IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3339 OF 2024
WITH
INTERIM APPLICATION NO. 5143 OF 2024
IN
BAIL APPLICATION NO. 3339 OF 2024

Brijender Kumar Awdesh Singh ...Applicant

Versus

The State of Maharashtra ...Respondent

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- Dr. Abhinav Chandrachud a/w Mr. Pramit Kulkarni i/b Mr Prem Kumar Pandey, Mr. Pavan Pandey, Mr. Pravin Pandey and Ms. Sneha Mishra, for Applicant.
- Mr. Tanveer G. Khan, APP for Respondent.
- Mr. Karansingh Rajput a/w Ms. Shalaka Patil, Mr. Ankit Pathak and Mr. Amaan Rahman i/b Trilegal for the Applicant in IA/5143/2024.
- Mr. Swapnil Kaklji, PIS, N.M. Joshi Marg Police Station, Mumbai, present.

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CORAM : MANISH PITALE, J.
DATE : 13th DECEMBER, 2024.

P. C. :

1. Heard learned counsel for the applicant and learned APP for the respondent-State, as also the learned counsel appearing for the first informant (intervenor).

2. The applicant in the present case was arrested on 09th February, 2024, in connection with First Information Report No.0612 of 2023, dated 12th October, 2023, registered at Police Station N.M. Joshi Marg, Brihanmumbai, for offences under Sections 406, 419, 420, 465, 467 and 468

read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The informant in the present case is an official of the insurance company TATA-AIG. The statement of the informant, leading to registration of the FIR shows that according to the informant, the applicant, who was working with the said company since the year 2008 till 14th May, 2020 and thereafter as a consultant with the company, had indulged in acts alongwith co-accused person resulting in serious financial loss to the insurance company to the tune about ₹ 8.5 Crores. It was alleged that the applicant, who was working as a Senior Manager in the distribution operation scheme posted at Mumbai, had misused the trust reposed by the company in him in the process of engaging vendors for providing services. It is alleged that fictitious entities were shown as vendors for providing services and substantial amounts were made over to them for providing such services. It was found upon enquiry that the entities who were shown as vendors were all bogus and that the amounts transferred to them eventually found their way to the applicant and his family members.

4. Investigation was undertaken and the applicant and the co-accused were arrested and the charge-sheet was eventually filed.

5. The learned counsel for the applicant submitted that in the present case the co-accused person was granted bail by the Magistrate, taking

note of the fact that the investigation was completed and charge-sheet was filed. It was recorded that no purpose would be served by continuing judicial custody of the co-accused person, as the offences would be triable by the Magistrate. Reliance was placed on the said order.

6. It was further submitted that the FIR in the present case was registered on 12th October, 2023, while the period concerning the alleged fraud committed upon the company was between January, 2020 to October, 2020, thereby indicating that the FIR was obviously delayed. No cogent explanation has been given as to why such a long period of time elapsed before the criminal process was set into motion by the informant.

7. It was further submitted that even if the contents of the entire charge-sheet are taken into consideration, there is nothing to indicate that the applicant was the person responsible for signing such agreements with the vendors for services and he was not even the signing authority for disbursal of amounts to such vendors / service providers. In such a situation, in the absence of any official of the said company being arraigned as an accused, the applicant being held responsible for the alleged fraud is unsustainable. It was further submitted that the utilization of the alleged ill-gotten money in purchasing properties, is an allegation which is not supported by the material on record, because all such properties were purchased prior to the aforesaid

period between January, 2020 to October, 2020. As regards the allegation pertaining to offence under Section 467 of the IPC, it was submitted that reference to certain e-mail trails is the only material relied upon by the Investigating Authority, which in itself cannot be said to be clinching material to show a *prima facie* case regarding the aforesaid serious offence. It is submitted that the most crucial aspect of the present case is that according to the informant company, the vendors did not provide any services to the company. It is further submitted that even if that be so, there is material on record to show that the company itself for the first time realized in August, 2022 that no services were provided. The aforesaid theory of the informant cannot be believed, even if the entire material filed alongwith the charge-sheet is to be taken into account.

8. It was further submitted that the applicant has remained incarcerated from 09th February, 2024 and charge-sheet already having been filed, no purpose would be served by continuing the incarceration of the applicant. The trial would take its own time and therefore, this Court may consider enlarging the applicant on bail.

