IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.561 OF 2023

Saraswati @ Muskan d/o Dattaram .. Appellant
vs.
National Investigation Agency & Anr. .. Respondents

Mr. Mateen Shaikh with Muskan Shaikh i/b Kritika Agarwal for the Appellant.
Mrs. Aruna Pai Special P.P. with Mr. Shrikant Sonkawade for NIA.
Mr. J. P. Yagnik APP for the Respondent-State.

CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.

DATE : 5th MARCH, 2024.

ORAL JUDGMENT (PER SHYAM C. CHANDAK, J.)

1) Present Appeal is filed under Section 21 (4) OF The National Investigation Agency Act (*for short 'NIA Act'*), for grant of bail.

2) Heard Mr.Mateen Shaikh, learned counsel for the Appellant, Mrs.Pai, learned Special P.P. for the NIA and Mr.Yagnik, learned A.P.P. for the Respondent-State.

3) Facts germane to filing of this Appeal are as under :-

3.1) That, on 7th February 2020, the Custom Department at Santacruz, Mumbai received an information from Intelligence Bureau, Mumbai that certain parcel containing Fake Indian currency Notes (FCINs) has been imported from Malaysia in the name of Sangita Kapoor, R/o. Goregaon, (W), Mumbai, India. On inquiry, it revealed that before the said

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parcel was delivered to Sangita Kapoor, accused no.1 contacted the postal department/concerned postman and collected that parcel from the postman. Therefore, police apprehended the accused no.1. On inquiry, accused no.1 revealed that, he had contacted his friend/absconding accused Amir Mirza, resident of Malaysia, and procured from him the FICNs by depositing cash Rs.45,000/- in a certain ICICI bank account given by Amir Mirza. The Appellant is friend of accused no.1 and she was with him while depositing the cash in the said bank account. As such, the Appellant had knowledge about the FICNs. The said parcel was containing 34 nos. of high quality FICNs of 2000 denomination. Out of it, 3 FICNs were used as genuine by the accused no.1 and Appellant in Domino's pizza, Goregaon Hub and hotel Aadhya. Rest FICNs were used in purchasing contraband articles by accused no.1. The FICS used in hotel Aadhya was seized. Therefore, accused no.1 and the Appellant came to be arrested on 12th February, 2020. Thereafter, F.I.R. bearing C.R.No.60 of 2020, dated 19th February 2020, was registered with Sahar Police Station on the report of Avlok Kumar, Inspector Customs, for the offences punishable under Sections 489A, 489B and 120B read with 34 of the I.P.C.

3.2) As per directions of the Ministry of Home Affairs, Government of India, the National Investigation Agency, Mumbai re-registered the said crime as Case No.RC-04/2020/Mum/NIA/BO-Mumbai and investigated into the same. The investigation transpired that, the accused no.3 was the main conduit between accused no.1, Appellant and wanted accused Amir Mirza, of procurement of FICNs. After taking delivery of the FICNs parcel by accused no.1, the accused no.3 withdrawn cash Rs.50,000/- from the bank account in which accused no.1 had deposited Rs.45,000/- and then accused no.3 went to Kuala Lumpur, Malaysia. Therefore, accused no.3 was arrested on 28th February, 2020. The FICNs of this crime were of high quality and it resemble with the FICNs of face value of Rs.23,86,000/- of 2000 denomination, smuggled from Pakistan to Mumbai *via.* Dubai, seized in FIR RC-03/2020/NIA/Mum, registered with NIA, Mumbai. The FICNs were procured with intent to use it as genuine in monetary transactions in India to damage the Nation's economy. Therefore, the NIA submitted charge sheet against accused nos.1, Appellant (accused no.2) and accused no.3 for the offence punishable under Sections 120B, 201 & 489C, 489B read with 34 of I.P.C. and Sections 16 read with 15(1)(a)(iiia) and 18 of the Unlawful Activities (Prevention) Act, 1967 (for short 'U.A.P. Act').

4) The first bail Application filed by the Appellant before the trial Court met with rejection on 3rd December, 2020. Her second Application seeking temporary bail on medical ground was rejected on 8th June 2021.

