IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1663 OF 2024

Dirgesh Subhashchandra Acharya … Applicant

Vs.

State of Maharashtra and another … Respondents

Ms. Aayushi Chauhan a/w. Mr. Manindra Pandey for Applicant.
Mr. Sagar R. Agarkar, APP for Respondent-State.
Mr. Nitin Chaudhari, API, Navghar Police Station, Mira Bhayander, Thane.

CORAM : MANISH PITALE, J.
DATE : AUGUST 30, 2024

P.C. :

. Heard Mr. Chauhan, learned counsel for the applicant and Mr.Agarkar, learned counsel for the respondent-State.

2. The applicant is seeking bail in connection with FIR No.0113 of 2016 dated 11.04.2016 registered with 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 (IPC).

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.4 (applicant), who are now deceased. Accused No.3 is the brother of the applicant, who is already released on bail and accused No.5 is said to be a business associate, who is absconding.

4. The learned counsel for the applicant submits that his brother Amit Subhashchandra Acharya has already been released on bail by this Court by order dated 13.06.2024 passed in Bail Application No.141 of 2024. It is submitted that this Court may consider the present application on the ground of parity, but the learned APP has disputed the same and

he submits that there is material to show the distinct role of the present applicant.

5. 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).

6. 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 along with Acharya Enterprises and it appears that he turned around to make allegations against the said entity.

7. 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 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.

8. 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. 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.

9. The learned APP further submitted that the distinctive role of the present applicant is evident from the statement of the witness - Ashwin Thakarshibhai Borad recorded during the course of investigation, which brings out the active role of the applicant. It is submitted that the said witness has specifically stated about having transferred amount of Rs.3,00,000/- in favour of the applicant and the manner in which the applicant had induced the said witness into parting with such money on the promise of MHADA accommodation being made available. The details of the amount of Rs.3,00,000/- transferred into the personal bank account of the applicant have been brought to the notice of this Court, indicating that such amount was transferred in terms of cheques dated

27.06.2011, 01.07.2011 and 11.07.2011. It is submitted that therefore, there is no question of parity with co-accused Amit Subhashchandra Acharya and the present application is ought to be dismissed.

10. This Court has considered the rival submissions in the light of the material available on record. 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 along with accused Nos.1, 2 and 4. Beyond that, there is no specific allegation made against the applicant in the aforesaid statement.

11. 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 purchasign 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.

12. This Court has perused the statement of witnesses recorded during the course of investigation. It can be observed that the informant had introduced himself to witnesses and other persons about how he could

help them to get in touch with Acharya Enterprises to facilitate purchase of MHADA tenements. In a sense, it could be said that the informant himself had reached out to individuals and given an impression that he could help them to get in touch with Acharya Enterprises for the aforesaid work. This fact, does create a dent in the grievance sought to be raised by the informant after about six years of the grievance having arisen for him.

13. As regards the distinctive role of the present applicant highlighted by the learned APP, it is relevant to note that even the said witness - Ashwin Thakarshibhai Borad issued cheques in the months of June and July 2011 for a total amount of Rs.3,00,000/- transferred in the account of the applicant, but he never raised any grievance for all these years. In fact, the application filed before the Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973 was filed after about four years in the year 2015 and eventually, the FIR was registered on 11.04.2016. This factor cannot be ignored at this stage. Even otherwise, the allegations in the present case are against Acharya Enterprises and it can be said that the main accused persons are accused Nos.1, 2 and 5. The applicant appears to be involved in the case because of the grievance of witness - Ashwin Thakarshibhai Borad that specific amount was transferred in his personal account. But, considering the fact that the allegations pertaining to remaining huge amount do not directly concern the present applicant, coupled with the fact that he has remained behind bars since April 2023, this Court is inclined to favourably consider the present application. It is to be noted that the evidence in the present case, in the backdrop of the specific allegations made against the applicant, would necessarily be documentary in nature and during the course of investigation, the investigating authority appears to have recovered the documents.

14. In view of the above, the application is allowed in the following

terms:-

A. 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 Rs.50,000/- (Rupees Fifty Thousand only) and one surety in the like amount;

B. 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;

C. 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;

D. 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.

15. 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.

16. The application is disposed of.

(MANISH PITALE, J.)

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