

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3509 OF 2024

Amar Sanjay Pukale	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Ms. Isha Saglani a/w. Mr. Siddhant B. Kusalkar for Applicant.
Mr. Babu V. Holambe-Patil, APP for Respondent-State.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 06, 2024

P.C. :

1. Heard Ms. Saglani, learned counsel for the applicant and Mr. Holambe-Patil, learned APP for the respondent-State.

2. The applicant seeks bail as he was arrested on 10.12.2019 in connection with FIR No.360 of 2019 dated 21.08.2019 registered with Malad Police Station, District - Mumbai, for offences under Sections 406, 420 and 467 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The FIR was registered on the statement of the informant, who made a grievance that the applicant induced him into parting with substantial amounts of money through cheques and cash on the promise of arranging for accommodation in a scheme of the Slum Rehabilitation Authority (SRA). The allegation was that the applicant asked for blank signed cheques from the informant on the ground that such amount would have to be paid to different individuals for arranging the said SRA accommodation. According to the informant, neither a proper agreement was ever executed nor was such SRA accommodation made available, and therefore, the informant realized that he had been cheated.

4. The investigation was completed and charge-sheet was filed. The charge-sheet cites 22 witnesses, to be examined by the prosecution. Presently, the first witness is being examined before the trial Court.

5. The learned counsel for the applicant submits that the offences, in the present case, are triable by the Magistrate and the applicant has already undergone incarceration for a period of four years and nine months. It is submitted that the allegation pertaining to offence under Section 467 of the IPC is not sustainable at all and even if the other offences are taken into consideration, the maximum punishment that can be imposed upon the applicant is imprisonment for a period of seven years. The applicant having undergone substantial period of imprisonment of four years and nine months, this Court may consider enlarging the applicant on bail on the said ground. Reliance is placed on a recent order passed by the Supreme Court on **27.08.2024** in the case of *Abdulmajid Abdulsattar Memon Vs. State of Gujarat (Criminal Appeal No.3525 of 2024)*.

6. Submissions are also advanced on the merits of the matter to contend that the offences against the applicant cannot be said to be made out on the basis of the material on record.

7. On the other hand, the learned APP submits that the *modus operandi* of the applicant is evident from the material available on record. Statements of witnesses were recorded in whose accounts, the applicant had deposited the blank cheques obtained from the informant. The said witnesses have clearly stated that the applicant used to deposit such cheques in their accounts and then take cash amounts from them. It is submitted that therefore, the applicant has no case on merits. As regards long incarceration, it is submitted that the evidence has already commenced and the trial can be expedited.

8. This Court has considered the material on record. Even if the *modus operandi* that becomes apparent on the basis of the statements of the witnesses on record is taken into consideration, the said material would be relevant for the offences pertaining to Sections 406 and 420 of the IPC. *Prima facie*, the material on record appears to fall short of making out a case under Section 467 of the IPC against the applicant. In this regard, only one document i.e. a draft agreement is placed on record with the charge-sheet. It is alleged that the applicant handed over the draft agreement to the informant during the process of extracting monies from him. This in itself, *prima facie*, does not appear to constitute the vital ingredients of the offence under Section 467 of the IPC. This is the only offence registered against the applicant, which carries maximum punishment of life imprisonment. All the other offences provide for punishment between three years and seven years of imprisonment.

9. In this backdrop, when the period of incarceration undergone by the applicant is taken into consideration, a case for being enlarged on bail is made out. It is an admitted position that the applicant was arrested on 10.12.2019. He has already undergone imprisonment for four years and nine months. The maximum sentence that can be imposed upon the applicant, even if he is found guilty of offence under Section 420 of the IPC is imprisonment for a period of upto seven years. It is also a matter of record that the offences are triable before a Magistrate.

10. In this regard, reliance placed on the recent order passed by the Supreme Court in the case of **Abdulmajid Abdulsattar Memon Vs. State of Gujarat** (*supra*) becomes relevant, for the reason that in the said case also, the offences were triable by the Magistrate and the Supreme Court granted bail to the accused when he had undergone imprisonment for a period of only about one year and three months, despite the fact that accused therein had criminal antecedents.

11. In this case also, the learned APP did highlight the fact that the applicant has criminal antecedents and there are three other criminal cases registered against him, two of which pertain to similar allegations of cheating. But, existence of criminal antecedents, in itself, would not come in the way of the applicant in the present case, considering the fact that he has already undergone incarceration for a considerable period of four years and nine months in a Magistrate triable case. The first witness is being examined and the charge-sheet shows that 22 witnesses have been cited by the prosecution. This indicates that the trial may not be completed in the foreseeable future.

12. 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.360 of 2019 dated 21.08.2019 registered with Malad Police Station, District - Mumbai, on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;
- (C) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (D) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

13. 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.

14. At this stage, the learned counsel for the applicant prays for cash security till the surety is furnished.

15. The applicant is permitted to furnish cash security of Rs.50,000/- for a period of four weeks.

16. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

Minal Parab