5) Mr.Shaikh, learned Advocate for the Appellant has submitted that, the Appellant had no knowledge when accused no.1 contacted other

accused persons to procure the FICNs, when he deposited cash Rs.45,000/- in the bank account of accused no.3 and when accused no.1 informed the absconding accused to send the disputed parcel containing FICNs at the address of Appellant's sister. In fact, the Appellant was not at all present when cash of Rs.45,000/- was deposited as stated above to get the FICNs. It is submitted that, as alleged, only one FICN was found to be used in the hotel. However, the Appellant had no knowledge that, the said FICN was fake. Thus, the Appellant is innocent. Except the confessional statements of accused persons, there is no legal evidence against the Appellant showing her involvement in this crime.

5.1) Learned Advocate submitted that, there is no material against the Appellant to attract the offences under Section 15 (1) (a) (iiia) read with Sections 16 and 18 of the U.A.P. Act. The minimum punishment provided for the offence under Section 15 of the U.A.P. Act is five years. The Appellant has already undergone 4 years in jail as an under-trial. So far the prosecution has examined 15 witnesses and wants to examine more. So, few more years will be required to complete the trial. Yet, detention of the Appellant in jail will not serve any purpose looking at the quality of the evidence against her. However, the learned Judge of the trial Court ignored the above circumstances and rejected the bail application which is erroneous. In the backdrop, the Appellant deserves for bail.

6) In contrast, learned Special P.P. submitted that, there is sufficient material against the Appellant that, she and accused no.1 conspired with accused no.3 to smuggle the FICNs to India and use it in monetary transactions in India with an object to damage the economy of the nation. Thus, there is *prima facie* case against the Appellant of having committed the aforesaid crime. Therefore, rejection of her bail Application by the trial Court was proper. So far, the prosecution has examined 15 witnesses and wants to examine 10 more witnesses. The case against the Appellant and accused no.3 is identical. The accused no.3 has been denied bail up-to the Apex Court. The second bail Application of accused no.3 was not pressed on 11th November 2023 as this Court directed to complete the trial within 18 months. In the backdrop and considering the seriousness of the offence, the Appeal may be dismissed.

7) As noted above, the Appellant has been charged for the offence punishable under Sections 120B, 201 & 489C, 489B read with 34 of I.P.C. and Sections 16 read with 15(1)(a)(iiia) and 18 of the U.A.P. Act. In so far as the offences under Section 15 (1) (a) (iiia) read with Sections 16 and 18 of the UAPA is concerned, in this context the embargo of Section 43 (D) (5), (6) of the UAP Act is required to be kept in mind which reads thus:

> *"43D. Modified Application of certain provisions of the Code :*
>
> *(1) ………..*
>
> *(2) ………..*

(3) ………..

(4) ………..

(5) Notwithstanding anything contained in the code, no person accused of an offence punishable under Chapter IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the code or any other law for the time being in force on granting of bail.

(7) ………. .”

8) Considering the provisions of said sub-section (5), undoubtedly, it is duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused seeking bail is *prima facie* true or otherwise. The expression “*prima facie* true” covers in its ambit, the material/evidence collected by the investigation officer for the accusation against the concerned accused. On its face, said material must show the complicity of accused and the commission of the alleged offences. It has to be based on reasonable grounds leading to the belief that the accusation against the accused is *prima-facie* true.

9) In view of the rival submissions and the provisions of the law, we have carefully considered the record. The record indicates that, to

procure the FICNs the accused persons used the bank account in India and Indian postal services. Purposefully, the accused no.1 gave the address of Appellant's sister to procure the FICNs. After receiving the FICNs, one FICN was used in the hotel by accused no.1 and the Appellant. As alleged, a couple of FICNs were also used at Domino's pizza and Goregaon hub, however, the same could not be recovered. Yet, the fact remains that, the FICNs were procured just to use the same in monetary transactions in India with intent to damage the Nation's stable economy. Prima facie it appears that, the Appellant had knowledge that, the subject currency notes were procured from Malaysia and the same were fake. However, she did not stop the accused no.1 from using it as genuine. To give effect to this offence, the accused persons have used the Indian bank and postal services, which is very serious. Therefore, we are of the opinion that, there are reasonable grounds for believing that the accusation against the Appellant is *prima facie* true.

10) In view thereof, in our opinion the Appellant cannot be admitted to bail till the 18 months period is over as directed by this Court by Order dated 11th December 2023.

10.1) As a result, the Appeal is liable to be dismissed and is accordingly dismissed.

(SHYAM C. CHANDAK, J.) **(A. S. GADKARI, J.)**