IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.316 OF 2024

AND

CRIMINAL APPLICATION NO.317 OF 2024

Apurva Kirti Mehta	…	Applicant
Vs.		
State of Maharashtra	…	Respondent

Mr. Nazmi Murtaza a/w. Mr. Ramesh Kumar Singh, Ms. Aqsa Tajuddin and Mr.Aditya Dogra for Applicant in both the Applications.

Mr. Sagar R. Agarkar, APP for Respondent-State in APPLN/316/2024.

Mr. Tanveer G. Khan, APP for Respondent-State in APPLN/317/2024.

Mr. Marmik Shah a/w. Mr. Rishabh Khot, Mr. Rohan Chavan and Mr. Tanmay Karmarkar for Respondent No.2 in APPLN/317/2024 and for Intervenor in APPLN/316/2024.

Mr. S. L. Sarkte, PSI, M.R.A. Marg Police Station.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 19, 2024

P.C. :

. Heard Mr.Murtaza, learned counsel for the applicant, Mr. Agarkar and Mr. Khan, learned APPs for the respondent-State and Mr. Shah, learned counsel having instructions to appear on behalf of the first informant.

2. The applicant (accused) has moved two applications before this Court. Criminal Application No.316 of 2024 is filed seeking suitable modification of specific condition imposed by the Sessions Court in its order dated 19.05.2023, whereby while granting bail, the Sessions Court had imposed a condition, requiring the applicant to deposit amount of Rs.40 lakhs in seven installments. The first installment was to be of Rs.10 lakhs and the remaining six installments were to be of Rs.5 lakhs

each. It is the case of the applicant that the first installment of Rs.10 lakhs was indeed deposited due to which, he could be released. But thereafter, he was unable to arrange the balance amount split in six installments.

3. The other application bearing Criminal Application No.317 of 2024 has been filed challenging the subsequent order of the Sessions Court dated 29.06.2024, whereby bail granted to the applicant was cancelled, due to his failure to abide by the condition to deposit the remaining six installments of Rs.5 lakhs each.

4. The learned counsel for the applicant submits that a proper reading of the order dated 19.05.2023, whereby the Sessions Court granted bail to the applicant, would show that in paragraph 5 of the said order, the Sessions Court had held in favour of the applicant on merits. But thereafter, in paragraph 6 of the very same order, the Sessions Court committed an error in imposing the aforementioned condition of depositing amounts and this approach of the Sessions Court appears to be in the teeth of the settled law that such conditions of depositing amounts cannot be imposed while granting bail as that would amount to treating the bail application as a recovery proceeding. It is submitted that in any case, the applicant did show his *bona fide* by depositing the first installment of Rs.10 lakhs, but thereafter, since his financial condition was precarious, he was unable to abide by the condition of paying the remaining installments.

5. It was specifically submitted that the applicant was merely an employee of Transco Shipping Company, which is a custom house clearing agent and despite being merely an employee, his bank account, having balance amount of Rs.25 lakhs, was already frozen by the investigating authority and the applicant having deposited further amount of Rs.10 lakhs, this Court may consider modifying the aforesaid

condition or deleting the same.

6. In support of the application challenging the order of the Sessions Court canceling his bail, the applicant submits that if this Court is pleased to modify or delete the aforementioned condition imposed in the order dated 19.05.2023, the aforesaid application would have to be consequentially allowed and the order cancelling bail would necessarily have to be set aside. It is submitted that the cancellation of bail is extremely harsh for the applicant, particularly when the continued incarceration of the applicant in judicial custody would be of no consequence, so long as the applicant co-operates with the trial Court for completion of the trial.

