Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1695 OF 2023
WITH
INTERIM APPLICATION NO. 2827 OF 2023

Hemant Vrajlal Zaveri ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Aabad Ponda, Senior Counsel with Mr. Rahul Moghe with Mr. Subhash Jadhav with Mr. Amit Patil with Ms. Kalyani Rathod with Mr. Rishabh Jadhav i/b Parinam Law Associates, for Applicant.
Mr. Y. M. Nakhwa, APP for State/Respondent.
Mr. Santosh Budhwani with Mr. Sujit Suresh i/b Manilal Kher Ambalal and Co., for Applicant in IA/2827/2023.
Ms. Suvarna Umap, API, EOW Banking III Unit XI, Present.

CORAM:- N. J. JAMADAR, J.
RESERVED ON : 23rd JANUARY, 2024.
PRONOUNCED ON:- 6th FEBRUARY, 2024.

ORDER:-

1) Heard the learned Counsel for the applicant, the learned APP for the State and the learned Counsel for the applicant in Intervention application- first informant.

2) The applicant, who is arraigned in CR No. 21 of 2022 with Economic Offences Wing, original CR No. 52 of 2022, registered with Colaba Police Station, for the offences punishable under Sections 120-B, 406, 409, 420, 477(A) of Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.

3) The prosecution case runs as under:-

(a) M/s. Tribhovandas Bhimaji Zaveri & Sons Retail Pvt. Ltd. (M/s. Tribhovandas), the accused No.1 is a Private Limited Company. The applicant and Girish Nayak, accused No. 3, were the Directors of M/s. Tribhovandas. In the month of March, 2015, the applicant and the co-accused Girish Nayak started M/s. Tribhovandas to engage in the business of gold, silver, diamond, precious gems and jewellery.

(b) On 2nd September, 2015, the accused applied to Axis Bank, for a cash credit facility to the tune of Rs. 40 Crores. After following the usual process, on 19th September, 2015, a cash credit facility to the tune of Rs.36 Crores was sanctioned to M/s. Tribhovandas. Appropriate securities were furnished by M/s. Tribhovandas. The loan installments were regularly repaid till December, 2018. As M/s. Tribhovandas committed default in payment of the installment since May, 2019, the account was declared NPA, on 29th August, 2019, and a notice recalling the cash credit facility was issued, on 24th January, 2020.

(c) Axis Bank appointed Mazars India LLP to conduct a forensic audit. In the report submitted by the auditor dated, 18th February, 2021, it transpired that the accused had indulged in several serious financial irregularities. M/s. Tribhovandas had, inter alia, utilised and diverted funds for purposes other than the one for which the cash credit facility was availed. There were related party transactions and funds were diverted to the entities of the accused. Non-existent and false transactions of sale and purchase of commodities and jewelleries, were shown. The financial statements submitted to the bank did not tally with the audited balance-sheets and stock statements. The amounts advanced by Axis Bank to M/s. Tribhovandas were, thus, siphoned off.

(d) It is, inter alia, alleged that M/s. Tribhovandas had entered into transactions with Midas Touch Pvt. Ltd., which was not at all dealing in the business of jewellery. Likewise, transactions were shown to have been entered with M/s Dreamgold Jewelry Pvt. Ltd., again a company in which the applicant had controlling interest. A sum of Rs.2.8 Crores was transferred to M/s. Dreamgold Jewellery Pvt. Ltd. There were financial transactions with Better Value Properties Ltd., another related party. The ledger statements did not match with the Bank statements. Unsecured loans were obtained from Better Value Leasing and Finance Pvt Ltd., to the tune of Rs.21.79 Crores and against which a payment of Rs.11.78 Crores was shown to have been made, in breach of an express condition that M/s. Tribhovandas shall not obtain any unsecured loan without the prior permission of the Axis Bank. There was diversion of funds by entering into transactions with Enafin Investment Pvt. Ltd., the payment and receipt of Rs.8 Crores, in the ledger account of Enafin Investment Pvt Ltd., did not match with the Bank statement of M/s. Tribhovandas.

