IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3742 OF 2024

Arvind Babulal Goyal ... Applicant
Versus
The State of Maharashtra ... Respondent

******

Mr. Niranjan Mundargi a/w Ms. Keral Mehta, Amey Nargonkar i/by Siddharth Jagushte for the Applicant.
Mr. P. P. Jadhav, APP for Respondent-State.
Mr. Santosh Kadam, P.I., E.O.W., Unit No.6, Mumbai.

******

CORAM: MANISH PITALE, J.
DATE : 8th JANUARY 2025

P.C. :

. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant is seeking bail as he was arrested on 22nd December 2023 in connection with FIR No. 66 of 2023 registered at EOW, Mumbai (initially registered as FIR No. 0911 of 2023 at Kasturba Marg Police Station, Mumbai, on 27th November 2023), for offences under Sections 420, 465, 467, 468 and 471 read with 120B of the Indian Penal Code, 1860 (IPC).

3. The FIR was registered on the statement of responsible officer of a share broking company i.e. J. M. Financial Service Limited, alleging that some unknown persons had created fake accounts and diverted shares of some clients of the said

complainant, that were lying dormant. Upon investigation, 4 persons were identified as accused, including the applicant herein. It is brought to the notice of this Court that the remaining 3 accused persons have been granted bail and it is only the applicant-accused, who is presently behind bars. It is further brought to the notice of this Court that co-accused Manish Rameshchandra Shah was granted bail by this Court by order dated 18th July 2024 passed in Bail Application No. 1988 of 2024. But, it is fairly stated that the present applicant is not seeking relief on the principle of parity.

4. The learned counsel for the applicant submits that investigation has been completed and the charge-sheet has been filed, although the investigating authority claims that further investigation is being undertaken. It is submitted that the voluminous documents filed along with the charge-sheet, fall short of indicating any active role of the applicant in the aforesaid offences. It is further brought to the notice of this Court that the offences are Magistrate triable, although the offence under Section 467 of the IPC, provides for maximum punishment of imprisonment for life. It is submitted that the investigating authority appears to be relying upon a statement of an ex-employee of the applicant recorded under Section 164 of the Criminal Procedure Code, 1973 (Cr.P.C.). It is highlighted that statement of the said witness under Section 161 of the Cr.P.C. was never recorded and even if the statement recorded on oath before

the Magistrate is taken into consideration, it is based on hearsay, consisting of bald allegations about the involvement of the applicant in creating fake documents in furtherance of the activity, which led to registration of the aforesaid offences. It is further submitted that the brief facts stated in the charge-sheet as against the applicant, also refer to material, which does not inspire confidence, in order to demonstrate involvement of the applicant in the aforesaid offences. It is further submitted that the applicant has suffered incarceration for more than one year and therefore, this Court may consider enlarging him on bail. He undertakes to abide by the conditions that may be imposed by this Court upon him.

5. On the other hand, the learned APP relied heavily on the aforesaid statement of the witness recorded under Section 164 of the Cr.P.C. before the Magistrate. It is submitted that the applicant could be said to be the kingpin in the present case, as he not only caused fake documents to be prepared in order to siphon off valuable shares, resulting in loss to the tune of more than Rs.14 crores, but he was also involved in impersonating certain person with the help of a co-accused person. Fake addresses etc. were shown in the process of opening fake accounts and therefore, the involvement of the applicant is evident from the material on record.

6. This Court has considered the material placed on record on behalf of the investigating authority. Although, the charge-sheet

runs into hundreds of pages, the investigating authority was unable to specify through the learned APP, as to the incriminating material against the applicant with regard to the offences in question, particularly the serious offence pertaining to Section 467 of the IPC. The main allegation against the accused persons is that they created fake accounts in order to siphon off valuables shares, resulting in loss to the tune of more than Rs.14 crores.