9. On the other, the learned APP and the learned counsel appearing on behalf of the intervenor (first informant) vehemently opposed the aforesaid contentions and they relied upon the contents of the charge-sheet and the

intervention application, to show that sufficient material was brought on record to show the involvement of the applicant in the present case. It was alleged that he was the kingpin of the conspiracy alongwith the co-accused person to create bogus entities, showing them as vendors providing services to the company and by misusing the trust reposed by the company in the applicant, the aforesaid huge financial fraud of about ₹ 8.5 Crores was committed by the applicant. It is submitted that the merits of the matter ought to be looked into while considering the application for bail and therefore, merely because the applicant has suffered incarceration from 09th February, 2024, cannot be a ground for him to be released on bail.

10. This Court has considered the rival submissions in the light of the material placed on record. The allegations in the present case against the applicant are indeed serious in nature, for the reason that the case of the informant is that the applicant, who was an employee with the company since the year 2008 had misused the trust reposed in him. It is to be noted that the grievance of the informant is elaborated in the written complaint submitted to the concerned police station on 09th June, 2023, wherein the role of the applicant as a Senior Manager of the distribution operations scheme at Mumbai till 14th May, 2020, was described in detail. It is specifically stated that the applicant, as a Senior Manager, was in-charge of checking and reviewing accuracy and correctness of the invoices raised by the vendors and

giving instructions for releasing payments to such vendors. It was specifically stated on behalf of the informant – company that by misusing such position held by the applicant, agreements were executed and payments were made over to such 11 entities, which were eventually found to be bogus entities.

11. The material on record *prima facie* indicates that although the FIR does refer to the period between January, 2020 to October, 2020, as the period when such fraud was committed by the applicant alongwith co-accused person, at least till 14th May, 2020, the applicant was indeed an employee of the company as its Senior Manager. Thereafter, he was activitly involved with the said company as a consultant. Therefore, the contention raised on behalf of the applicant that he was merely a consultant and that without any involvement of the officials of the company such a fraud could not have been committed, does not deserve consideration.

12. It was also sought to be indicated that in the absence of certain officials of the company, including those who signed the aforesaid agreements, being made accused persons, prosecuting only the applicant would not be sustainable. But, this Court is not in agreement with the said contention, simply for the reason that the charge-sheet and the documents filed therewith do indicate a *prima facie* case against the applicant as regards the offences registered in the present case.

13. The documents include e-mail trails pertaining to January, 2020 onwards, showing the manner in which the applicant himself had sent draft invoices to the co-accused person, who appears to have been associated with the vendors/service providers that were eventually found to be bogus and fradulent. The said draft invoices were finalized by the co-accused person and they were returned back to the applicant with PAN numbers of such vendors / service providers. It was found during the course of investigation that such entities being bogus, the PAN numbers stated in the invoices were also fake. The aforesaid material does indicate a strong *prima facie* case against the applicant, as being the person who not only hatched the conspiracy to siphon off the aforesaid huge amount of the company, but he played a major role in the said activity.

14. The bank account statements and the other material placed on record show that such amounts that were paid ostensibly to such entities, eventually found their way to the accounts of the applicant and his family members. The documents on record *prima facie* show a money trail reaching up to the applicant and his family members, thereby showing that such amounts that were made over to the bogus and fictitious entities were routed back to the applicant and the co-accused person.

15. Such material does indicate the major role played by the applicant

in the facts and circumstances of the present case.

16. The question is, when this Court finds a strong *prima facie* case against the applicant on the basis of material collected during investigation, can it be said that the merits of the matter should be completely ignored and the aspect of granting bail has to be considered only on the consideration that of investigation has been completed and charge-sheet has been filed.

17. This Court is of the opinion that while considering the question of bail the Court cannot be of oblivious of the material on record, particularly when it indicates a strong *prima facie* case against the applicant. The process of trial can be expedited, but the applicant in such facts cannot be enlarged on bail, merely because he has remained behind bars for about 11 months and the investigation has been already completed.

18. The order passed in favour of the co-accused person cannot inure to the benefit of the applicant because the material on record indicates that the major role was played by the applicant as regards the offences registered in the present case and that he could be said to be the brain behind the *modus operandi* adopted in the present case to commit the aforesaid offences pertaining to breach of trust, as also forgery and fabrication.

19. This Court is of the opinion that the applicant does not deserve

any indulgence. Accordingly, the bail application is dismissed. The trial is expedited.

20. The interim application is also disposed of.

(MANISH PITALE, J.)