Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4874 OF 2024

Anil O. Khandelwal .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 4824 OF 2024

Naresh Tikamchand Jain .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Ashok Mundargi, Senior Advocate a/w. Mr. Subir Sarkar i./by Ms. Dhruti Chheda and Mr. Ankit Pandey, Advocates for Applicant in BA No. 4874 of 2024.
- Mr. Satyavrat Joshi a/w. Ms. Sayee Sawant, Mr. Shaunak Sawant, Mr. Yash Fadtare, Mr. Ishan Paradkar, Mr. Samay Pawar i/by Vidhii Partners for Applicant in BA No. 4824 of 2024.
- Ms. Megha S. Bajoria, APP for Respondent – State in both matters.
- PI Mr. Nikam, for EOW present.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 25, 2025.

P.C.:

1. Heard Mr. Mundargi, learned Senior Advocate for Applicant in Bail Application No.4874 of 2024; Mr. Joshi, learned Advocate for Applicant in Bail Application No.4824 of 2024 and Ms. Bajoria, learned APP for Respondent – State.

2. The above two Bail Applications are filed under Section 439 of the Code of Criminal Procedure, 1973 by Applicants – Anil O. Khandelwal and Naresh Tikamchand Jain separately seeking Regular

Bail in connection with the same crime viz; C.R. No.67 of 2021 wherein both are arraigned as co-accused alongwith several other co-accused registered by Economic Offences Wing[1], Banking III, Unit - XI, Mumbai for offences under Sections 406, 409, 418, 420, 421, 422, 465, 467, 468, 471, 477A readwith 120-B of Indian Penal Code[2]. Both Applicants are incarcerated since 11.02.2022 i.e. 3 years and 14 days pending trial. Charge-sheet has been filed. Since facts *qua* both Applicants are more or less the same, both Bail Applications are disposed of by this common order. Complainant is Yes Bank.

3. Both Applicants are Chartered Accountants. Applicant – Anil O. Khandelwal is the Chief Financial Officer[3] of the Company called Cox and Kings Limited[4] and Applicant – Naresh Tikamchand Jain's proprietory concern namely N.T. Jain and Company is the Internal Auditor of CKL. CKL borrowed huge amounts as capital loan from Yes Bank and defaulted in repayment. Complainant is Mr. Ashish Joshi, Chief Vigilance Officer of Yes Bank. Complaint dated 22.06.2021 is filed against CKL, Anthony Good, Urshila Kerkar, Ajay Ajit Peter Kerkar, Pesi S. Patel, Mahalinga Narayanan and other unknown accused persons in connection with default and non-repayment of the loan amount of Rs. 525 crores received by CKL from Yes Bank as working capital loan during the period between 24.05.2017 and

1 For short 'EOW'
2 For short 'IPC'
3 For short 'CFO'
4 For short 'CKL'

22.06.2021.

4. Briefly stated prosecution case is that CKL borrowed similar substantial amounts and loan towards working capital between 2011 and 2019 from Axis Bank, Laxmi Vilas Bank, HDFC Bank, Yes Bank, Tourism Finance Corporation Limited, Kurlon Enterprises Limited, Indusind Bank in different denominations running into several hundred crores. Complaint is lodged by Yes Bank for cheating and criminal breach of trust due to default by the said Company CKL in repayment of the loan amount. It is seen that post 2019, CKL failed to repay the loan amount to Complainant Bank. It also defaulted on statutory payments including payments towards GST[5] and TDS[6]. Record shows that on 27.06.2019 CKL filed a disclosure with the Stock Exchange informing that it had defaulted in repayment of commercial papers aggregating to various denominations pertaining to Banks from which they had obtained loan and could not repay the same. Record shows that on 15.07.2019 a Steering Committee was formed of Indusind Bank, Laxmi Vilas Bank, Yes Bank and State Bank of India (some of the Complainant Banks whose loans were defaulted by CKL). Record shows that in August 2019, Steering Committee appointed a Forensic Auditor i.e. Price Waterhouse Cooper to conduct audit of the accounts of CKL. In October 2019, proceedings were initiated before the National Company Law Tribunal against CKL for recovery of claims

5 Goods and Services Tax
6 Tax Deducted at Source

to the extent of Rs.270 crores. Forensic Auditor submitted interim report in December 2019 and it was followed by a final report thereafter which *prima facie* indicated widespread diversion of monies which were given to CKL as financial facilities. *Prima facie* it was stated that these monies received as loan were diverted to various other entities owned and operated by the accused persons in the present crime including the Applicants. It is in this context that present FIR was filed, registered and investigated.