(e) In the month of March, 2017, jewellery worth Rs.25 Crores was shown to have been sold and purchased from National Bullion Refinery. However, there was no corresponding entry in the books of accounts. Thus, the accused furnished false financial statements and indulged in falsification of the accounts to show that M/s. Tribhovandas was in a sound financial health. Lastly, the applicant had diverted funds to the personal account of the applicant to the tune of Rs.1,62,40,711/-. Thereby the applicant committed offences punishable under Sections 120-B, 406, 409, 420, 477(A) in pursuance of a criminal conspiracy with the co-accused punishable under Section 120-B of the Penal Code, 1860.

4) The applicant was arrested on 7th November, 2022. Post completion of investigation, charge-sheet came to be lodged on 2nd February, 2023, reserving the liberty to carry out further investigation under Section 173 (8) of the Code of Criminal Procedure, 1973.

5) The Investigating Officer has carried out further investigation, and lodged a supplementary charge-sheet on 23rd November, 2023 against Girish Nayak and Anant Gawande. The Co-accused have also been arraigned for the offences punishable under Sections 120-B, 406, 409, 420, 477(A) of the Penal Code, 1860.

6) Mr. Ponda, the learned Senior Advocate, for the applicant submitted that the co-accused Girish Nayak, the Director of M/s. Tribhovandas and Anant Gawande, who were intimately connected with M/s. Tribhovandas, nay were instrumental in the alleged fraud and falsification of the accounts, have been treated with favourably. The Investigating Officer did not deem it necessary to arrest co-accused Girish Nayak and Anant Gawande on the specious ground that, though overwhelming evidence to establish the complicity of those accused could be collected during the course of investigation, yet, since those accused had rendered full co-operation during the course of investigation, they were not arrested.

7) Mr. Ponda submitted that on account of the discriminatory treatment itself, the applicant deserves to be released on bail. What accentuates the situation, according to Mr. Ponda, was the existence of material in the form of the statements of the prosecution witnesses which show that Girish Nayak and Anant Gawande were the prime characters in the commission of the alleged offences. To lend support to the submission that such discriminatory approach entitles an accused, who is discriminated against, to bail, reliance was placed on a judgment of Delhi High Court, in the case of **R. Vasudevan Vs. CBI, New Delhi**[1].

8) In any event, Mr. Ponda would urge that the investigation is complete for all intent and purpose. Charge-sheet and supplementary charge-sheet have been lodged. The applicant,

1 2010 SCC Online Del 130

who is 64 years of age, has been in custody for 15 months. Therefore, the applicant deserves to be released on bail.

9) In opposition to this, Mr. Nakhwa, the learned APP, stoutly resisted the prayer for bail. Taking the Court through the report under Section 173 of the Code, 1973 and the documents annexed with it. Mr. Nakhwa would urge that the intention of the applicant was dishonest since the inception of the transaction as the forensic audit has revealed that the amount of Rs.8 Crores, invested on 30th September, 2015, by way infusion of equity share capital was transferred to Dreamgold Jewelry Pvt. Ltd., on the very day the cash credit facility was sanctioned. Mr. Nakhwa made an endeavour to demonstrate how the funds availed from the Axis Bank for working capital were diverted to the account of the applicant. Emphasis was laid on the fact that the false entries were made in the stock register to show an untrue financial position of the company.

10) Mr. Nakhwa would urge that the fact that the co-accused have not been arrested would not enure to the benefit of the applicant, who is the principal accused and the beneficiary of the fraud. It was further submitted that there are three more

identical offences registered against the applicant and, therefore, he does not deserve to be released on bail.