7. On the other hand, the learned APPs opposed the present application and they submitted that a proper reading of paragraphs 5 and 6 of the order dated 19.05.2023, passed by the Sessions Court, while granting bail to the applicant, would show that it was the voluntary statement of the applicant that led to the direction given by the Sessions Court to deposit Rs.40 lakhs in seven installments. It was not as if the Sessions Court imposed the said condition on its own and as a necessary pre-condition for release of the applicant on bail. It was submitted that a perusal of the entire charge-sheet would show that there is enough material against the applicant to indicate the backdrop in which such a voluntary statement was made on his behalf. It is submitted that the said condition does not deserve to be modified and consequently, the order cancelling bail of the applicant needs no interference.

8. The learned counsel, having instructions to appear on behalf of the first informant, has tendered an affidavit in reply along with a copy of the entire charge-sheet. Although the first informant was not formally made a party in the present applications, in the interest of justice, the said affidavit along with the documents / charge-sheet is taken on record.

The learned counsel for the first informant has referred to various portions of the charge-sheet to impress upon this Court that the assertion that the applicant was merely an employee of the Transco Shipping Company is a factually incorrect statement as he was a proprietor of the said company, at least from the year 2018. It is submitted that the attempt on the part of the applicant to claim that another person, who was associated with Transco Shipping Company, was actually responsible in the present case and that the applicant had no role to play, needs to be rejected on the basis of the material that has come on record with the charge-sheet. Attention of this Court is invited to the bank account statements of the company to show that substantial amounts were transferred by the concern of the first informant and substantial parts of such amounts were in turn transferred to the account of the applicant. It is submitted that the applicant had made a voluntary statement to deposit further amount of Rs.40 lakhs. It is submitted that by claiming that the applicant was merely an employee, an attempt was made to mislead this Court and therefore, on this ground itself, the applications deserve to be dismissed.

9. Attention of this Court is also invited to the order dated 29.08.2023 passed by the Sessions Court, whereby an application moved by the applicant for modification of the said bail condition was rejected. The applicant never challenged the said order and approached this Court belatedly, making factually incorrect statements, while pursuing the present applications. It is submitted that this Court, therefore, may dismiss the applications.

10. In order to consider the application moved by the applicant seeking modification of the aforesaid condition imposed in the order dated 19.05.2023 passed by the Sessions Court, whereby conditional bail was granted to the applicant, it would be appropriate to quote the

relevant paragraphs of the said order. Paragraphs 5 and 6 of the said order read as follows:-

> “5] It is appearing that the applicant-accused was arrested on 31/12/2022 and since then he is under detention. The applicant-accused had moved the bail application before the additional Metropolitan Magistrate; however, it was rejected by the order dated 09/01/2023 and thereafter the applicant-accused filed the present bail application. It is important to note that merely because the alleged offences are relating to the economical offence, bail cannot be rejected. After completion of investigation and filing the charge-sheet, rejection of the bail will amount to assuming that the applicant-accused is guilty of the alleged offences. It is well settled principle that 'bail is a rule and jail is the exception', and the person is to presumed to be innocent and not guilty, unless and until the guilt is proved. On the aforesaid backdrop, I do not find any sufficient reason to reject the bail application of the applicant-accused. No purpose would be served by keeping the applicant accused under detention for further period. Apprehension of the prosecution can be addressed by imposing certain conditions.
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> 6] As per the case of the prosecution, the applicant-accused had opened the bogus account and got transferred the amount of Rs.1,32,26,000/- from the account of the complainant. It is appearing that the investigating agency has seized the bank accounts of the applicant-accused wherein amount around of Rs.25 lakhs is balance. The applicant-accused had shown readiness to deposit the amount of Rs.40 lakhs to show his bona-fides; however, it is submitted that financial condition of the applicant-accused has now become weak and still he is ready to deposit the said amount in installments and proposed to deposit said amount in 7 installments. Having regard to the entitlement of the applicant-accused to the bail and submission of the counsel for the applicant-accused, I'm of the view that while granting the bail, the applicant-accused can be directed to deposit the amount of Rs.40 lakhs in the lower court in 7 installments and accordingly bail application can be allowed. In the result, I proceed to pass the following order.”

