Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3882 OF 2024

Vijay Yesudas Nadar ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Keshav Chavan, a/w Anita Marbhal, for the Applicant.
Mr. Ishaan Shrivastav, a/w Ravleen Sabharwal, for the Intervener.
Mr. A. A. Naik, APP for the State.
PSI Vinod Patil, Matunga Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 16th OCTOBER, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant, who is arraigned in CR No.421 of 2023 registered with Matunga Police Station, Mumbai, for the offences Punishable under Sections 120B, 406, 420, 468, 471 and 506(2) of Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.

3. At the outset, the learned Counsel for the applicant submits that the co-accused Ali Raza Abdul Karim Shaikh, the principal accused, has been enlarged on bail by this Court by an order dated 5th August, 2024. The role attributed to the applicant is that of introducing a person as the holder of a liquor licence for which the first informant was fraudulently induced to part with huge amount by making a representation that the said licence would be sold to the first informant. It was submitted that apart from the applicant, all the co-accused have been released on either regular or pre-arrest bail. Therefore, the applicant also deserves the same dispensation.

4. The learned APP fairly submitted that the role attributed to the applicant is restricted to that of introducing the fictitious persons as the holder of the liquor licence, and the officers of the Excise Department. The applicant had allegedly also forged certain documents. The principle of parity may, however, apply.

5. The learned Counsel for respondent No.2 – first informant resisted the prayer for bail. It was submitted that Ali Raza Shaikh was released on bail as the said accused had offered to make payment and undertook to deposit certain amount. There is material to indicate that an amount of Rs.10,30,000/- has been paid to the applicant. There are statements of accounts which indicate that the co-accused Ali Raza Shaikh and his brother have transferred the amounts to the account of the applicant. Therefore, in the event the applicant is released on bail, the said amount deserves to be secured.

6. While releasing Ali Raza Shaikh, this Court had considered the prosecution case in a little detail, and thereafter recorded the reasons which weighed with the Court in granting bail, as under:

> "9. I have perused the material on record. Prima facie, from the perusal of the allegations in the FIR, it becomes evident that there were multiple transactions between the first informant and the Applicant. Initially, first informant was induced to part with money on the count that the prosecutions then pending against first informant would be quashed. Secondly, first informant was allegedly induced to pay the amount by making a representation that liquor license which stood in the name of Vikrant Sonawane would be transferred in the name of the first informant. Arif A. Patel (A2) had allegedly impersonated himself as Vikrant Sonawane. Thirdly, the FIR indicates, first informant was again defrauded to invest the amount in the business of agriculture produce at APMC Market by making a false representation that first informant would earn a return of Rs.19.75 Lakhs against an investment of Rs.12 Lakhs, after 40 days.
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> 10. One also gets an impression that first informant had realised that there was something amiss with the initial transactions entered into with the Applicant and, yet, there were further transactions between the Applicant and the first informant. The cheques drawn by the Applicant were also allegedly dishonoured.
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> 11. The evidence of credit of amounts to the account of the Applicant and his relatives is required to be appreciated in the backdrop of the aforesaid nature of transactions between the parties. The submission on behalf of the Applicant that the real nature of the transaction and the genesis of the offences has not been clearly spelled out, cannot be thus brushed aside lightly.
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> 12. At any rate, the investigation is practically complete for all intent and purpose. Charge-sheet has been lodged. In the circumstances of the case, whether an offence

> punishable under Sections 468 and 471 of the Penal Code can be said to have been prima facie made out, appears contentious. The offence under Section 420 of the Penal Code entails punishment which may extend to 7 years. In this view of the matter, further detention of the Applicant as an under-trial prisoner does not seem to be warranted.
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> 13. The Court has noted the affidavit filed by the Applicant volunteering to deposit the amount. The Court is conscious that bail cannot be granted on the condition of deposit of the amount. Nonetheless, since affidavit has been filed by the Applicant voluntarily, the undertakings therein can be accepted as the undertakings to the Court and in case of breach of those undertakings, the consequences will follow."

7. The aforesaid reasons apply with equal force to the claim of the applicant for bail. At any rate, the role attributed to the applicant appears to be that of introducing the fictitious persons in connection with the transaction to sell the liquor licence. It is not the case that the first informant had paid and/or transferred the amount to the applicant. Reliance is placed on the extract of account of accused No.1. It indicates that certain amount has been transferred to the account of the applicant by Ali Raza (A1). The nexus of the said amount with the offences in question is a matter for evidence and trial. In any event, the applicant has been in custody since 24th January, 2024. Investigation is complete. Charge-sheet has been lodged. Rest all the accused have been enlarged on bail. It is trite that, while releasing an accused on bail the Court cannot impose an onerous condition of deposit of the amount which is involved in the offence. Therefore, I am inclined to exercise discretion in favour of the applicant.

8. Hence the following order:

: O R D E R :

(i) The applicant be released on bail in CR No.421 of 2023 registered with Matunga Police Station, Mumbai, on furnishing a PR Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.

(iv) Upon being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(v) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]