IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 141 OF 2024

Amit Subhashchandra Acharya ... Applicant
vs.
The State of Maharashtra and another ... Respondents

Ms. Aayushi Chauhan, i/b. Mr. Manindra Pandey for applicant.

Mr. Balraj B. Kulkarni, APP for respondent No.1-State.

CORAM : MANISH PITALE, J.
DATE : 13th JUNE, 2024

P.C. :

. Heard learned counsel for the applicant and the learned APP for the State.

2. By this application, the applicant seeks bail in connection with FIR No.0113 of 2016 dated 11.04.2016 registered at Navghar Police Station, Thane Rural for offences under Sections 406, 120B, 417, 420, 464, 467, 468, 470, 471 and 506 read with Section 34 of the Indian Penal Code, 1860.

3. The applicant is one of the accused out of total five accused persons in the present case. Accused Nos.1 and 2 were the parents of accused No.3 (applicant), who are now deceased. Accused No.4 is the brother of the applicant, who is also behind bars and accused No.5 is said to be a business associate, who is absconding.

4. The learned counsel for the applicant submits that in the present case, the applicant has been wrongly roped in, merely because he belongs to the family of accused Nos.1, 2 and 4. It is submitted that the applicant was not

actively associated with the family business run in the name of Acharya Enterprises. The said entity was concerned with property transactions, particularly arranging for properties in complexes of Maharashtra Housing and Area Development Authority (MHADA).

5. It is further submitted that even going by the statement of the informant leading to registration of FIR dated 11.04.2016, the incident in question is said to have taken place in the year 2010, while the informant approached the police authorities in the year 2016 i.e. after about six years. It is further submitted that the statements of witnesses recorded during the course of investigation show that the persons, who also claimed that they were duped by the said Acharya Enterprises, specifically stated that the informant himself projected that he could help them reach out to the said Acharya Enterprises for purchasing MHADA units and properties. It is submitted that such statements clearly indicate that the informant himself was involved in the said business alongwith Acharya Enterprises and it appears that he turned around to make allegations against the said entity.

6. It is further submitted that in none of the documents titled as agreement for sale cum transfer executed by the said Acharya Enterprises alongwith third parties, bear the signatures of the applicant, thereby demonstrating that he had no connection with or involvement in the business of Acharya Enterprises. It is the case of the applicant that his father i.e. deceased accused No.1 was actively involved with Acharya Enterprises. It is alleged that the informant himself was an intermediary for Acharya Enterprises and therefore, this Court may take into consideration the said factor, while perusing the contents of the statement given by the informant as well as the statements of witnesses recorded during the course of

investigation. On this basis, it was submitted that since the applicant has remained behind bars from April, 2023 and even the charge has not been framed, the present application may be allowed.

7. On the other hand, the learned APP submitted that the applicant was absconding for a long period of time and he was eventually apprehended in April, 2023. It was submitted that the statement given by the informant and the statements of witnesses recorded during the course of investigation, show that the applicant is very much from the family of accused No.1 Subhashchandra Acharya and that the persons, who were duped by the said Acharya Enterprises, had repeatedly reached out to the applicant for refund of money, thereby indicating his active involvement in the business. Attention of this Court is invited to certain documents bearing signatures of the applicant alongwith the mother-accused No.2, to indicate the involvement of the applicant with Acharya Enterprises. It was submitted that this Court ought to take into consideration the fact that the applicant had not joined the investigation and he remained absconding for a considerable period of time.

8. This Court has perused the material on record in the light of the rival submissions. It appears that although the FIR was registered on 11.04.2016, the applicant could be apprehended in April, 2023.

9. But, while considering the present application, it would be appropriate to appreciate the case with which the informant went to the police. A perusal of the statement dated 10.04.2016 of the informant would show that even according to him, he came in contact with Acharya Enterprises in the year 2010 and under the pretext of arranging for him a MHADA property, an

amount of Rs. 5 lakhs was taken by Acharya Enterprises from the applicant. The statement itself shows that the informant approached the police with his grievance after about six years in the year 2016. In the aforesaid statement, the informant had indeed named the applicant as one of the persons introduced to him as being associated with the said Acharya Enterprises alongwith accused Nos.1, 2 and 4. Beyond that, there is no specific allegation made against the applicant in the aforesaid statement.

10. Documents on record in the form of agreement for sale cum transfer executed on behalf of Acharya Enterprises with various third parties, show that such documents were signed by accused No.1 Subhashchandra Acharya, who is now deceased. The case against the accused persons is that such agreements were executed for purchasing MHADA properties and eventually, the transactions never fructified, although huge amounts were paid to Acharya Enterprises. The said documents indeed show that the applicant has not signed the documents/agreements.

11. In this backdrop, statements of certain witnesses recorded during the course of investigation brought to the notice of this Court, assume significance. One such statement of Ashwin Borad dated 09.06.2016 shows that the informant himself had told the said person that if MHADA property was to be bought, the informant could help the said person reach out to Acharya Enterprises to facilitate such purchase of property. There are other such statements on record, including the statement of Varun Patra also recorded on 09.06.2016. The aforesaid statements give an impression that the informant himself was associated with Acharya Enterprises and he reached out to certain persons to facilitate their interaction with Acharya Enterprises in the context of buying MHADA properties. The aforesaid

statements show that the informant had assisted them in reaching out to Acharya Enterprises in the years 2010 and 2011.

12. This Court is of the opinion that the aforesaid statements, to a certain extent, do create a dent in the grievance sought to be raised by the informant against the accused persons and that too, in the year 2016, while his grievance pertained to the year 2010.

13. The documents upon which the learned APP placed reliance containing signatures of the applicant, show that these were leave and license agreements signed by the applicant alongwith his mother (now deceased) i.e. accused No.2 as licensees of certain premises. At this stage, it cannot be said that merely because the applicant signed the aforesaid leave and license agreements alongwith his mother, the same would necessarily create an adverse impression against him.

14. It cannot be denied that the applicant is indeed related to accused Nos.1, 2 and 4. But, that in itself cannot be a ground for the prosecution to claim that adverse inference ought to be drawn against the applicant.

15. It appears that the applicant was arrested in April, 2023, although the FIR was registered as far back as in the year 2016. But, it cannot be ignored that the applicant has remained behind bars for about one year and two months.

16. Considering the aforesaid material on record, *prima facie* case is made out by the applicant in his favour and therefore, the present application deserves to be allowed.

17. In view of the above, the application is allowed in the following terms:

(i) The applicant shall be released on bail in connection with FIR No.0113 of 2016 dated 11.04.2016 registered at Navghar Police Station, Thane Rural for offences under Sections 406, 120B, 417, 420, 464, 467, 468, 470, 471 and 506 read with Section 34 of the Indian Penal Code, 1860, on furnishing PR Bond of ₹ 50,000/- (Rupees Fifty Thousand only) and one surety in the like amount.

(ii) The applicant shall report to Navghar Police Station, Thane Rural on first Monday of every month between 11:00 a.m. and 01:00 p.m, during the pendency of the trial. The applicant shall co-operate with the trial Court and attend the proceedings regularly.

(iii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.

(iv) The applicant shall inform the trial court about his contact number and residential address immediately upon release on bail and update the same in case of any change.

18. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

19. The application is disposed of.

(MANISH PITALE, J)

Priya Kambli