5. Investigation of the crime is completed and charge-sheet has been filed in 07.05.2022.

6. The alleged role attributed to Applicants is of falsification of accounts in collusion with each other. Same role is attributable to both. It is alleged in the charge-sheet that certain amounts were paid to them which could be said to be the amounts received by them for having indulged in the illegal activity of falsification of accounts. In addition to the above, it is alleged that Applicant – Anil O. Khandelwal diverted funds to companies in which he alongwith his brother was director and further the funds were transferred to various bank accounts of bogus companies brought into existence by them.

7. Mr. Mundargi, learned Senior Advocate appearing for the Applicant in Bail Application No.4874 of 2024 would at the outset submit that the main accused namely Ajay Ajit Peter Kerkar has been granted bail vide order dated 29.08.2024 by the Supreme Court[7] in the present case. He has placed before me a copy of order dated 13.08.2024[8] passed by this Court (Coram: Manish Pitale, J) granting bail to Applicant – Anil O. Khandelwal in connection with C.R. No.33 of 2020 wherein similar allegations are made against the Applicant. He would therefore persuade the Court to consider that order as well as order passed by the Supreme Court granting bail to the main Accused namely Ajay Ajit Peter Kerkar and claim parity with him for grant of bail considering his long incarceration and submit that his further judicial custody is unwarranted as he has fully co-operated in the investigation.

7.1. Next, he would submit that Applicant whom he represents has been granted bail by the learned PMLA Special Court vide order dated 30.04.2024 on the ground of delay in commencement of trial and his long incarceration which is an additional ground which the Court should be considered. He would submit that the reasons given by the Supreme Court and this Court as also by the PMLA Special Court while granting bail to the main Accused namely Ajay Ajit Peter Kerkar as well as Applicant – Anil O. Khandelwal in the aforementioned orders squarely apply to present case and therefore the Applicant is entitled to bail on the principle of parity.

7 Criminal Appeal arising out of SLP (Crl) Nos.10471-10478 of 2024
8 Passed in bail Application No. 4222 of 2021

7.2. He would submit that while granting bail to the main Accused – Ajay Ajit Peter Kerkar, the Supreme Court in its order dated 29.08.2024 referred to the order passed by this Court granting bail to Applicant – Anil O. Khandelwal, the CFO of CKL and thereafter arrived at the conclusion of enlarging him on bail. Hence he would urge the Court to consider the facts of the case and enlarge the Applicant – Anil O. Khandelwal on bail.

8. Mr. Joshi, learned Advocate appearing for Applicant in Bail Application No.4824 of 2024 would adopt and support the submissions advanced by Mr. Mundargi. He would submit that the role attributed to the Applicant whom he represent is on a similar footing to that of Applicant, Anil O. Khandelwal who was the CFO of the Company. He would submit that Applicant whom he represents has been granted bail by the learned PMLA Special Court vide order dated 30.04.2024 on the ground of delay in commencement of trial and his long incarceration and this factor may also be taken into consideration while deciding the grant of bail. He would persuade the Court to consider the position of the Applicant being an Internal Auditor and urge the Court to grant bail in the interest of justice on the aforementioned submissions.

