Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2093 OF 2023

Prashant Narayanan Kamble ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Prablin Singh Abrol, for the Applicant.
Mr. Y. M. Nakhwa, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 11th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.

2. This is an application for bail in connection with CR No.882 of 2021 registered with Sakinaka Police Station, Mumbai, for the offences punishable under Sections 420, 408, 465, 467 and 471 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").

3. The gravamen of indictment against the applicant and the co-accused-Ankiet Kawade is that the co-accused-Aniket was working with Prestige Alcobev, which deals in the business of wines. Co-accused had collected the cheques, which were deposited by the customers of Prestige Alcobev. However, the co-accused had not deposited the said cheques in the account of the said company. A cheque bearing No.260826 issued by

Rajdoot Wines, Fort, for an amount of Rs.88,318/- was not credited in the account of Prestige Alcobev. Enquires revealed that the said cheque was encashed by presenting it in an account maintained at Bank of Maharashtra, Ghatkopar (W), Mumbai, on 11th February, 2020 purportedly maintained by a Company Prestige Alcobev. The applicant was stated to be the proprietor of the said firm. It further transpired that in all a sum of Rs.22,22,745/- were credited in the said account and the said amount was withdrawn. Hence, the report.

4. The learned Counsel for the applicant submitted that the applicant also deals in the business under name and style of Prestige Alcobev. The applicant had maintained a genuine account with Bank of Maharashtra. The cheques were neither entrusted to the applicant nor the applicant had forged any document. The applicant has been in custody since 21st July, 2022. He, therefore, deserves to be enlarged on bail.

5. The learned APP contested the prayer for bail. It was submitted that the applicant had played a major role in the fraud. Inviting the attention of the Court to the documents evidencing the opening of the account, it was submitted that the applicant alongwith co-accused had fraudulently opened the account with Bank of Maharashtra in the name of the first informant company and dishonestly withdrawn the amount.

6. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. The crux of the allegations in the FIR is that the first informant company had entrusted cheque to accused No.1 Aniket, who was then working with the Company. He stopped to report to the company with effect from 3rd February, 2020. The FIR came to be lodged on 19th August, 2021. The allegations in the FIR indicate that the first informant had became aware of the alleged non-credit of the amount in the year 2020 itself. There is delay in lodging the FIR. In any event, the entrustment was with co-accused Aniket. The documents indicate that the applicant has opened the account in the name of Prestige Alcoveb in the month of December, 2018.

7. An amount of Rs.88,318/- was allegedly siphoned off by presenting the said cheque in the account of the applicant. It does not appear that the Investigating Officer had recorded the statements of the other persons whose cheques were also credited in the account of the applicant and the amounts withdrawn.

8. The applicant is in custody since 21st July, 2022. *Prima facie,* the applicant cannot be arraigned for the offence punishable under Section 408 of the Penal Code. The question as to whether any false document was created and forged documents were used as genuine is a matter for adjudication at the trial. In the circumstances, having regard to the period for which the applicant has been in custody, I am inclined to allow the application.

9. Hence, the following order:

: O R D E R :

(i) Application is allowed.

(ii) The applicant Prashant Narayanan Kamble be released on bail in CR No.882 of 2021 registered with Sakinaka Police Station, Mumbai, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.

(iii) The applicant shall mark his presence before the concerned police station on first Saturday in between 11.00 am. to 1.00 pm. till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant 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 applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant 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 applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]