IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1385 OF 2024

Brijesh Bharatbhai Dhaduk	…	Applicant
vs.		
The State of Maharashtra	…	Respondent

WITH
BAIL APPLICATION NO. 296 OF 2024

Mohanmurrari Mishra	…	Applicant
vs.		
The State of Maharashtra	…	Respondent

WITH
BAIL APPLICATION NO. 2552 OF 2023

Vishalbhai Vitthalbhai Viroja	…	Applicant
vs.		
The State of Maharashtra	…	Respondent

Mr. S. S. Patwardhan a/w. Mr. Ajit M. Savagave for applicant in BA/1385/24.

Mr. Santosh M. Deshpande for applicant in BA/296/2024.

Mr. Akkshay Mishra, i/b. Hulyalkar & Associates for applicant in BA/2552/23.

Ms. Rutuja A. Ambekar, APP for respondent-State in BA/296/24.

Mr. Tanveer Khan, APP for respondent-State in BA/1385/24 and BA/2552/23.

Mr. Nilesh Bankar, Crime Branch Unit-I, Navi Mumbai.

CORAM : MANISH PITALE, J.
DATE : 27th JUNE, 2024

P.C. :

. By these applications, accused Nos.1, 2 and 4 are before this Court, seeking bail in connection with FIR No.0172 of 2022 dated 14.10.2022, registered at Police Station CBD Belapur, District Navi Mumbai for offences under Sections 170, 420 and 120-B read with 34 of the Indian Penal Code, 1860 (IPC). Subsequently, offences under Sections 402, 406, 395 and 201 of the IPC were added. This Court is informed that the applicants have remained behind bars for about two years.

2. In the present case, the informant gave his statement on 14.10.2022, leading to registration of the said FIR against the accused persons. Initially, five persons were named as accused and it was also recorded that there were further individuals involved in the incident. The statement of the informant elaborately gives a chain of events, whereby he was duped of a huge amount of ₹ 3.5 crores. The informant claims to be an industrialist/businessman, who has staff/workers numbering about 200 or more. It is stated that since he used to distribute cash to his workers on the occasion of festivals, he was in need of brand new currency notes for which purpose, he was ready to exchange a huge amount, considering the strength of his workers.

3. It is the case of the informant that in this connection, accused No.1 alongwith one Mr. Ajay and a person, whose name he did not remember, had reached his office on 16.08.2022, claiming that they could arrange for the brand new currency notes required by the informant. Thereafter, in the statement, the informant has given details of the events chronologically as they unfolded, stating the roles of various accused persons, the names of some of whom he was aware and also others whose names he was not aware. After giving the chronology of events, the informant stated that eventually after 11.10.2022, he realised that the accused persons had conspired to dupe him of the huge amount of ₹ 3.5 crores. He specifically stated that the said amount was handed over to the accused persons, who

stated that brand new currency notes would be made available. But, on one ground or the other, they kept on postponing handing over the new currency notes to him and the cash amount of ₹ 3.5 crores handed over by the informant was lost forever.

4. It is in this backdrop that the FIR was registered and investigation was undertaken. This Court is informed that some of the suspects are still at large and efforts are being made to apprehend them. After arrest of the accused persons, test identification parade was carried out in which the informant did identify the accused persons as those involved in the incident.

5. Bail Application No.2552 of 2023 is filed by accused No.1. Bail Application No.296 of 2024 is filed by accused No.2 and Bail Application No.1385 of 2024 is filed by accused No.4.

6. The learned counsel appearing for accused No.1 in the said bail application submitted that since investigation is now completed, chargesheet is already filed, recoveries have been made to some extent and accused No.1 has remained behind bars since 17.10.2022, no further purpose would be served by keeping the said accused person behind bars. It is submitted that the applicant had merely introduced some of the other accused persons to the informant and it cannot be said that the applicant-accused No.1 was himself involved in duping the informant and that therefore, this Court may consider enlarging him on bail.

7. The learned counsel appearing for accused No.2 submitted that he has not been named in the FIR and only a stray reference is made to a person in an Innova car in the chain of events given by the informant. At worst, accused No.2 could be said to be accompanying certain other persons in the

Innova car and that too, on the instructions of his employer, for which he cannot remain behind bars indefinitely. Accused No.2 was arrested on 12.11.2022 and he has remained behind bars since then. It is submitted that an amount of ₹ 5 lakhs is already recovered from the applicant-accused No.2 and since the trial will take considerable period of time, this Court may consider enlarging accused No.2 on bail. The learned counsel appearing for the applicant-accused No.2 placed reliance on an order dated 14.03.2024 passed by this Court (Coram: M. S. Karnik, J) in Bail Application No.3512 of 2023 (**Rajesh Keshavlal Thumar vs. The State of Maharashtra**), concerning accused No.5. It is submitted that while allowing his application, this Court took into consideration the fact that substantial amount was recovered from the said accused person and that he had been incarcerated for about one year and three months. On this basis, the learned counsel for applicant-accused No.2 claimed parity.

8. The learned counsel appearing for accused No.4 submitted that the said accused person was not named in the FIR and that he has remained behind bars since 02.12.2022. It is submitted that the case of the applicant-accused No.4 can be said to be similar to that of accused No.5, who is already granted bail by this Court in terms of the said order dated 14.03.2024 passed in Bail Application No.3512 of 2023. It is submitted that in the case of accused No.4, an amount of ₹ 35 lakhs is already recovered and considering the aforesaid fact, this Court may allow the application on the ground of parity. It is further submitted that as on today, there is nothing to connect the applicant-accused No.4 to the incident in question. It is further submitted that the trial in the present case, will be taking considerable period of time and therefore, the application may be allowed.

