Prasad Rajput

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3786 OF 2024

Francis Joseph .. Applicant
Versus
State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO.1031 OF 2025
IN
CRIMINAL BAIL APPLICATION NO.3786 OF 2024

Bhupesh Rikhabchand Solanki .. Applicant
Versus
State of Maharashtra and Anr. .. Respondents

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- Mr. Harekrishna Mishra a/w Ms. Sarita Yadav, Advocates for Applicant.
- Mr.Ajay S Mishra, Advocate for Applicant in IA No.1031 of 2025.
- Mr. Balraj B. Kulkarni, APP for State.
- PSI – Avinash Kolle, Waliv Police Station, present.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 30, 2025

P. C.:

1. Heard Mr. Harekrishna Mishra, learned Advocate for Applicant; Mr. Ajay Mishra, learned Advocate for Applicant in IA No.1031 of 2025 and Mr. Kulkarni, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No.788 of 2023 registered with

Waliv Police Station for the offence punishable under Sections 419, 420, 468, 470 and 473 read with Section 34 of the Indian Penal Code, 1860 (for short, "**IPC**").

3. Applicant in the present case is arraigned as Accused No.2. FIR is lodged by first informant on 01.10.2023. Principal Accused admittedly is one Mr. Raj Kannan arraigned as Accused No.1 in the present crime.

4. Briefly stated according to the first informant in June, 2017 Accused No.1 communicated with first informant and persuaded him to have business relationship with him. In December, 2017 Accused No.1 visited first informant's office and offered him tender worth of Rs.75,20,00,000/- for installation of electric switches and L.E.D. street light released through Tamil Nadu State Government. According to first informant and prosecution case Accused No.1 convinced first informant to pay Rs.1,71,00,000/- as consulting fees, licensing fees, approval charges for obtaining tender for work. First informant transferred an amount of Rs.16,00,000/- from Royal Richard Electro India Pvt. Limited Company's HDFC Bank account to bank account of Accused No.1 held in Axis Bank. On 26.04.2018 first informant received an email from email address of Accused No.1 that tender was passed in his name. Therefore, on 29.06.2018 first informant transferred a further amount of Rs.50,00,000/- in the bank account of a company called AVIO SCOPE in Pallavan Grama Bank belonging to Accused No.1. The first informant transferred another tranche of Rs.55,00,000/- on 31.07.2018. One year thereafter first informant realized that the tender document was fake. This was brought to the notice of Accused No.1 and there was some talk between Accused No.1 and first informant and they both executed an agreement dated 25.03.2019 wherein the present Applicant arraigned as Accused No.2 was the witness. On the same date i.e. on 25.03.2019 first informant filed a police complaint against Accused No.1 for criminal breach of trust, misappropriation, wrongfully extorting money and cheating. Thereafter on 17.05.2022 first informant once again filed a fresh police complaint in continuation of his previous complaint of 2019 that mentions further details but this time complaint was filed against Accused No.1 and the present Applicant both. The Police Authorities registered an FIR bearing No.788 of 2023 on 01.10.2023. It is borne out from record that on 27.10.2023 Accused No.1 expired. On 28.10.2023 Applicant was arrested by Police Authorities and he is in custody since then pending trial as Accused No.2. Chargesheet is filed on 24.01.2024 and additional charge Section 467 of IPC with respect to forgery and fabrication of documents is also added therein. Supplementary chargesheet has been filed on 27.02.2024 whereas second supplementary chargesheet has been filed on 15.07.2024.

5. Learned Advocate for Applicant Mr. Mishra would submit that *prima facie* on the face of record there is gross delay in filing FIR pursuant to filing of complaint in the first instance in 2019. Next he would submit that Applicant is not a beneficiary of any amount with respect to the transaction which transpired between Accused No.1 and the first informant. Next he would submit that Applicant has no role whatsoever to play in the alleged transaction between Accused No.1 and the first informant. He would vehemently submit that Applicant was a witness to the agreement dated 25.03.2019 executed between Accused No.1 and first informant and merely on that ground Applicant has been indicted and arraigned as Accused person in the present crime.

6. Learned Prosecutor Mr. Kulkarni has vehemently objected to the present Application and would submit that Applicant / Accused No.2 is complicit in the present crime and is the beneficiary of an amount of Rs.17,36,655/- from Accused No.1. He would draw my attention to the affidavit in reply dated 26.02.2025 appended at page No.673 of the Application to contend that Applicant who is arraigned as Accused No.2 had accompanied Accused No.1 alongwith his other partners through the office of first informant in 2017 to convince first informant to participate in the tender. He would submit that admittedly amounts were transferred to the bank account of Accused

No.1 in 3 tranches of Rs.16 lacs, 50 lacs and 55 lacs. Accused That No.2 – Applicant before me is an indirect beneficiary of the said amount to the tune of Rs.17.33 lacs. He would submit that if the Affidavit-in-Reply and annexures thereto are seen receipt of money of Rs.17 lacs by Accused No.2 from Accused No.1 can be *prima facie* seen and therefore he is a conspirator in defrauding first informant by concocting the false narrative and story of tender document and extracting money from him. He would therefore pray that Application be rejected.