9. Ms. Bajoria, learned APP would vehemently oppose grant of bail to the Applicants. She would submit that Applicants are indicted for an economic offence which is considered to be an offence against the economy of the nation and affects the financial fabric of the society at large. She would submit that role of the Applicants as highlighted and endorsed in the charge-sheet is of falsification of accounts to depict a healthy picture of the financial health of the Company CKL as being financially sound for the purpose of obtaining loans / capital loans and thus forms the basis of the crime in question. She would submit that such falsification of accounts forms the basis of inducement to the bank in question to part with huge sums of public money as borrowings / loan amount which is ultimately defaulted by the Company. She would thus emphasize that role of Applicants has to be categorized as a major role in submitting falsified accounts to the Complainant Bank on the basis of which substantial loan is procured with the intention of defaulting on the same which has come true in the present case. However on taking instructions she would submit that considering parity and long incarceration the Court may pass appropriate order rather than delving on the issue of merits since the same would be determined in the trial.

10. I have considered the rival submissions advanced at the bar and perused the record with the able assistance of the learned Advocates appearing for the parties.

11. *Prima facie* it is seen that offences under Section 409 and 467 of IPC are the major offences as they provide for punishment of imprisonment of more than 7 years and contemplate maximum sentence of life imprisonment. Therefore if Applicants are able to demonstrate that the said offences *prima facie* cannot be said to be made out against then then Court would be inclined to grant bail particularly in the light of their long incarceration as argued by their Advocates and investigation being completed.

12. Since the Prosecution Advocate has persuaded me to consider the case of Applicants on parity and long incarceration as also the fact that the main principal accused Ajay Ajit Peter Kerkar having been granted bail, adhering to the submissions of the Prosecution, I have considered the above grounds for deciding these Applications.

13. This Court is further informed that the Applicants have been granted bail in the proceedings initiated against them under the provisions of the Prevention of Money Laundering Act, 2002. This is also a factor that can be taken into consideration.

14. As regards the allegation of certain amounts being paid to the Applicant – Naresh Tikamchand Jain, which could be relatable to the allegation of falsification of accounts and hence kickback amounts were paid to him, this Court finds that there is sufficient material brought to the notice of this Court in the Application to indicate that such amounts were received as professional charges and professional fee with regard to 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. Regarding allegations of monies received by both Applicants and routed to various other bogus or fictitious Companies, undoubtedly that will be a case for trial if proved on the basis of evidence.

15. In the case of ***Javed Gulam Nabi Vs. State of Maharashtra and Anr***[9], the Supreme Court, after referring to the earlier judgements in the case of ***Union of India Vs. K. A. Najeeb***[10], and ***Satender Kumar Antil Vs. Central Bureau of Investigation***[11], 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.

16. This Court is of the opinion that the said position of law also enures to the benefit of the Applicants.

17. While considering the case of Applicants for grant of bail, it is seen that the principal case of the Complainant is that there is a default in repayment of loan amount advanced by the banks to the

9 2024 SCC OnLine SC 1693
10 (2021) 3 SCC 713
11 (2022) 10 SCC 51

Company i.e. CKL. What intrigues the Court's mind is the fact that when Public and Private Sector Banks holding public money advance large amounts of monies as loan or working capital to a Company, what is the nature of security that the said Banks take from the Company in order to secure the loan amount. In the present case the borrower is CKL. In general context if a common man approaches a Public Sector Bank or a Private Sector Bank for loan, in order to secure the loan the common man is required to give adequate security without which no loan is sanctioned to him. When an Application for loan is made, a rigorous process of compliances is normally undertaken and complied with by the borrower as required by the Bank only after which the loan is sanctioned. This procedure and process for compliance is generally called as due diligence to be undertaken by the Bank which advances the loan. Whether this procedure was followed by the Complainant Bank in the present case with CKL is the question before the Court?