9. On the other hand, Ms. Ambekar, learned APP and Mr. Khan, learned APP appearing in these applications for respondent-State, have vehemently opposed the prayers made in the bail applications.

10. As regards accused No.1, it is submitted that he is specifically named in the FIR and his role is evident from the very initial stage, when he approached the informant and claimed that he could help out the informant in arranging brand new currency notes in exchange for huge amount of ₹ 3.5 crores. His role being in the forefront, there is no question of granting him bail.

11. As regards accused No.2, it is submitted that in the statement leading to registration of FIR itself, the informant had elaborately described the chain of events and how certain persons in Innova car had intercepted the vehicle carrying the cash. Since applicant-accused No.2 is alleged to be one of the persons in the Innova car, his involvement is evident from the material placed on record. It is emphasized that applicant-accused No.2 was specifically identified in test identification parade and therefore, he cannot claim advantage on the basis that he was not specifically named in the FIR.

12. As regards the applicant-accused No.4, it was submitted that the informant, while describing the initial events in his statement, referred to presence of a person, whose name he could not remember. The said person had visited the office of the informant on 16.08.2022 alongwith accused No.1. It was further submitted that the statement of witness Ajay Brijbhushan Mishra recorded on 11.11.2022 clearly shows that the said person, whose name the informant could not remember, is indeed accused No.4 Brijesh. It is further emphasized that accused No.4 was also identified

in test identification parade, thereby showing that neither accused No.2, nor accused No.4 can claim parity on the basis that this Court has granted bail to accused No.5 from whom also, substantial amount was recovered. It was emphasized that recovery of amount clearly shows the involvement of the accused persons and this factor cannot inure to their benefit.

13. This Court has heard the learned counsel for the applicants and the learned APPs in the backdrop of the material available on record. In the present case, the statement of the informant, leading to registration of FIR, elaborately describes the chain of events from 16.08.2022 to 11.10.2022, eventually leading to registration of FIR on 14.10.2022. The manner in which the events have been described, shows the involvement of the accused persons, who *prima facie* appear to have planned and conspired in an elaborate manner, so as to dupe the informant of huge cash amount of ₹ 3.5 crores. The manner in which the accused No.1 alongwith accused No.4, approached the informant on 16.08.2022 and thereafter, took the huge cash amount of ₹ 3.5 crores from him on the allurement of providing brand new currency notes, indicates their involvement from the very beginning. The contention raised on behalf of accused No.4 Brijesh that he was not named in the FIR or in the statement of the informant, cannot inure to his benefit, for the reason that during the course of investigation, sufficient material has come on record to indicate his involvement. The statement of the witness Ajay Mishra recorded on 11.11.2022, shows that it was at the behest of accused No.4 Brijesh that accused No.1 Vishal got introduced to the informant. Hence, the involvement of accused No.4 appears to be from the very beginning i.e. August 2022. Apart from this, it is significant that accused No.4 Brijesh was identified in test identification parade. It is undisputed that huge amount of ₹ 35 lakhs was recovered from accused

No.4. It is also relevant to note that accused No.1, in his statement, had claimed that, out of the huge amount of ₹ 3.5 crores, amount of ₹ 40 lakhs was taken by the said accused No.4. In such a situation, the statement made on behalf of accused No.4 that only ₹ 35 lakhs were received and that they have been produced by accused person, is a self-serving statement, which cannot inure to his benefit.

14. In any case, this Court finds that there is sufficient material against accused No.1 and his involvement with accused No.4 from the very beginning i.e. August 2022 and hence, these two accused persons cannot claim parity with accused No.5, who was granted bail by order dated 14.03.2024. It is significant to note that recovery of huge amount from said accused No.5 was not the only factor taken into consideration by this Court, while granting his bail. A crucial observation made in the said order, in respect of accused No.5, was that he did not participate in the actual incident and that he was alleged to be a mere conspirator. On the other hand, participation of accused Nos.1 and 4 appears to be made out by the material available on record and their direct involvement is evident from the very statement of the informant, which led to registration of FIR. These are the distinguishing features and hence, the argument of parity is rejected.

15. As regards accused No.2, it is crucial to note that in the statement leading to registration of FIR, the informant had elaborately described the involvement of Innova car and the persons who were riding in the said car, as the vehicle carrying the cash amount that was intercepted by the Innova car and thereafter, it was a wild goose chase for the informant to recover his cash amount. It is specifically stated by the informant on 14.10.2022 itself that there were six persons in the Innova car. According to the prosecution,

accused No.2 was one of the six persons. It is significant that he was identified by the informant in the test identification parade. It is also relevant that as on today, the other persons in the Innova car are absconding and this is certainly an indicator of the active involvement of accused No.2 in the incident in question and hence, the distinguishing feature as compared to the role of accused No.5, who was granted bail on 14.03.2024. There is no question of parity in the case of accused No.2 also, even though there is recovery of ₹ 5 lakhs from him.

16. Accused No.1 was arrested on 17.10.2022, accused No.2 was arrested on 12.11.2022 and accused No.4 was arrested on 02.12.2022. Considering the offences with which they are now charged, they having remained behind bars till today, cannot be a ground to release them on bail, considering their active involvement in the incident in question. The nature of offences and sequence of events as described by the informant, gives an impression to this Court that the applicants were actively involved and conspired with other accused persons to deprive the informant of a huge amount of ₹ 3.5 crores on the basis of a well-thought out strategy.

17. Considering the material available on record and the role of the applicant accused persons in the present case, this Court is of the opinion that they do not deserve any indulgence.

18. In view of the above, the applications are dismissed.

(MANISH PITALE, J)

PRIYA KAMBLI Digitally signed by PRIYA KAMBLI Date: 2024.06.28 18:05:44 +0530

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