2024:BHC-NAG:7910

IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.497 OF 2024

Abhaykumar Rajeshwar Ram
Vs.
State of Maharashtra, Through Police Station Officer, Cyber Police Station, Buldhana, District Buldhana

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S. P. Bhandarkar, Advocate for applicant.
Mr. N. B. Jawade, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 23/07/2024

1. The applicant came to be arrested on 15.01.2024 in connection with Crime No.38/2023 registered with Cyber Police Station, Buldhana, District Buldhana for the offences punishable under Sections 419, 420, 465, 468, 470, 120-B, 471 of the Indian Penal Code and under Sections 66(c), 66(d) of the Information Technology Act.

2. The accusation against the present applicant is on the basis of the report lodged, on an allegation that the informant was desiring to have e-Scooter dealership of Ather Company. It is further alleged that the informant along with one Shubham searched the website of Ather Company on Google platform. On 01.07.2023 they found the website on Google thereafter, they filed the dealership form online by giving his mobile number. On 22.07.2023

they received a phone from one person disclosing his name as a Vedant Sharma who projected himself as Manager of Ather Company. As per his direction, the informant forwarded his Aadhar Card, Pan Card, Income Tax Returns, land documents on the e-mail address. On 31.07.2023 he received a phone call from a person projecting himself as Rahul Mathue Senior Manager of Ather Company and asked him to deposit processing fee and other charges in the account of one Abhishek Kumar. It is further alleged that on 01.08.2023 the informant deposited Rs.1,55,500/-, on 05.08.2023 Rs.7,75,000/- and on 16.08.2023 Rs.19,75,000/-. Thus, total amount of Rs.29,05,500/- was deposited through RTGS. Again on 16.08.2023 Vedant Sharma called him and asked him to deposit Rs.18,75,000/-, therefore, the informant suspected about the activities and lodged the report. On the basis of the said report, initially the crime was registered against the unknown person.

3. During the investigation, the name of the present applicant is revealed and he was arrested.

4. Learned Counsel Mr. Bhandarkar for the applicant submitted that as far as the applicant is concerned, his name is nowhere disclosed on the website of that e-Scooter Ather Company. He submitted that the registration of the informant is on the website. He has deposited the amount by RTGS.

The amount was not received by the present applicant. As far as the allegations are concerned, which are against Abhishek Kumar in whose account the amount was deposited. The present applicant is arrested merely on the basis of the mobile phone, which was seized from his possession and was attached with the account of one Deepak Thakur, Pradip Thakur in whose account the some amount was deposited. Thus, as far as the involvement of the present applicant is concerned, except the seizure of the said mobile phone, there is no other material to connect him with the alleged offence. Now, the investigation is already completed, charge-sheet is filed, further incarceration of the present applicant is not required. As far as the receipt of the amount is concerned, there is no material with the investigating agency to show that the present applicant has received some amount, in view of that, the applicant be released on bail.

5. Learned APP strongly opposed the said application on the ground that there is a *prima facie* material against the present applicant. During investigation, ATM Card, Pan Card, Identity Card are seized from the present applicant which shows that he has collected several bank documents, ATM Cards and Pan Cards from the needy people and prepared the forged documents and therefore, the said documents are used. He has also created the fake website and collected the amount with the help of the

another accused. Thus, considering the role of the present applicant, if he released on bail he would abscond and would not be available for trial. In view of that, bail application deserves to be rejected.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that the informant has registered himself for the dealership on the website namely, atherelectricdealer.com. The domain name of the website is ATHERELECTRICDEALER.COM. Its creation date is 23.11.2021 and place of creation is Florida i.e. United States of America.

7. During the investigation, the Investigating Officer has also collected the data regarding the depositing of the amount. It reveals that the amount was deposited in the name of Abhishek Kumar and one Pradip Thakur. The connection of the present applicant as per the prosecution is that, the mobile phone bearing No.8879496194 is affiliated to the account of said Thakur and the said mobile phone was seized from the possession of the present applicant. It is further contention of the prosecution that though present applicant is not doing any work, he has incurred the expenses by giving the said amount to the third person for purchasing the said car. His details regarding travelling by Air are also collected which shows that frequently he is incurring

the expenses towards the travelling though he is not having any earning source. On the basis of same, the investigating agency attempted to connect the present applicant with the alleged offence.

8. On perusal of the investigation papers, it reveals that it is only mentioned that the involvement of the present applicant is in the forgery of the documents but what exactly the act was committed by the present applicant is not mentioned. As far as the seizure of the mobile is concerned, the investigating agency has not collected the document to show that said SIM Card is in the name of Pradip Thakur or in the name of the present applicant. None of the account statements shows any amount is received by the present applicant through the transfer in his account. As far as the allegation of the transfer of the amount is concerned, which is against the Pradip Thakur and one Abhishek. Thus, considering the entire material collected during the investigation, except the seizure of the mobile phone which is affiliated to the account of the Pradip Thakur, there is no other material collected to show the involvement of the present applicant. Though involvement of the present applicant is in the economic offence, considering the nature of the evidence collected by the investigating agency and the observation of the Hon'ble Apex Court in the case of **P. Chidambaram v. Directorate of Enforcement,** reported in **(2020) 13 SCC 791**

wherein it is observed that the gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another.

9. The observation of the Hon’ble Apex Court in the above decision is reproduced here for the reference:

> “23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged

> to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

10. Admittedly, The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal cases are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court.

11. In the light of the above facts, here in the present case, as considering the investigation is already completed, charge-sheet is filed and the nature of the investigation and the role attributed to the present applicant, his further incarceration is not required and therefore, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Abhaykumar Rajeshwar Ram** shall be released on bail in connection with Crime No.38/2023 registered with Cyber Police Station, Buldhana, District Buldhana for the offences punishable under Sections 419, 420, 465, 468, 470, 120-B, 471 of the Indian Penal Code and under Sections 66(c), 66(d) of the Information Technology Act, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the Local Crime Branch twice in a month on 1st and 15th of every month and the Local Crime Branch shall record his presence.

(iv) The applicant shall produce his passport if he is having before the investigating agency.

(v) The applicant shall not leave India without prior permission of the Court.

(vi) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

12. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate