IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2273 OF 2024

Ritesh Anselem Fernandes ..Applicant.
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Harshil Gandhi a/w. Punit Gehi i/b. Rizwan Merchant and Associates for Applicant.

Smt. Sangita D. Shinde, APP for State/Respondent.

Mr. Marmik Shah a/w. Tanmay Karmarkar for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 15 JULY 2024

PC :

1. The Applicant is seeking his release on bail in connection with C.R.No.327 of 2023 registered at M.R.A. Marg police station, Mumbai, on 22.12.2023, under sections 408, 420, 464, 465, 467, 468, 471 r/w. 34 and 120B of the I.P.C. and under section 66(D) of the Information Technology Act.

2. Heard Mr. Harshil Gandhi, learned counsel for the Applicant, Smt. Sangita Shinde, learned APP for the State-Respondent No.1 and Mr. Marmik Shah, learned counsel for the

Respondent No.2.

3. The F.I.R. was lodged on 22.12.2023. The applicant was arrested on 02.03.2024. The charge-sheet is filed on 22.05.2024. During pendency of the present application, on 07.06.2024, a co-ordinate bench of this Court (Coram: Shyam C. Chandak, J.) had observed that the investigation was completed. Both the learned advocates had agreed to verify the exact amount involved in the crime and that the applicant would make his best endeavour to deposit that amount within a reasonable time. After this order was passed, the applicant has not deposited any amount in this Court, but instead, the informant and the applicant and some of the co-accused have entered into the consent terms. Pursuant to those consent terms, an affidavit is filed by the Respondent No.2/first informant giving no objection for grant of bail to the applicant. In this background, I have considered this bail application.

4. The allegations against the applicant contained in the F.I.R. and also in the charge-sheet which is a result of investigation

and recording of statements of the witnesses, mentions the prosecution case as follows:

The F.I.R. was lodged by one Smt. Pallavi Patil. She was working with M/s. Hind Offshore Pvt. Ltd. (hereinafter referred to as ‘complainant company’). One Manish Kshirsagar was the Director of that company. The business of the complainant company is to give ships on hire and providing catering, as well as, house keeping services. The complainant company has employed 70 employees in their office and 200 others on the ships. The applicant was employed with the complainant company in the year 2008 as a Consultant. Since 2017, he was made the Business Head. Since he was an old employee, he had earned trust of the other Directors. It was expected from the applicant to get customers for the complainant company. In the year 2021, the applicant suggested to Mr. Kshirsagar that if the complainant company offered commission to the parties bringing clients, that would enhance their business. Believing his suggestion, Kshirsagar started giving commission to those parties. The allegations against the applicant are that, he used email I.D. of the complainant company and supplied secret information to the rival companies. It was found that the applicant had obtained commission from the company, as well as, from the company's customers. There are different allegations made in the charge-sheet under different heads. One of the allegations is that the applicant had sent an e-mail to M/s. Sapura Energy Berhad Engineering Services. That company was an old customer of the complainant company. The applicant asked that customer to give business to the complainant company's rival company Sinai Maritime Pvt. Ltd. He similarly promoted other company's vessel. He opened different companies in the name of his wife, father-in-law, mother-in-law and a friend. He represented to the complainant company that all these companies were getting clients for the complainant company and thus obtained commission for those companies which actually were controlled by the applicant himself. The applicant misled the Account Assistant Swara Mayekar and obtained rough invoices for commission. He formed another company by the name Hind Offshore Management Services. The name of this company was strikingly similar to the complainant company's name. Misusing that name, he again earned some illegal amount.

These, in short, were the allegations against the applicant.

5. The charge-sheet mentions that the complainant company had suffered losses to the tune of Rs.7,74,72,435/-. The gist of the statements of the witnesses is mentioned in Column-16 of the charge-sheet which is at page Nos.53 to 82 of this application memo. There are reference to the statements of various witnesses namely Manish Kshirsagar, Swara Mayekar, Anand Shah, Rajendra Devadiga, Rajesh Gopali, Parshuram Surve etc. The witness like Rajendra Devadiga had stated that, some amount of the commission was transferred in the complainant company's bank account and other amount was transferred in the various bank accounts of the different companies, as instructed by the applicant. This, in short, was the *modus operandi* of the applicant. In this background, the investigation was carried out, the applicant was arrested on 02.03.2024 and now the charge-sheet is filed against him.

6. The parties i.e. the complainant company and five accused including the applicant have entered into the consent terms. Those five accused are, the present applicant, Manisha Sapaliga, Harsha Shah, Manoharlal Shah and Tara Shah. A copy of the consent term is taken on record and marked 'X' for identification. The column-6 of the consent terms mentions that the complainant company had agreed to give an affidavit of no objection for grant of bail to the applicant in this application. The consent terms mentions different modes, and schedule of payment to be made to the complainant company by the applicant. Pursuant to the said consent terms, an affidavit is also filed on behalf of the Respondent No.2 giving no objection for grant of bail to the applicant in this application. The said affidavit dated 10.07.2024 is taken on record and marked 'Y' for identification. The paragraph-4 of the said affidavit mentions thus -

> "I say and submit that the Applicant and the Respondent No.2 have amicably settled the dispute which led to the registration of the FIR bearing No.327 of 2023. I say that the Applicant has duly entered into and executed Consent Terms dated 10th July, 2024 and accordingly, I say that I have no objection to the grant of bail to the Applicant".

7. In view of this clear no objection given by the complainant, learned counsel for the applicant submits that bail be granted to the applicant.

8. Learned APP accepted that it is a dispute between the private parties and the interest of society in general is not involved. Therefore, though, learned APP has not submitted that bail be granted, she could not submit as to why bail should not be granted in view of the consent terms and affidavit filed before the Court today.

9. In this view of the matter, there is no reason to deny bail to the present applicant; since the complainant company itself has given no objection for grant of bail to the applicant. The affidavit is filed on behalf of the complainant company by Smt. Pallavi Patil who had lodged the F.I.R. on behalf of the complainant company. She is present in the Court. She is identified by her counsel. She stated that, she has authority to give no objection for grant of bail to the applicant. In this situation, I am inclined to grant bail to the present applicant in the present subject matter.

10. Hence, the following order:

<u>O R D E R</u>

i) In connection with C.R.No.327 of 2023 registered at M.R.A. Marg police station, Mumbai, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.50000/- with one or two sureties in the like amount.

ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)