



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1908 OF 2023**

Abdul Aziz Firozabadi ... Applicant
versus
The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO.207 OF 2024**

Sajid Jalil Sayyed ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Nitin Sejpal with Ms. Pooja Sejpal, Ms. Akshata Desai, Mr. Siddharth Gharat for Applicant in BA 1908 of 2023
Mr. Kushla Mor with Mr. Rohan Chauhan for Applicant in BA 207 of 2024.
Mr. S.R.Aagarkar, APP for State.
Mr. Lingram Sopan Devkutte, PSI, Cyber Police Station, Navi Mumbai.

CORAM: N.J.JAMADAR, J.

DATE : 6 FEBRUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. Accused No.4 – Abdul Aziz Firozabadi – Applicant in BA No.1908 of 2023 and Accused No.3 – Sajid Jalil Sayyed – Applicant in BA No.207 of 2024 who have been arraigned in C.R.No.271 of 2022 registered with Turbhe Police Station along with co-accused Suraj Murli Varma and Anup Murli Varma for the offences punishable under Sections 419, 420, 465, 468, 471, 201 read with Section 34 of the Indian Penal Code, Sections 66C and 66D of the Information Technology Act, 2000

and Sections 4, 20, 21 and 25 of the Indian Telegraph Act, 185, have preferred these applications to enlarge them on bail.

3. The gravamen of indictment against the applicants and the co-accused is that they had started a data center under the name and style of M/s. Global Enterprises, installed a server at Mahape, Navi Mumbai, and obtained Session Initiation Protocol (SIP Trunking) connection from Vodafone, a telecom service provider, and illegally routed the intentional VOIP calls and thereby deceived the government. The said acts of the applicants also posed a threat to internal security of the State. The applicants had allegedly caused notional wrongful loss to the government to the tune of Rs.2,67,36,949/-. It was inter alia alleged that the applicants were the confederates in the conspiracy pursuant to which the aforesaid offences were committed by the co-accused Suraj Murli Varma and Anup Murli Varma and the applicants.

4. Mr. Sejpal, learned Counsel for the Applicant in BA No.1908 of 2023, submitted that there is no nexus between the applicant and the alleged offences. The applicant was the employee of co-accused Suraj Murli Varma, who was allegedly the proprietor of M/s. Global Enterprises. The only material against the applicant is that he had allegedly impersonated as Sahil while inducing the witnesses Amar Rameshwar Chauhan and Yashraj Amar Chauhan to let out a shop premises. That circumstance is too fragile to implicate the applicant for the alleged offences.

5. Mr. Mor, learned Counsel for the applicant in BA 207 of 2024, supplemented the submissions of Mr. Sejpal. Inviting the attention of the Court to the statements of Ms. Madhavi Bhat and Mr. Amol A. Deshpande as regards the identity of the person who contacted them, especially inconsistency in the claim of both the witnesses as regards the identity of accused Nos.3 and 4, it was submitted that there is no material to connect the applicant with the alleged crime.

6. Learned APP joined the issue by canvassing a submission that during the house search of both the applicants, incriminating articles have been recovered. There was huge financial loss to the Government on account of illegal routing of international calls. In the circumstances, it cannot be said that there is no prima facie case against the applicants. Thus, the applications deserve to be rejected.

7. I have perused the FIR lodged by Mr. Anil Ganpat Hale, Jr. Telecom Officer, Security. The first informant alleged that Suraj Verma, Proprietor of M/s. Global Enterprises and his associates had deceived the government by illegally routing international calls by establishing a data center. Qua the applicants, the allegations is that they were the associates of co-accused Suraj Verma.

8. Two circumstances are primarily pressed into service against the applicants. One, the alleged impersonation by the applicants. Two, the recovery of the alleged incriminating articles from the house searches of each of the applicants. On the first count, the prosecution proposes to rely upon two instances. First, the fact

that the applicant Firozabadi had falsely represented himself as Sahil while taking Shop No.13, Aurbindo HSG on leave and licence basis and the applicant – Sajid had impersonated himself as Sameer. Second, accused Nos.3 and 4 had called the officers of Vodafone representing themselves as Suraj Varma and Manish. Reliance was sought to be placed on the statements of Amar Chauhan and Yashraj Chauhan, who had let the shop premises on leave and licence basis and Rohit Singh, who had acted as a mediator in securing the premises, and the statement Mr. Ganesh N. Jaiswal, who had assisted the applicants in securing the premises at Fantasia Business Park.

9. The aforesaid statements indicate that the applicants had accompanied co-accused Suraj Verma and Anup Verma and assisted them in securing the premises on rent by falsely disclosing their identity as Suraj and Sameer. However, copy of the leave and licence agreement executed on 13 May 2022 between Deepak Oza and Suraj Verma (pages 192-196 in BA 1908 of 2023) does not indicate that the applicants had executed the said agreement either as a licensee or witnesses who identified the executant. Likewise, the leave and licence agreement in respect of Unit G-127, Harare Fantasia Business Park also does not reveal that either of the applicants had executed the said leave and licence agreement as the executant or witness. In this view of the matter, the weight to be given to the statements of the above named witnesses would be a matter for trial.

10. I find substance in the submission of Mr Mor that prima facie there appears inconsistency in the statements of Ms. Madhavi Bhat and Amol Deshpande, the officers of the Vodafone, as regards the person who called them and impersonated himself as Suraj. For Madhavi Bhat, it was the applicant – Firozabadi and for Amol Deshpande, it was – Sajid.

11. It is true, there are house search and seizure panchanamas which indicate that certain articles belong to M/s. Global Enterprises, were recovered from the possession/houses of the applicants along with other electronic gadgets/peripherals. However, whether the applicants were the privy to the alleged offences would be a matter for adjudication at the trial, as it is not a prosecution case that either of the applicants was the proprietor of M/s. Global Enterprises.

12. In any event, the applicants have been in custody since 22 October 2022. 15 months have elapsed. Investigation seems to be complete for all intent and purpose. Chargesheet has been lodged. Having regard to the nature of the accusation, it is unlikely that the trial can be concluded within a reasonable period. None of the offences for which the applicants have been arraigned entails punishment of imprisonment exceeding 7 years. I am, therefore, inclined to exercise the discretion in favour of the applicants.

12. Hence, the following order :

ORDER

- (i) The Applications stand allowed.
- (ii) The Applicants – Abdul Aziz Firozabadi and Sajid Jalil Sayyed be released on bail in C.R.No.271 of 2022 registered with Turbhe Police Station on furnishing a PR bond in the sum of Rs.30,000/- each and one or two sureties in the like amount to the satisfaction of the trial Court.
- (iii) The applicants shall mark their presence at Turbhe Police Station on first Monday of every alternate month between 11 am to 1 pm for a period of three years or till the conclusion of the trial whichever is earlier.
- (iv) The applicants shall not tamper with the prosecution evidence. The applicants 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 applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicants 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 applicants and co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Applications disposed.

(N.J.JAMADAR, J.)