7. Mr. Mishra, learned Advocate appearing for first informant has persuaded the Court to hear him. Court has permitted intervention of first informant and has heard learned Advocate for intervenor / Applicant in IA No.1031 of 2025. According to first informant he has reiterated the fact that present Applicant had accompanied Accused No.1 to Mumbai in the office of first informant to convince him and insofar as communication with company of Accused No.1 was concerned, present Applicant was in the knowhow and when it was unearthed that the tender was fabricated and fake by Accused No.1 an agreement was executed between them to which present Applicant was a witness. He would submit that there is one more absconding accused namely wife of Accused No.1 who is the real beneficiary of all amounts received by Accused No.1. He would submit that anticipatory bail application of absconding accused was rejected by trial Court and equally bail application of the applicant – Accused No.2 is also rejected. He would submit that during the interregnum first informant received several threats and therefore since wife of Accused No.1 is absconding it will be a dangerous proposition to release Applicant – Accused no.2 on bail. He would submit that Applicant – Accused No.2 is also liable to be tried for preparing fabricated and false letters of State Government of Tamil Nadu to lure gullible investors into parting with huge sums of money to them. He would submit that Applicant does not deserve any sympathy of Court especially when he has time and again represented and espoused the cause of Accused No.1 to convince first informant to participate in the tender and part with substantial amount of money to Accused No.1. Hence he would pray for rejection of Application.

8. I have heard the rival submissions advanced by learned Advocates and perused the record of the case. It is *prima facie* seen that Applicant's role in the present crime emanates from he being a witness to the crime between Accused No.1 and first informant and the twin allegations that he had accompanied Accused No.1 while visiting the office of first informant to convince him to accept the tender and he is the beneficiary of the amount of Rs.17.33 lacs. Apart from the aforesaid three specific allegations insofar as other allegations and accusations are concerned, there is absolutely nothing incriminating brought on record to substantiate the same. Insofar as the three allegations are concerned, the principal allegations that Accused No.2 namely Applicant before me was hand in glove and acted in connivance of Accused No.1 into convincing and luring first informant to accept the tender document cannot be prima facie accepted in view of the case in the FIR. It is seen that first informant received an email in sometime in 2017-2018 regarding some tender approval from Rural Development Authority Board, Coimbatore City Municipal Corporation. According to prosecution case principal accused Raj Kannan arraigned as Accused No.1 is the person who interacted with first informant on email as also received substantial amounts of Rs.1.61 crores from the first informant in his bank account (Rs.16 lacs) and in the account of his company called AVIO SCOPE (Rs.105 lacs) and this is the admitted position. Case of prosecution directed against Applicant is that he is an indirect beneficiary of an amount of Rs.13.20 lacs as stated in paragraph No.5 of the Affidavit in reply. The breakup of this receipt is alleged to be true on the basis of bank statement of Accused No.1 and Accused No.2 (Applicant before me) appended at page Nos.690 and 691 of the Application. *Prima facie* it is seen that there are intermittent transfers of amount of Rs.1 lacs on 02.07.2018 and 2 lacs on 03.07.2018 from Accused No.1 as seen from the bank statement of Accused No.1. Similarly there is transfer of Rs. 2.50 lacs on 14.09.2018 and Rs.2 lacs on 15.09.2018 to the present Applicant. According to prosecution case these bank entries extracted from the bank account of Accused No.1 pertain to indirect benefit received by present Applicant. *Prima facie* it is seen that these are not the only entries which are reflected in the account of Accused No.1 which is sought to be relied upon by the prosecution. Bank account which is referred in the bank account of the company called AVIO SCOPE belonging to Applicant and it is seen that he has transferred substantial amounts to several parties including the absconding accused namely his wife. Indictment of Applicant is solely on the basis of aforesaid bank account transactions according to prosecution to the tune of Rs.13.36 lacs. *Prima facie* the entries in the bank account to the extent of the aforesaid amount do not prove any complicity of Applicant in the present crime. This is primarily because the entire correspondence and negotiation has been undertaken by Accused No.1 - Mr. Raj Kannan through his company called AVIO SCOPE with the first informant right since 2017 and amounts were paid by first informant in the year 2018 when the existence of present Applicant is *prima facie not* proven save and except the statement of first informant that present Applicant had accompanied Accused No.1 during the meeting with first informant in his office. Merely on this accusation further custody of Applicant after he having cooperated in the investigation and admittedly on the basis of prosecution case in the FIR itself that that he is the an indirect beneficiary of Rs.13.36 lacs is not required. His complicity can be proved by the prosecution at the time of trial.

8.1. It is seen that insofar as role attributed to present Applicant – Accused No.2 is concerned, it has to be comprehended with the ingredients of Section 419 of the IPC which talk about the person who cheats by impersonation and who shall be punished with imprisonment which may extend upto 3 years or with fine or with both. Thereafter, insofar as Section 420 is concerned it pertains to cheating by dishonestly inducing the person deceived to deliver any property to any person wherein on the basis of the prosecution case itself *prima facie* indictment of Applicant is doubtful.

8.2. Insofar as attracting provisions of Section 468 is concerned, it has to be established that the documents are false and fabricated and made dishonestly and Applicant has any direct role in it. Insofar as role attributed to Applicant – Accused No.2 is concerned, it is not brought on record whether he was part and parcel of the interaction with first informant with respect to the tender document even as per the FIR on *prima facie* consideration. Hence, in view of my above *prima facie* observations, I am of the opinion that Applicant having suffered long incarceration for the past 2 years and 1 month and in view of the role attributed to Applicant, the Applicant can be released on bail

9. Hence, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

(iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

10. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

11. Bail Application is allowed and disposed. In view of disposal of present Bail Application, Interim Application stands disposed.

P.R. Rajput

[MILIND N. JADHAV, J.]