7. In this context, when the charge-sheet is perused alongwith the documents filed therewith, this Court finds that the only material heavily relied upon by the investigating authority is the statement of the witness directly recorded before the Magistrate under Section 164 of the Cr.P.C., who was an ex-employee of the applicant. This Court is not going into the question as to whether such a statement could have been recorded on oath before the Magistrate directly without a statement of the said witness being recorded under Section 161 of the Cr.P.C.

8. A perusal of the aforesaid statement of the witness recorded before the Magistrate would show that *prima facie* his knowledge with regard to the involvement of the applicant in creating fake documents can be said to be hearsay. The statement fails to reveal any particular instances of the involvement of the applicant in creating such fake documents. Therefore, the material against the applicant with regard to the serious offence under Section 467 of the IPC can be said to be limited to the aforesaid statement of the witness.

9. Apart from this, the allegation about the applicant having produced the person, who impersonated one Mr. Vakharia, as per the charge-sheet, appears to be having no connection with accused No.3-Ashish Shah, although it was orally submitted by the learned APP, on instructions, that the person who actually impersonated the said Mr. Vakharia and who was introduced allegedly by the applicant, was the said accused No.3-Ashish Shah.

10. There is substance in the contentions raised by the learned counsel for the applicant and in the absence of specific material being placed with the charge-sheet, mere oral allegations cannot be accepted across the bar. Therefore, this Court finds that the applicant has made out a *prima facie* case to claim that even if the material presently on record along with the charge-sheet is to be taken into consideration, it falls short of showing the involvement of the applicant, as regards the serious offence of forgery under Section 467 of the IPC. The other offences pertain to cheating and using such forged documents. The material on record does not show that victims have come forward to pinpoint the allegations against the applicant as the person who actually duped them or that he was the person who was actively involved in creating the fake documents, which eventually led to creation of fake accounts in the process of siphoning off valuable shares.

11. Additionally, it is to be noted that even as per the charge-sheet, during the course of investigation, by the process of freezing shares and valuable property, the interest of victims appears to

have been secured to a substantial extent and therefore, this Court is of the opinion that the applicant has made out a case to claim that further incarceration would serve no purpose.

12. In any case, even as per the investigating authority, further investigation would be undertaken and supplementary charge-sheet may be filed, thereby indicating that the framing of charge and initiation of the trial will not be happening in the foreseeable future. At present, the charge-sheet shows that the prosecution would be examining about 22 witnesses. In such circumstances, there is hardly any likelihood of the trial being completed in a reasonable period of time.

13. As regards the criminal antecedents of the applicant, it is to be noted that one FIR was registered as far back as in the year 1998. Another FIR of the year 2014 registered at Dindoshi Police Station, has been quashed by consent, as stated on behalf of the applicant. There is one more FIR of the year 2022 pending against the applicant, wherein the aforesaid ex-employee, whose statement under Section 164 of the Cr.P.C. has been relied upon by the investigating authority, is also a co-accused person. In the said proceeding, the applicant was simply produced before the Magistrate when the charge-sheet was filed and he was released on bail. Therefore, the aspect of criminal antecedents against the applicant need not hold back this Court from passing a favourable order in the present case.

14. 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. 66 of 2023 registered at EOW, Mumbai (initially registered as FIR No. 0911 of 2023 at Kasturba Marg Police Station, Mumbai, on 27th November 2023), on furnishing P.R. Bond of Rs. 50,000/- and one or two sureties in the like amount.

(b) The applicant shall report to the office of EOW, Mumbai, on first Monday of each month between 10:00 a.m. and 12:00 noon.

(c) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.

(d) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.

(e) The applicant shall surrender his original passport, if any, before the trial Court, within one week, upon being released on bail.

(f) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact

Number and residential address with updates in case of any change.

15. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

16. The application is disposed of.

MANISH PITALE, J.

BIPIN DHARMENDER PRITHIANI Digitally signed by BIPIN DHARMENDER PRITHIANI Date: 2025.01.08 17:32:53 +0530