



PMB

907.ba.2489-23.doc

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2489 OF 2023

GOKULNATH RAGHU SHETTY

..APPLICANT

VS.

CENTRAL BUREAU OF INVESTIGATION

..RESPONDENT

Adv. Sandeep Karnik for the applicant.

Adv. H. S. Venegavkar a/w Adv. Kamar Ali Shaikh for
respondent-CBI a/w CBI Officers – Mr. Arvind More, Dy.SP
a/w Mr. Mohak Chaudhary, PSI.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 15, 2024.

P.C. :

1. Heard learned counsel for the applicant and learned
counsel for the respondent.

2. This is a second application for bail in this Court. Bail
Application No.3409 of 2022 earlier filed on behalf of the
applicant was withdrawn on 22.02.2023 with liberty to file
fresh application for bail after six months. The applicant is
the accused No.1 in respect of a trial arising out of FIR
No.R.C. No.02/E/2018-CBI/BS&FC/Mumbai registered on
15.02.2018 under Sections 409, 420, 120-B of the Indian
Penal Code and under Sections 13(1)(c)(d) read with 13(2)

of the Prevention of Corruption Act, 1988 (hereafter 'the PC Act' for short) by the Central Bureau of Investigation, BS & FC, Mumbai.

3. I am not referring to the facts in detail as I am satisfied that on merits, considering the role of the applicant, the accusations are serious having impacted economy of the country. Suffice it to observe that at the relevant time the applicant was working as a Deputy Manager in Forex Department in Punjab National Bank ('P.N.B.' for short). The accusation is that the applicant along with the other accused entered into criminal conspiracy by abusing his official position defrauded P.N.B. by issuing Letter of Undertakings (LOUs)/Foreign Letter of Credit through three companies namely Gitanjali Gems Ltd., M/s. Gili India Ltd., M/s. Nakshatra Brand Ltd. to the tune of Rs.7,080.86/- crores in complete contravention of the Reserve Bank of India's guidelines and without following the procedure laid down towards that end. It is alleged that present applicant in conspiracy with the other accused dishonestly submitted documents to bank an

misappropriated the funds of the bank and accordingly committed the offence. The allegation against the applicant is that the entire procedure of granting such credit limit to the accused company was done without following any procedures established by the bank and R.B.I. by issuing circulars. The applicant was in charge of the Mid Corporate Branch, Brady House, Mumbai at the Forex Department. There are in all eighteen accused. One of the accused i.e. Mehul Choksi is absconding. The LOUs/Foreign Letter of Credit were issued without sufficient collaterals and guarantees. The verification process as required was not carried out by the applicant. According to Mr. Venegavkar, learned counsel for respondent, the applicant is the mastermind along with the main accused – Mehul Choksi. He submits that the investigating agency is making every possible effort to secure the return of the absconding accused to face trial. Mr. Venegavkar submitted that the materials indicate that the applicant is a beneficiary to the tune of Rs.1,02,53,664/- which amounts were deposited in the bank account of the friends and relatives of the

applicant by those in charge of the companies who benefited from the transactions. Mr. Venegavkar submitted that but for the active involvement of the applicant, a scam of such magnitude would never have seen the light of the day. The applicant made every possible attempt to circumvent the well established procedure, safeguards and norms prescribed while sanctioning such LOUs/Foreign Letter of Credit. The applicant directly issued SWIFT messages without making entry in Core Banking Solution (CBS), as a result, the superiors and the concerned officials of the bank did not get knowledge about the issuance of such LOUs/Foreign Letter of Credit. On merits, therefore I find that prima facie the accusations are serious.

4. The reason why I am inclined to enlarge the applicant on bail is only on the ground of long incarceration. The applicant was arrested on 06.03.2018 and is now in custody almost for six years. The charge has not been framed so far. There are around hundred witnesses to be examined. The trial is not likely to conclude any time soon. The applicant is 65 years of age. Mr. Venegavkar expressed an apprehension

that the applicant who is well versed with the banking norms and may try to scuffle the investigation so far as the absconding accused is concerned. Mr. Venegavkar, on instructions, fairly submitted that major investigation is completed. He apprehends that as the applicant is a banker and well versed with the modus of transfer of funds especially to foreign countries, there may be an attempt on his part to tamper with the investigation and aid the absconding accused. Considering the advanced stage at which the investigation is, I am of the opinion that the applicant's enlargement on bail in view of the long incarceration is not going to prejudice the investigation. However, to allay the apprehension of the prosecution, I propose to impose stringent conditions, which even the learned counsel on instructions submits that the applicant is willing to abide. The applicant cannot be indefinitely incarcerated as even at this stage after six years as an under-trial prisoner, it is obvious that the trial is going to take a long time to conclude. The applicant does not appear to be a flight risk.

5. I draw support from the decision of the Supreme Court in **Manish Sisodia vs. Central Bureau of Investigation**¹.

The observations in paragraph 26 are relevant which read thus :-

"26. However, we are also concerned about the prolonged period of incarceration suffered by the appellant – Manish Sisodia. In *P. Chidambaram v. Directorate of Enforcement*, the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in *Shri Gurbaksh Singh Sibbia and Others v. State of Punjab*, and *Sanjay Chandra v. Central Bureau of Investigation*, that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in *Satender Kumar Antil v. Central Bureau of Investigation and Another*, this Court referred to *Surinder Singh Alias Shingara Singh v. State of Punjab* and *Kashmira Singh v. State of Punjab*, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In *Vijay Madanlal Choudhary (supra)*, this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. *Vijay Madanlal Choudhary (supra)*, also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in *Arnab Manoranjan Goswami v. State of Maharashtra and Others*, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as

1 Special Leave Petition (Criminal) No.8167 of 2023 decided on 30.10.2023

tenacious can be.”