11) Mr. Budhwani, the learned Counsel for the applicant in IA No. 2827 of 2023 – first informant – Axis Bank, supplemented the submissions of Mr. Nakhwa. It was urged that the instant case involves a financial fraud of huge public money. By resorting to fabrication of documents since the very inception of the transaction the applicant had deceived the Bank to part with a huge amount. Laying emphasis on the conduct of the applicant reflected in an order passed by this Court in Criminal Application (ABA) No. 106 of 2020, wherein the applicant had allegedly submitted false and forged documents in support of the prayer for pre-arrest bail, Mr. Budhwani submitted that the applicant does not deserve the relief of bail.

12) I have carefully perused the material on record, especially in the backdrop of the nature of the accusation. Prima facie, there are documents which indicate that there was diversion of funds availed from Axis Bank by way of cash credit for working capital requirement in the sense that the funds were utilised for purposes other than the one for which the financial facility was extended. The documents also indicate that there was a mesh of transactions between M/s. Tribhovandas and related parties; be it corporate entities or individuals. The allegations that the transactions of sale and purchase of precious metals and jeweleries were shown to have been entered, with entities which did not at all deal in those commodities are also prima facie made out. At this stage, there is material to show that the utilisation of the funds, advanced by the Axis Bank, was prima facie in such a manner as to give rise to an element of criminality.

13) The question that, however, warrants consideration, at this stage, is, taking the prosecution case as its stands, whether the applicant is entitled to be released on bail. To put in other words, is there such qualitative difference in the role attributed to the co-accused and the applicant in the matter of alleged fraud and falsification of the statements of accounts.

14) First and foremost, it is imperative to note that the prosecution alleges that the offences were committed in pursuance of a criminal conspiracy with co-accused Girish Nayak and Anant Gawande. Interestingly, the prosecution also alleges that there is overwhelming evidence to support the indictment against Girish Nayak and Anant Gawande. The reason ascribed for not arresting those co-accused was that they had co-operated in the investigation. The Investigating Officer may be justified in taking that position. However, prima facie, the statements of the witnesses, banked upon by the prosecution, in support of the indictment against the applicant, suggest the complicity of the co-accused in equal measure.

15) As noted above, the first informant, the Deputy Vice President of Axis Bank, had explicitly named Girish Nayak as an accused while lodging the FIR. Nimish Anil Chodankar and Hitesh Ashok Narang, whose statements were pressed into service in support of the indictment against the applicant, have stated in their supplementary statement that M/s. Midas Touch Pvt. Ltd., a 100 % subsidiary of M/s. Talwalkars Better Value Fitness Pvt. Ltd., is a related party of Vans Scientific Information Pvt Ltd of which Anant Gawande is a Director. Girish Nayak is the Chief Financial Officer (CFO) of M/s. Talwalkar Group. M/s. Abhipray Enterprises Pvt. Ltd is a 100% subsidiary of M/s. Talwalkars Healthclubs Ltd. Girish Nayak and Anant Gawande are the Directors and CFO of M/s. Talwalkar's Group Companies. The transactions shown between M/s. Tribhovandas, on the one part, and M/s. Midas Touch Pvt. Ltd., and M/s. Abhipray

Enterprises, on the other part, are false. They were a subterfuge for circulation of funds. The financial statements were fudged to show the financial position of M/s. Tribhovandas.

16) Mr. Prashant Martin states that Anant Gawande is the Director/Promoter of M/s. Talwalkar Better Value Fitness Pvt. Ltd. Girish Nayak is the CFO. Anant Gawande is concerned with many entities including M/s. Enafin Investment Pvt. Ltd., M/s. Abhipray Enterprises Pvt Ltd and M/s. Midas Touch Pvt. Ltd. All the transactions in M/s. Talwalkar Better Value Fitness Pvt. Ltd., were as per the directions of Anant Gawande.

