IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4436 OF 2024
AND
BAIL APPLICATION NO.4437 OF 2024

Naresh Tikamchand Jain … Applicant
**Vs.**
State of Maharashtra … Respondent

Mr. Satyavrat Joshi a/w. Ms. Sayee Sawant, Mr. Shaunak Sawant, Mr. Yash Fadtare, Ms. Reena Prajapati and Mr. Ishan Paradkar i/b. Vidhii Partners for Applicant in both the Applications.

Ms. Rutuja A. Ambekar, APP for Respondent-State in both the Applications.

Mr. Appa Shedge, API, EOW, Banking-3 in BA/4436/2024.

Mr. Sarang Chavan, API, EOW, Banking-2 in BA/4437/2024.

**CORAM : MANISH PITALE, J.**
**DATE : NOVEMBER 28, 2024**

**P.C.** :

. Heard Mr. Joshi, learned counsel for the applicant and Ms.Ambekar, learned APP for the respondent-State in both the applications.

2. The applicant in both the applications is the same individual and he has approached this Court seeking bail in two different FIRs registered against him and other accused persons.

3. The applicant is seeking bail in connection with C.R.Nos.36 of 2020 and 47 of 2020 registered by Economic Offences Wing (EOW), Mumbai. Initially, they were registered as FIR No.154 of 2020 dated 12.11.2020 with Cuffe Parade Police Station and FIR No.313 of 2020 dated 11.12.2020 with MRA Marg Police Station respectively. Both the FIRs have been registered for offences under Sections 406, 409, 420,

465, 467, 468, 471, 477-A read with 120-B of the Indian Penal Code, 1860 (IPC). The applicant is one of the accused persons. He was an internal auditor of Cox and Kings Limited (CKL).

4. The informant, in the present case, is the Vice-President of IndusInd Bank. The allegation against the applicant, as the CFO of CKL and other accused persons being directors etc. of CKL, is that they defrauded the aforesaid complainant bank by defaulting payments pertaining to commercial credit cards facility extended by the complainant bank to facilitate the business of tours and travels and other such activities of CKL. Initially, commercial cards facility was extended in the form of two commercial cards sanctioned to CKL for the purpose of making travel and incidental bookings such as airline tickets, hotels and tour bookings, with a credit limit of Rs.25 crores. This was in February 2015. The credit facility was increased from time to time and eventually, on 16.03.2018, it was extended to Rs.370 crores.

5. But subsequently, the commercial credit card limit had to be reduced after it was noticed that in June 2019, CKL defaulted on statutory payments, including payments towards GST and TDS. On 27.06.2019, CKL filed a disclosure with the Stock Exchanges, informing that it had defaulted in repayment of commercial papers aggregating to Rs.150 crores. It is to be noted that although in the present case, the allegation of the complainant bank pertained to defaults in the context of the credit card facility, it came to light that CKL had started defaulting in repayment of loans and other such facilities extended by other banks also. In that context, on 15.07.2019, a Steering Committee was formed of the complainant bank, AXIS Bank, YES Bank and State Bank of India. In October 2019, proceedings were initiated before the National Company Law Tribunal against CKL for claims to the extent of about Rs.270 crores. A Forensic Auditor i.e. Pricewaterhouse Cooper was

appointed by the Steering Committee of the Banks in August 2019. The interim report was received in December 2019 and eventually, the final report of the auditor was also submitted. These reports indicated widespread diverting of monies as financial facilities extended by banks and financial institutions, including the complainant bank to CKL. These monies were diverted to entities owned and operated by the accused persons, including the applicant. It is in this backdrop that the aforesaid FIR was registered and investigation was undertaken.

6. Upon the charge-sheet being filed for the aforesaid offences, the role of the applicant was stated specifically and this included an allegation of falsification of accounts along with co-accused person Anil O. Khandelwal, who was the Chief Financial Officer (CFO) of CKL. It was further alleged that certain amounts were paid to the applicant and this could be said to be the amounts received by the applicant for having indulged in the illegal activity of falsification of accounts. The applicant was arrested in connection with C.R.No.36 of 2020 on 03.03.2021 and in connection with C.R.No.47 of 2020 on 05.02.2022, thereby showing that he has suffered incarceration in respect of the aforesaid two cases for a period of about 3 years & 8 months and 2 years & 9 months respectively.

7. At the outset, the learned counsel for the applicant relies upon an order dated **13.08.2024** passed by this Court in **Bail Application No.4222 of 2021** (*Anil O. Khandelwal Vs. State of Maharashtra through EOW*), to contend that the reasoning in the said order applies to the present applicant as well and since the applicant therein was granted bail, this Court may consider allowing the present bail application on the principle of parity. It is further pointed out that one of the co-accused persons i.e. the director of CKL was granted bail by the Supreme Court by an order dated 29.08.2024 passed in Criminal Appeal arising out of

SLP (Criminal) Nos.10471-10478 of 2024. It is submitted that the Supreme Court referred to the aforesaid order passed by this Court granting bail to the CFO of CKL and thereupon found that the Director of CKL also deserved to be enlarged on bail. It is submitted that when one of the directors of CKL has been granted bail by the Supreme Court, the applicant, being an internal auditor, ought to be granted bail in the interest of justice.

