Jain, the relative of the first informant, introduced the first informant to co-accused Arvind Jain. The latter, in turn, introduced the first informant to co-accused Surendra Chordia and the applicant. The co-accused Arvind Jain and Surendra Chordia made a representation that the applicant would secure loan of Rs. 10 Crores for the first informant. However, 20% of the loan amount as

service charges will be levied. Believing the representation of the applicant and the co-accused the first informant parted with a sum of Rs. 75 lakhs during the period November, 2018 to June, 2019. It is alleged, out of the said amount, a sum of Rs. 45 lakhs was credited to the account of the applicant. When the first informant inquired about the loan, the co-accused Surendra Chordia and Arvind Jain had shown fixed deposit receipts purportedly in the name of the applicant. They represented that the applicant will soon procure the loan for the first informant. Upon further inquiry, it transpired that the fixed deposit receipts were false and fabricated. Realizing the fraud, the first informant lodged the report.

4. Mr. Gajbhiye, the learned counsel for the applicant, submitted that there is no material to indicate that the entire amount of Rs. 75 lakhs was paid to the applicant. In fact, the applicant was not in the frame till the co-accused allegedly induced the first informant by making a representation that the applicant would secure the loan. It was submitted that there was an altogether different circuitous transaction in pursuance of which the amounts were credited to the account of the applicant.

5. Mr. Pethe, the learned APP, resisted the prayer for bail. Attention was invited to the communication dated 24th March, 2023

addressed by State Bank of India which records that the account in which the fixed deposit receipts were shown to have been made, did not belong to the State Bank of India, Nariman Point branch and the said account was a savings account. It was further submitted that the applicant has antecedents.

6. I have perused the report under section 173 of the Criminal Procedure Code, 1973 and the documents annexed with it.

7. Prima facie, there is an element of delay in lodging the report. The transaction took place between November, 2018 to June, 2019. It seems a written complaint was lodged in the year 2021. The material on record thus indicates that certain amounts were credited to the account of the applicant. However, the allegation that the applicant had shown false and fabricated fixed deposits does not seem to be prima facie made out as in the FIR it is alleged that the co-accused Surendra Chordia and Arvind Jain had shown fixed deposit receipts purportedly kept with different banks. In these circumstances, whether there was a different transaction as contended by the applicant would be a matter for adjudication at the trial.

8. The investigation is complete. Charge sheet has been lodged. The applicant has been in custody since 8th October, 2023.

9. I have also perused the chart of cases in which the applicant

has been arraigned. Apart from cases under Negotiable Instruments Act, three cases for the offences under the Penal Code seem to have been registered against the applicant. The learned counsel for the applicant submits that in C.R. No. 3393 of 2005, the applicant has been acquitted. Whereas, the prosecution in C.R. Nos. 1878 of 2018 and 4700 of 2023 are pending. In the backdrop of the nature of the accusation and the time lag since the registration of those crimes, in my view, the antecedents of the applicant are not such as to dis-entitle him from seeking bail.

I am, therefore, inclined to allow the application.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Jay Chimanlal Desai be released on bail in C.R. No. 106 of 2023 registered with Borivali 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 Borivali 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 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.

5] 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.

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

7] 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.)