IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2364 OF 2023

Amol Lalu Pawar ... Applicant
versus
State of Maharashtra ... Respondent

Mr. Abhishek Yende with Mr. Sagar Paspohe, Mr. Saiprasad Hole, for Applicant.
Mrs. Supriya Kak, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 17 APRIL 2024

P.C.

1. The Applicant, who is arraigned in C.R.No.47 of 2022 registered with Nalasopara Police Station, Palghar, for the offences punishable under Sections 420, 384 read with Section 34 of the Indian Penal Code and Sections 66C, 66D, 67, 67A of the Information Technology Act, 2000, has preferred this application to enlarge him on bail.

2. The first informant lodged a report with the allegations that during the period 4 February 2022 to 7 February 2022 she received messages to the effect that she was selected for work from home and would receive salary of Rs.6000/- per day. She was induced to log on to a link https://wa.me/918968656814 which purported to be that of Flipcart application and, thereafter, perform the task as instructed by the unknown person who identified himself as Liam. Initially, the first informant was induced to transfer small amount of Rs.2,00/- and it was represented that the return

thereon would get credited to the virtual account of the first informant. Later on, the first informant was induced to part with a sum of Rs.12,000/-. Though the amount of Rs.20,000/- was shown in the virtual account of the first informant, she could not withdraw the said amount. The first informant realized that she was defrauded. Hence, she lodged the report on 9 February 2022.

3. During the course of investigation, it transpired that like the first informant, there were thousands of investors who were duped in a similar fashion. Investigation revealed that two of the accounts in which unsuspecting investors were made to transfer the amounts stood in the name of the applicant as the proprietor of In and Out Services and M/s. Super Traders. The applicant had opened a current account with Yes Bank on 31st January 2022 and there were hundreds of transactions on the said account on 7 and 8 February 2022. The applicant had uploaded the said account for Online Loan Application and Online Investment Application. Likewise, hundreds of transactions were made in another account in the name of M/s. Super Traders on 21 and 22 February 2022. In account No.045963400000880 a sum of Rs.5,52,58,611.48/- was credited during the period 7 and 8 February 2022 and in account No.042163400002107, a sum of Rs.5,82,92,053 was credited during the period 21 and 22 February 2022. Out of the said amounts, the applicant, in turn, transferred a major portion to other bank accounts.

4. Investigation further revealed that the borrowers who had borrowed the

money by using online loan applications were threatened and abused and obscene photos and videos were sent on their mobile phones to coerce them to repay exorbitant amounts.

5. Mr. Yende, learned Counsel for the Applicant, submitted that the identity of the persons who perpetrated the massive online fraud, allegedly to the tune of Rs.66,42,15,747/-, could not be ascertained. The applicant is one of the account holders, whose accounts were fraudulently used by the fraudsters. The applicant did not make any inducement to the first informant. Nor the applicant is a beneficiary of the fraud. An endeavour was made to draw home the point that in the account maintained in the name of the M/s. In and Out, as against the credit of Rs.5,52,58,611.48, a sum of Rs.5,52,40,003/- came to be instantaneously debited, leaving the balance of Rs.18,608/- only. Likewise, in the account maintained in the name of M/s. Super Traders, against the credit of Rs.5,82,92,053.83, a sum of Rs.5,82,70,000/- was also instantaneously debited, leaving the balance of Rs.22,053/- only.

6. Mr. Yende made an endeavour to urge that though the applicant had opened the account in the name of M/s. In and Out by crediting an amount of Rs.2,00,000/- by way of cheque, yet the mobile number which was mentioned in the account opening form was not that of the applicant and, therefore, the applicant was unaware of the huge transactions in the said account.

7. In opposition to this, Mrs. Kak, learned APP, stoutly submitted that the applicant had opened the account in the name of M/s. In and Out on 31 January 2022, and under a week's time, there were transactions running into Crores of rupees in the said account and that belies the innocence, now sought to be canvassed on behalf of the applicant. The fact that the applicant has opened the account by depositing a sum of Rs.2 lakhs by way of cheque, was emphasised by the learned APP to show the involvement of the applicant. It was further submitted that the amounts which were credited in the said account were withdrawn and/or transferred by IMPS, which would not have been possible without the involvement of the applicant. Therefore, having regard to the magnitude of the fraud, the applicant does not deserve to be enlarged on bail, submitted Mrs. Kak.

8. I have carefully perused the material on record and given anxious consideration to the rival submissions. Evidently, what began with an suspecting home maker being lured to log on to a link on the pretext that she would be earning money by working from home turned out to be a mammoth fraud. Evidently, the accounts in the name of M/s. In and Out and M/s. Super Traders stood in the name of the applicant. Prima facie, the fact that those accounts were opened by the applicant and there were transactions running into crores of rupees in a couple of days, are borne out by the material on record. Endeavour on the part of the applicant was to draw home the point that the applicant was one of the victims of the fraudsters who

had used the accounts of the applicant to get the amount deposited from the unsuspecting persons and instantaneously transferred the said amount to their accounts. The ignorance now sought to be feigned by the applicant is required to be appreciated in the backdrop of the material on record, albeit prima facie. The fact that the account was opened in the name of M/s. In and Out, couple of days prior to the deposit of crores of rupees, deserves to be taken into account. While opening the account, the applicant had credited a sum of Rs.2 lakhs.

9. According to the applicant, the alleged fraud was perpetrated by giving mobile number which was not that of the applicant. Prima facie, the account opening form indicates that the applicant had furnished the requisite particulars. This submission sought to be canvassed on behalf of the applicant in the matter of operating the account in the name of M/s. In and Out, prima facie, does not hold ground if considered in the light of the fact that on 21 February 2022 and 22 February 2022, there were transactions running into crores of rupees in the account of M/s. Super Traders. No such explanation, as is sought to be offered in respect of the transactions in the account of M/s. In and Out is pressed into service in respect of the transactions in the account of M/s. Super Traders. Prima facie, it does not appeal to human credulity that the applicant was unaware of the use of the accounts of the applicant when there were 153 debit and 10372 credit entries in the account of M/s. In and Out and 16247 credit and 144 debit entries in the account of M/s. Super Traders, in a

couple of days only.

10. I find substance in the submission of the learned APP that the material on record, prima facie, indicates the involvement of the applicant in the transfer of the amounts from the accounts in the name of M/s. In and Out and Super Traders. IMPS transfer ordinarily requires the involvement of the account holder. The mere fact that a major part of the amounts credited into the accounts of the applicant were instantaneously transferred to the other accounts does not necessarily imply that the applicant was not a beneficiary of the transactions. Thus, the submission based on the balance which stood to credit of the accounts of the applicant does not merit countenance at this stage.

11. The situation which thus obtains is that there is a strong prima facie case against the applicant. Huge fraud running into crores of rupees appears to have been perpetrated. Prima facie, the applicant appears to be a privy to the said fraud.

12. The applicant was arrested on 13 March 2022. He has been in custody for more than two years. Yet, having regard to the nature and gravity of the accusation, in my view, the applicant does not deserve to be enlarged on bail on the count of the period of incarceration alone. A direction for expeditious conclusion of the trial may, however, become justifiable.

13. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) 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.

(iii) The learned Magistrate seized with RCC No.1412 of 2022 arising out of C.R.No.47 of 2022 is requested to make an endeavour to commence and conclude the trial in the said case as expeditiously as possible and preferably within a period of 9 months from the date of communication of this order.

Application disposed.

(N.J.JAMADAR, J.)