18. *Prima facie* it is seen that Complainant Bank alleges that when the Company CKL approached the Bank, it placed on record its balance sheet which was *prima facie* looking very healthy and based upon which the Complainant Bank advanced huge amounts of money as loan. It should not be forgotten that these monies which are / were advanced as loan by the Complainant Bank are / were public monies. Therefore even if the borrower Company i.e. CKL presented and relied upon its balance sheet for procuring the loan amount which runs into hundreds of Crores in most of the cases before me, it was the duty of the Complainant Bank to undertake appropriate due diligence. In this context attention is invited to Bank's due diligence to be followed before giving loan to a borrower Company on the basis of its balance sheet only. It is seen that Banks have to perform a variety of due diligence checks before giving loan to a Company on the basis of its balance sheet. In the case of such a Company Banks have to review the Company's balance sheet, income statements and cash flow statements. Banks are required to assess the Company's risk profile and monitor the Company's performance throughout the tenure of loan. In the present case, it is *prima facie* seen that loan was given to CKL by Complainant Bank over a tenure of 4 years beginning from 2017 to 2021. In that context, the Complainant Bank was required to take steps with respect to enhanced due diligence because while advancing hundreds of Crores of public money as loan it would involved and indicate a much higher risk so as to ensure that the money borrowed is returned back. Such enhanced due diligence would have helped the Complainant Bank to mitigate the risk factor as also to meet all regulatory requirements and avoid reputational, operational, legal and concentration risks. It is seen that in order to prevent the Banks and other Financial Institutions from being used as a channel for money laundering and to ensure the integrity and stability of the financial system efforts are continuously being made both internationally and nationally by way of prescribing various rules and regulations. In India Reserve Bank of India has been at the forefront in taking steps through various Regulations and Notifications. In India, Prevention of Money Laundering Act, 2002 and Prevention of Money (Maintenance of Record) Rules 2005 form the legal framework of anti-money laundering and countering financing of terrorism. In that view all regulated entities are required to follow the certain customer identification procedures and prescriptions while undertaking transactions either by establishing an account based relationship or otherwise and monitor transactions.

19. It is seen that in the present case over a period of more than 4 years, Complainant Bank advanced substantial amounts running into several hundred crores of rupees to CKL. CKL has not been in a position to repay the said amount. The question therefore that would arise in the mind of the Court is whether the Complainant Bank had carried out due diligence appropriately in the context of the procedure required to be followed by any Public or Private Sector Bank while advancing large sums of monies which are not secured adequately. For example in the case of the Complainant before me it is stated that they were deceived by falsified accounts and balance sheets which were submitted to them for borrowing the amounts by CKL. Still 4 year period over which amounts were advanced is reasonably a long period for the Complainant Bank to complete appropriate due diligence and ensure that the real status of the borrower Company is known to the Complainant. Needless to state that complicity of the accused persons in the present crime in question will be determined in the trial on adjudication. Before me is the case of the Chief Financial Officer of CKL and its Internal Auditor. Undoubtedly their complicity and role will be determined in the ensuing trial. However considering their period of long incarceration and my above *prima facie* observations and findings, I am of the opinion that the Applicants have made out a case for bail.

20. As delineated herein above, Applicants have already been granted bail by orders dated 28.11.2024 and 13.08.2024 passed by this Court in other Bail Applications. Keeping that in view, both Bail Applications are allowed on the following terms and conditions:-

(i) Both Applicants are directed to be released on bail on furnishing P.R. Bond of Rs. 1,00,000/- (Rs. One Lakh only) each with one or two sureties of the like amount;

(ii) Both Applicants shall be released forthwith on provisional cash bail of Rs. 1,00,000/- (Rupees One Lakh only) and are permitted to furnish sureties as directed within a period of 4 weeks after their release from prison;

(iii) Applicants shall report to the Investigating Officer of EOW as and when called for by the Investigating Officer;

(iv) Applicants 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 they do so it will entitle the prosecution to apply for cancellation of this order;

(v) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vi) Applicants shall surrender their passport, if any, within 2 weeks from their release, with the Trial Court;

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

(viii) Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable; and

(ix) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicants.

21. It is clarified that the above observations in this order are limited only for the purpose of granting bail and the trial shall proceed uninfluenced by the present order. The trial shall be adjudicated on its own merits and evidence and determined strictly in accordance with law.

22. Bail Application No.4874 of 2024 and Bail Application No.4824 of 2024 are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2025.02.25 19:22:59 +0530