6. Learned counsel for the applicant submitted that the applicant does not have a passport and in any case has no intention of applying for a passport. A statement is made on instructions of the applicant’s son who is present in the Court that no application for passport will be made by the applicant during the pendency of the trial. It is submitted by learned counsel for the applicant on instructions that an affidavit to this effect will be filed before the trial Court by the applicant prior to his release on bail also indicating that he will not leave Mumbai/Mumbai Suburban District till the trial concludes without the leave of the trial Court. The applicant shall report to the investigating agency’s office once in a week on every Tuesday between 11.00 a.m. and 12.00 noon. The statements made are accepted and shall be duly abided.

7. Learned counsel for the applicant relied on the order dated 05.02.2024 passed by the Supreme Court in respect of the co-accused – Hemant Dahyalal Bhatt in SLP (Crl.) No.16667 of 2023 to which reference is made. The order

reads thus :-

"Leave granted.

In view of the age and also the incarceration of about six years, the appellant - Hemant Dahyalal Bhatt is directed to be released on bail during the pendency of the trial in the chargesheet(s) arising out of First Information Report (FIR) no. RC BSM 2018 E0001 dated 31.01.2018 registered with CBI BS&FC, Mumbai, District - Mumbai, Maharashtra for the offence(s) punishable under Section 120-B read with Section 420 of the Indian Penal Code, 1860 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, on terms and conditions to be fixed by the trial Court.

The appellant - Hemant Dahyalal Bhatt will also comply with the conditions stipulated in Section 438(2) of the Code of Criminal Procedure, 1973.

Additionally, the appellant - Hemant Dahyalal Bhatt will surrender his passport in the trial Court. He will give a mobile phone number to the Court, on which he can be contacted by Central Bureau of Investigation to ascertain his whereabouts.

The impugned order is set aside and the appeal is allowed in the aforesaid terms.

We clarify that the observations made in this order and grant of bail will not be treated as findings on the merits of the case.

We also clarify that the present order has been passed in light of the peculiar facts of the individual case, and will not be treated as a precedent in other cases, especially where the accused is stated to be absconding.

Pending application(s), if any, shall stand disposed of."

(emphasis mine)

8. Mr. Venegavkar submitted that the Supreme Court passed the order in the peculiar facts of the individual case

clarifying that the same will not be treated as a precedent in other cases, especially where the accused is stated to be absconding. It is further submitted that the accusations in respect of co-accused - Hemant Bhatt are distinguishable from those in respect of the present applicant. It is submitted that co-accused - Hemant Bhatt was an employee of Nirav Modi and he acted as per the instructions of his employer while signing the applications for LOUs/Foreign Letter of Credit; whereas the present applicant was the one who issued the LOUs/Foreign Letter of Credit with complete knowledge that the same are being issued only with a view to favour the main accused in complete breach of the well established banking practices and norms in this regard and that too for monetary consideration. It is then submitted that the age of the co-accused - Hemant Bhatt is also one of the factor which taken into consideration by the Supreme Court. He submits that the applicant herein is in good health.

9. There is no doubt that the order dated 05.02.2024 passed by the Hon'ble Supreme Court cannot be treated as

a precedent in this case. The fact however remains that the applicant is 65 years of age and is incarcerated almost for six years awaiting trial which is likely to take a long time to conclude with around hundred witnesses to be examined.

10. Learned counsel for the applicant on instructions assures that the applicant will not make any attempt to contact the absconding accused or other accused or do anything which will have the effect of tampering with the investigation. The applicant undertakes that he will not establish any contact with the co-accused. It is made clear that if there is any attempt on the part of the applicant in tampering with the investigation, the same will be viewed seriously which may entail the consequence of cancellation of this bail. In view of the above, I am inclined to enlarge the applicant on bail, but on conditions.

11. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant-Gokulnath Raghu Shetty be released on bail in connection with FIR No.R.C. No.02/

E/2018-CBI/BS & FC/Mumbai registered by the CBI, on furnishing P.R. Bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount.

(c) The applicant shall report to the office of the CBI once in a week on every Tuesday between 11.00 a.m. and 12.00 noon.

(d) 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. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the trial Court as well as the Investigating Officer and shall keep them updated, in case there is any change.

(f) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(g) The applicant shall not leave Mumbai/Mumbai Suburban District without the leave of the trial Court.

(h) The applicant shall not apply for issuance of a passport till trial concludes.

(i) The applicant to file the affidavit/undertaking as indicated hereinabove prior to his release. The applicant to abide by the statements made in the affidavit-cum-undertaking.

12. The application is disposed of.

13. At this stage, Mr. Venegavkar submitted that considering the magnitude of the offence and the serious impact it had on the economy, in the interest of justice, this order be not given effect to for a period of six weeks from today. Learned counsel for the applicant on instructions did not oppose such a request. This order therefore shall take effect after a period of six weeks from today.

14. It is made clear that the aforesaid observations are prima facie in nature.

(M. S. KARNIK, J.)