17) Mr. Satish Talekar, who worked with M/s. Talwalkar Better Value Fitness Pvt Ltd., as an Accountant, informed that he had made entries in the monthly stock statement of M/s. Tribhovandas as per verbal directions of Anant Gawande and Girish Nayak and obtained the signatures of the applicant thereon by forwarding the same through e-mail.

18) Even Mr. Firoj Faram Balsara, on whose statement, the learned APP placed reliance, stated that while he was working with M/s. Micky Mehta's 360 Wellness Temple Pvt Ltd, at the instructions of Girish Nayak he had put signatures on various documents and it later transpired that he was shown a Director

of M/s. Midas Touch Pvt. Ltd. The said company was operated by Mr. Girish Nayak.

19) The aforesaid material, prima facie, indicates that the parties and entities with whom M/s. Tribhovandas allegedly entered into transactions and, resultanly, there was diversion of funds, were the related parties of Girish Nayak and Anant Gawande. The witnesses have stated that at the instance of those accused, incorrect statements were prepared. In the backdrop of this material, if the Investigating Officer is satisfied with the co-operation rendered by the co-accused, the claim of the applicant for bail cannot be jettisoned away by canvassing a submission that the role of the applicant is distinct. In the case of **R. Vasudevan** (supra), the Delhi High Court criticized the approach of the Investigating Agency in not adopting a just and fair approach in treating all the accused persons on an even pedestal.

20) Having considered the material on record, I find that the role attributed to the applicant, especially in the backdrop of the allegations of criminal conspiracy and falsification of the accounts, prima facie does not appear to be materially distinct from that of the co-accused. Thus, I find substance in the submission of Mr. Ponda that in the face of the stand of the Investigating Agency qua the co-accused, the applicant deserves bail.

21) Even otherwise, as is evident, the offences revolve around documents. All the documents have been seized. Post further investigation, the Investigating Officer has lodged a supplementary charge-sheet. The supplementary statement of the first informant indicates that the value of the security furnished for the loan was assessed at Rs.19.47 Cores. Possession of the secured assets had been obtained. Proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 have been initiated.

22) Evidently, M/s. Tribhovandas had serviced the loan account regularly till December, 2018. The fraud was allegedly unearthed after the account became NPA. Undoubtedly, this does not dilute the gravity of the offences but it bears upon the question as to whether the intention of the accused was dishonest since the inception of the transaction.

23) In the aforesaid view of the matter, at this stage, further detention of the applicant does not seem warranted.

24) So far as the antecedents of the applicant, it appears that four crimes have been registered against the applicant primarily for the offences punishable under Sections 406 and 420 of the

Penal Code, 1860. In one crime, charge-sheet has been lodged. Three are under investigation. Mr. Ponda informed the Court that in one of the crimes, the Supreme Court had granted pre-arrest bail to the applicant. Having regard to the nature of the offences registered against the applicant and in the facts of the case, in my view, the antecedents are not such as to dissuade the Court from exercising the discretion in favour of the applicant.

25) The applicant is 64 years of age. He has been in custody since 7th November, 2022. In the backdrop of the nature of the accusation, it is unlikely that the trial can be concluded within a reasonable period.

26) The applicant appears to have roots in society. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

27) I am, therefore, inclined to exercise the discretion in favour of the applicant.

28) Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The applicant Hemant Vrajlal Zaveri Kuni be released on bail in CR No. 21 of 2022, registered with

Economic Offences Wing, for the offences punishable under Sections 120-B, 406, 409, 420, 477(A) of Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount, to the satisfaction of the learned Magistrate.

(iii) The applicant shall attend the office of EOW, Mumbai on first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) The applicant shall surrender his passport before the jurisdictional Magistrate, if not already surrendered before any Court or investigating agency.

(vi) The applicant shall not leave Indian without prior permission of the jurisdictional Magistrate.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and co-accused and the trial court shall not be influenced by any of observations made hereinabove.

(viii) In view of disposal of the Bail Application, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]

The order corrected as per order dated 7th February, 2024.