11. The Sessions Court proceeded to impose the following condition,

amongst other conditions, on the applicant while granting bail:-

> “2. The accused Apurva Kirti Mehta shall be released on bail in crime No.411/2022 registered at the MRA Marg police station on executing PR bond of Rs.60,000/- with one or two sureties in like amount with the conditions that
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> i) He shall deposit the amount of Rs.40 lakhs before the lower court in seven installments. First installment shall be of Rs. 10 Lakhs, and subsequent installment shall be of Rs. 5 Lakh each. First installment shall be deposited before release from the jail and each subsequent installment shall be payable in the first week of each month and payment of those installments shall commence from July 2023.”

12. It is an admitted position that the applicant did deposit the first installment of Rs.10 lakhs, as a consequence of which, he was released from custody. He was expected to deposit further installments of Rs.5 lakhs each from July 2023 onwards. The applicant failed to do so and instead moved the aforementioned application, seeking modification of the bail condition before the Sessions Court. On 29.08.2023, the said application was rejected and the Sessions Court, while rejecting the application, held as follows:-

> “Perused the Misc. application and also the application Exh-3). Both these application are filed for modification of bail order dated 19.05.2023. The prosecution has filed reply at Exh-2 and resisted the application. The applicant is alleged to have committed the offence punishable u/s 406, 420, 465, 467 and 471 of the IPC. Bail application moved u/s 439 of CRPC was allowed by the order dated 19.05.2023. The bail conditions in respect of depositing the amount were imposed having regard to the readiness of the applicant to deposit the amount, and installments to deposit the amount were also granted as per the submission of the applicant. Much leniency was shown, while imposing the bail Conditions. I do not find any sufficient reason to modify those bail conditions, and as such Misc application and application (Exh-3) are liable to be rejected.

> Hence, Misc. Application No. 1418/23 and application (Exh-3) are rejected."

13. It is an admitted position that the applicant did not challenge the said order, meaning thereby that the applicant was required to abide by the aforementioned condition. As the applicant failed to do so, an application was moved for cancelling his bail, which was considered by the Sessions Court. Eventually, the application seeking cancellation of bail was allowed and by order dated 29.06.2024, the Sessions Court cancelled the bail of the applicant, which is subject matter of challenge in Criminal Application No.317 of 2024.

14. This Court has perused paragraphs 5 and 6 of the order dated 19.05.2023 passed by the Sessions Court, quoted hereinabove. The learned counsel for the applicant was at pains to point out that a perusal of paragraph 5 of the order would show that bail was granted on merits to the applicant, and there was no propriety on the part of the Sessions Court to have made observations in paragraph 6, which eventually led to imposing the above-quoted condition on the applicant. In the first place, this is not an application challenging the order dated 19.05.2023 and it is an admitted position that till date, the applicant never moved any such application to challenge the said order. Instead, the applicant had moved the aforementioned application for modification of the said condition before the Sessions Court, which stood rejected by the order dated 29.08.2023 and thereafter, much later, in March 2024, the present proceedings were initiated, again seeking modification of the said condition.

15. In this context, when the above-quoted paragraph 6 of the order dated 19.05.2023 of the Sessions Court is perused, it comes to the fore that the applicant had shown readiness to deposit amount of Rs.40 lakhs to show his *bona fides*. However, it was further submitted on behalf of

the applicant that since his financial condition had become weak, he would be able to deposit the said amount in seven installments. The recording of the aforesaid submission does indicate that it was a voluntary statement made on behalf of the applicant and it was not as if the condition to deposit the amount was imposed by the Court without any reference to the voluntary statement made on behalf of the applicant. The observations made in above-quoted paragraphs 5 and 6 of the order dated 19.05.2023 of the Sessions Court give an impression that the Sessions Court proceeded to grant bail to the applicant, taking into account the voluntary statement made on his behalf to deposit the amount of Rs.40 lakhs, *albeit* in installments instead of depositing the same at one go.