8. The learned APP submits that although the investigating officer is not present today, the documents filed along with the applications would show that the role of the applicant in falsification of accounts is *prima facie* made out. It is submitted that falsification of accounts was the basis of obtaining further loans and showing the financial health of CKL being sound, thereby indicating that the role of the applicant, in the present case, can be said to be a major role and considering the fact that the offence under Section 467 of the IPC contemplates maximum punishment of life imprisonment, no indulgence may be shown to the applicant.

9. This Court has considered the rival submissions. It is to be noted that the offences under Sections 409 and 467 of the IPC can be said be major offences as they provide for punishment of imprisonment for more than seven years. Both the provisions contemplate maximum sentence of life imprisonment. Therefore, if the applicant is able to demonstrate that the said offences *prima facie* cannot be said to be made out against him,this Court would be inclined to grant bail, particularly in the light of the period of incarceration already suffered by the applicant.

10. In this regard, the order passed by this Court in the case of **Anil O. Khandelwal Vs. State of Maharashtra through EOW** *(supra)* assumes significance, for the reason that the allegations levelled against the applicant herein appear to be identical to the allegations levelled

against the said person i.e. Anil O. Khandelwal, who was the CFO of CKL. While dealing with the question of applicability of Sections 409 and 467 of the IPC, in the facts and circumstances of the case, this Court in the said order held as follows:-

> "15. As regards Section 409 of the IPC, it pertains to offence of criminal breach of trust by a 'public servant', 'banker', 'merchant' or 'agent'. In the present case, the applicant was the CFO of CKL. The company CKL was engaged in the business of travel and tours, booking air tickets, hotel bookings, etc. CKL itself is an accused in the present case along with the applicant and others. It is not even an allegation that CKL had advanced any monies to any party, which in turn defaulted, resulting in registration of offences. On the contrary, the allegation is that CKL, its directors and others, including the applicant as the CFO defrauded the complainant bank. Therefore, there is substance in the contention raised on behalf of the applicant that even if the entire material on record, including the charge-sheet is taken into consideration, as per the plain language of Section 409 of the IPC, the offence thereunder *prima facie* is not made out against the applicant.
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> 16. As regards Section 467 of the IPC, a perusal of the same shows that when forgery is committed of a document, which purports to be a 'valuable security', punishment can be imposed upto a maximum term of life imprisonment. In the facts of the present case, the key words as regards ingredients of the said offence under Section 467 of the IPC are 'valuable security'. In order to examine the specific contention raised on behalf of the applicant, it would be necessary to refer to Sections 30 and 467 of the IPC, which read as follows:-
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>> '30. **Valuable security**.--The words 'valuable security' denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.
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>> 467. **Forgery of valuable security, will, etc.**--Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable

> property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

17. A perusal of the definition of 'valuable security' given in the above-quoted Section 30 of the IPC would show that it has to be a document, which either creates, extends, transfers, restricts, extinguishes or releases or purports to do so, a legal right or whereby a person acknowledges a legal liability.

18. The document in question in the context of which the accused persons, including the applicant, have allegedly committed offence under Section 467 of the IPC, is the statement of accounts or books of accounts of CKL. The allegation is that such books of accounts were falsified and fudged in order to show CKL in excellent financial health, although it was in real terms facing financial vagaries. There is *prima facie* substance in the contention raised on behalf of the applicant that the books of accounts or statement of accounts of the CKL in itself cannot be said to be a document that creates any legal right or whereby a legal liability is acknowledged. The Kerala High Court in the case of **Moosa and others Vs. State of Kerala** *(supra)*, in the context of the expression 'valuable security' has held as follows:-

> "4. … But simply it means that to become a 'valuable security' the document itself should create the right or liability. Ordinarily speaking account books do not by themselves create any such right or liability, though they may evidence the existence of such rights or liabilities. Sets of figures showing that certain goods were sold and certain others were bought, or certain sums of money were paid out and others received do not by themselves create or extinguish any right or liability. The only value of such figures is that, if they are entered in a properly kept account book they may be called in support of a legal claim. In other words, an account book generally speaking may be valuable evidence but is not valuable security within the definition given in section 30. …"

