

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2259 OF 2024

Aslam Nijam Shaikh	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Surender M. Sharma for Applicant.

Mr. Prasanna P. Malshe, APP for Respondent – State.

Mr. Rajigore, PSI present.

CORAM : MANISH PITALE, J.

DATE : JUNE 14, 2024

P.C. :

. Heard Mr. Sharma, learned counsel appearing for the applicant and Mr. Malshe, learned APP appearing for the respondent-State.

2. The applicant is seeking bail in connection with F.I.R. No.1071 of 2022 dated 15.09.2022 registered at Vakola Police Station for offences under Sections 328, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The informant (victim) alleged that on 24.02.2022, co-accused had brought food for the informant as she was unwell and it is alleged that in the said food, something was added due to which the informant felt drowsy and she fell asleep. It is alleged that subsequently, the informant came to know from one of her tenants that on the aforesaid date, after administering something in her food, the co-accused person had taken thumb impression of the informant on a blank paper and thereafter the said blank paper was misused. The informant alleged that the applicant and the co-accused, who posed herself as his wife, were her tenants in a room.

4. The co-accused is absconding, while the applicant was arrested on 14.11.2022 and he has remained behind bars since then. The charge-sheet was filed on 15.02.2023.

5. The learned counsel for the applicant submits that in the present case, the FIR was registered on 15.09.2022 i.e. about 7 months after the alleged incident. It is further submitted that such delay is not explained at all. It is the further case of the applicant that the co-accused has filed proceedings before the competent civil court against the informant to restrain her from dispossessing her without recourse to law. It is in the backdrop of the pendency of such proceedings that the allegations have been made by the informant. It is further submitted that the entire case against the accused appears to be based on certain *WhatsApp* chats in respect of which proper *panchanama* has not been executed. On this basis, the learned counsel for the applicant is pressing for relief in the present application.

6. On the other hand, the learned APP submits that it was only after the *WhatsApp* messages were received by the informant that, she realized as to what had actually happened on 24.02.2022. It was only thereafter that the informant could make further enquiries and thereupon approached police for registration of the FIR. On this basis, it is submitted that the delay is sufficiently explained. It is further submitted that the contents of the *WhatsApp* chats would show involvement of the applicant along with the co-accused, indicating the manner in which the co-accused mixed something in the food given to the informant due to which she felt drowsy and thereafter, took her thumb impression on the blank paper. It is submitted that the offences are serious and therefore, the present application may be dismissed.

7. Having considered the rival submissions in the backdrop of the material on record, this Court finds that there is indeed delay in

registration of the FIR, in as much as the incident in question is said to have taken place on 24.02.2022, while the FIR was registered on 15.09.2022. The grievance of the informant is to be appreciated in the backdrop of a civil proceeding initiated by the co-accused as referred to hereinabove. The learned APP has indeed placed emphasis on *WhatsApp* chats exchanged between the applicant and the co-accused and he has also relied upon statement of the first wife of the applicant to contend that the accused are certainly connected and responsible for the aforesaid incident. But, at this stage, reliance is placed only on the *WhatsApp* chats. Copies of the screenshots, having been perused by this Court, do indicate that the accused persons had interacted with each other in the context of the informant, but it cannot be said that this would sufficiently explain the considerable delay in registration of the FIR. Since a civil dispute forms the backdrop of the grievance raised by the informant, this Court is inclined to favourably consider the present application.

8. In any case, the applicant has remained behind bars since 14.11.2022, which is about one year and seven months. This is an additional factor for holding in favour of the applicant.

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

- (A) The applicant shall be released on bail in connection with F.I.R. No.1071 dated 15.09.2022 registered at Vakola Police Station on furnishing P.R. Bond of Rs.50,000/- [Rupees Fifty Thousand only] and one surety in the like amount;
- (B) The applicant shall not tamper with the evidence of the prosecution. They shall not influence the informant, witnesses or any other person concerned with the case;

- (C) The applicant shall not enter jurisdiction of Vakola Police Station, during the pendency of the trial;
- (D) The applicant shall cooperate with the proceedings before the trial Court and he shall attend each and every date unless specifically exempted by the trial Court;
- (E) Upon being released on bail, within two weeks, the applicant shall communicate the details of his contact number and residential address to the trial Court.

10. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

11. The application is disposed of.

(MANISH PITALE, J.)

Minal Parab