16. It cannot be said that the order falls foul of the position of law clarified by the Supreme Court that harsh conditions of depositing substantial amounts cannot be imposed while granting bail as that would amount to treating applications for bail as recovery proceedings on the part of the informant and the aggrieved parties. Instead, the aforesaid facts reveal that it was the voluntary statement of the applicant, which led to the observations made in paragraph 6 of the said order, leading to imposition of above-quoted condition on the applicant.

17. It is relevant to note that the applicant did deposit the first installment of Rs.10 lakhs immediately in terms of the aforesaid condition for being released from custody. But thereafter, he showed no interest in depositing the balance amount in six installments of Rs.5 lakhs each. The applicant proceeded to file the application for modification of the condition before the Sessions Court, which was rejected, as far back as on 29.08.2023.

18. The present proceedings before this Court were filed only in March 2024, thereby indicating the conduct of the applicant of having

no intention to abide by the voluntary statement made before the Sessions Court, when bail was granted. Therefore, there is no substance in the contention raised on behalf of the applicant that the aforementioned condition ought to be modified or deleted as it is an onerous condition imposed by the Sessions Court. As noted hereinabove, the said condition was imposed on the voluntary statement of the applicant and not *suo motu* by the Sessions Court.

19. Apart from this, the specific contention raised on behalf of the applicant that he was merely an employee of Transco Shipping Company and that the person actually responsible for the said company was not made an accused, is belied by the documents filed on record along with the charge-sheet. The impression sought to be given to this Court was that, despite being merely an employee of the said company, the applicant had already suffered freezing of his bank account, whereby huge amount of Rs.25 lakhs was locked up and since the applicant had deposited further amount of Rs.10 lakhs, this Court may consider modifying the condition and exempting the applicant from depositing further installments. Documents filed along with the affidavit of the first informant, taken on record, indicate that the applicant has been a proprietor of the said Transcort Shipping Company at least from the year 2018 onwards. This clearly indicates the factually incorrect position sought to be projected before this Court that the applicant was merely an employee of the said Transco Shipping Company. Being a proprietor, the applicant could be said to be responsible for the acts of the said company, which is a custom house clearing agent and thereby directly responsible for the grievances raised by the informant in the present case. It is pertinent to note that in the present case, not only an offence of cheating under Section 420 of the IPC is registered against the applicant, but, serious offence under Section 467 of the IPC is also registered, which prescribes maximum punishment of imprisonment for life.

Besides, the bank account statement of the Transco Shipping Company indicates that huge amounts were transferred by the concern with which the first informant is associated and substantial part of such amounts were further transferred to the bank account of the applicant by Transco Shipping Company, thereby indicating *prima facie* that the theory of the applicant of being a humble employee of the said company, can be said to be factually incorrect.

20. In such a situation, the applicant has failed to make out a case for modification of the above-quoted condition and hence, the application seeking such modification deserves to be dismissed.

21. As regards the application challenging the order of cancellation of bail, this Court finds that the Sessions Court took into consideration the backdrop in which the order dated 19.05.2023 was passed, whereby conditional bail was granted to the applicant. It was found that the applicant failed to abide by the condition, and therefore, sufficient ground was made out for allowing the application seeking cancellation of bail. This Court has independently considered the material on record, particularly the entire charge-sheet brought to the notice of this Court on behalf of the first informant. The material on record belies the claims made by the applicant and indicates that having taken advantage of the order of the Sessions Court, directing his release upon depositing the first installment of Rs.10 lakhs, the applicant did not make any effort to deposit the remaining installments and instead came forward with theories that are not borne out by the material on record. No indulgence can be shown to such an applicant as the Sessions Court correctly cancelled the bail of the applicant.

22. In view of the above, both the applications are dismissed.

23. At this stage, the learned counsel for the applicant seeks time for

the applicant to surrender.

24. The applicant is granted time of two weeks to surrender. It is made clear that if the applicant fails to surrender within the aforesaid period of two weeks, the concerned police officers shall take necessary steps to take the applicant into custody.

(MANISH PITALE, J.)

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