19. The Allahabad High Court in the case of **Hari Prasad and others Vs. State** *(supra)* held as follows:-

> "5. The conviction of the appellants for offences under Ss. 477 and 477A, I.P.C. is challenged on the ground that on the facts of this case no offence under those sections could be made out. The offence under S.477 against the accused appellants was on the allegation that they had secreted the account-books, namely kachhi-rokar and nam-jakar and, therefore, secreted valuable securities. It is contended for the appellants that account-books do not come within the definition of the expression "valuable security" under S.31. I.P.C. and that, therefore, no offence under S.477, I.P.C. could be made out on the mere basis that the appellants secreted away certain account-books.
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> 6. We agree with this contention. The words "valuable security" as defined in S.30 mean, a document which is or purports to be a document whereby any legal right is created, extended, transferred, restricted, extinguished or released or whereby any person acknowledges that he lies under legal liability or has not a certain legal right. Account-books, as such, do not create any right, and any entry in the account-books cannot be the basis of charging an accused with the liability of what is noted against him. Entries in the account-books can be merely evidence of certain alleged facts and, as such, are relevant evidence. In view of Section 34 of the Evidence Act. Certain entries which might be signed by a constituent may form the basis of a charge against him in view of his acknowledging his liability and the correctness of the contents noted in that entry. It is not alleged that any entry in these account-books was of such a type and consequently the secreting of an account-book with respect to that particular entry would not amount to the secreting of a valuable security. We, therefore, hold that the account-books are not "valuable security" and that therefore no offence under S.477, I.P.C. is made out against the accused appellants, even if they had secreted the kachhi-rokar and the nam-jakar bahis of this firm."

20. This Court finds that the aforesaid interpretation of the relevant provisions can be accepted and that in any case, a strong *prima facie* case is indeed made out by the applicant in his favour, while contending that the basic ingredients of the

> offence under Section 467 of the IPC are not made out against him, even if the allegations and the material on record along with the charge-sheet are to be taken into consideration.
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> 21. In this context, the learned senior counsel for the applicant is justified in contending that a distinct offence under Section 477-A of the IPC regarding falsification of accounts is registered against the applicant. At worst, the material on record may indicate an offence under the aforesaid provision, but such an offence also provides for a maximum punishment of imprisonment for a term of seven years.
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> 22. Therefore, this Court finds that the applicant has indeed made out a *prima facie* case to contend that the only two offences in the present case i.e. under Sections 409 and 467 of the IPC, which prescribe maximum sentence for life imprisonment are *prima facie* not made out. Consequently, the period of incarceration undergone as an under-trial by the applicant ought to be taken into consideration with reference to the other offences, which carry maximum sentence of imprisonment for a term of upto seven years."

11. The above-quoted reasons apply with full force in favour of the applicant also, as the allegations levelled against him are identical. This Court is further informed that the applicant has been granted bail in the proceedings initiated against him under the provisions of the Prevention of Money Laundering Act, 2002. This is also a factor that can be taken into consideration.

12. As regards the allegation of certain amounts being paid to the applicant, which could be relatable to the allegation of falsification of accounts and hence kickback amounts, this Court finds that there is sufficient material brought to the notice of this Court in the present application to indicate that such amounts were received as professional charges and professional fee with regard to the services provided by the applicant to CKL. This Court finds that the applicant, in respect of such amounts pertaining to professional fee, has also paid taxes, and therefore, receipt of such amounts in itself cannot be a factor to deprive the applicant of the relief of bail.

13. It is an undisputed position that in respect of the two FIRs in the present case, the applicant has already undergone imprisonment for a period ranging from 3 years & 8 months and 2 years & 9 months. Even if it is to be held that there is a *prima facie* case against the applicant with regard to the other offences, which may provide for maximum punishment of imprisonment for seven years, the applicant has already undergone substantial period of incarceration.

14. In the case of *Javed Gulam Nabi Vs. State of Maharashtra and another*, **2024 SCC OnLine SC 1693**, the Supreme Court, after referring to the earlier judgements in the case of *Union of India Vs. K. A. Najeeb*, **(2021) 3 SCC 713** and *Satender Kumar Antil Vs. Central Bureau of Investigation*, **(2022) 10 SCC 51**, held that Constitutional Courts ought to exercise power to enlarge accused under-trials on bail, who have suffered substantial incarceration and there is remote possibility of trial being completed within the reasonable period of time. The Supreme Court has emphasized upon right to speedy trial being a facet of Article 21 of the Constitution of India.

15. This Court is of the opinion that the said position of law also inures to the benefit of the applicant.

16. In view of the above, the applications are allowed in the following terms:-

(A) The applicant shall be released on bail in connection with C.R.Nos.36 of 2020 and 47 of 2020 registered by EOW, Mumbai, on furnishing P.R. Bond of Rs.50,000/- each with one or two sureties in the like amount to the satisfaction of the trial Court;

(B) The applicant shall report to the office of the EOW, Mumbai on first Monday of every month between 10:00

a.m. and 12:00 noon, during the pendency of the trial, upon being released on bail concerning the present offence and other offences in respect of which the applicant is incarcerated;

(C) The applicant shall co-operate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;

(D) 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;

(E) The applicant shall surrender his passport, if any, with the trial Court;

(F) 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 the same in case of any change.

17. 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 applications and that the trial Court shall proceed further, without being influenced by the observations made in this order.

18. The applications are disposed of.

**(MANISH PITALE, J.)**