

MHCC020031172022



IN THE COURT OF SPECIAL JUDGE, CBI FOR GR. BOMBAY
AT BOMBAY

BAIL APPLICATION NO.153 OF 2022
IN
REMAND APPLICATION NO.183 OF 2022
IN
RC NO. 4/E/2017-CBI/EOB/MUMBAI
(CNR No.MHCC02-003117-2022)

Brijesh Lohiya
S/o. Sushil Lohiya
Occupation: Business,
Age 43 years,
Permanent resident of
1003/1004 A Wing,
Vastu Tower, Evershine Nagar,
Malad West,
Mumbai 400064
(Currently in Arthur Road Jail)

.... Applicant/Org.
Accused No. 4

V/s

Central Bureau of Investigation
(EOB), Mumbai
Through its Joint Director,
Economic Offence Wing, CBI Building,
11th Floor, Plot No. C-35A, 'G' Block,
Bandra Kurla Complex (BKC),
Near MTNL Exchange, Bandra (East),
Mumbai 400098.

.... Complainant

Appearances:

Ld S.P.P. Shri. J.K. Sharma for CBI, EOB, Mumbai.

Ld. Adv. Shri. Aabad Ponda @ Adv. Shri. Sajal Yadav I/b Adv. Shri. Raj Raut for applicant.

**CORAM : HIS HONOUR SPECIAL JUDGE
SHRI A.S. SAYYAD
CBI SPECIAL COURT (C.R.No.52)
(IN CHARGE OF C.R.No.47)
DATE : JUNE 03, 2022.**

(DICTATED AND PRONOUNCED IN OPEN COURT)**: ORAL ORDER :**

The applicant seeks his release on bail by way of this application under section 439 of Cr.P.C. in connection with crime no. RC No. 4/E/2017 registered with CBI, EOB, Mumbai for the offences punishable under section 120-B r/w 420, 467, 468, 471 of I.P.C. r/w section 13(2) r/w 13(1)(d) of P.C. Act.

2. Heard Ld. Advocate Shri. Aabad Ponda appearing for the applicant and the Ld. SPP Shri. J.K. Sharma for the prosecution at the length of considerable time.

Background of facts :

3. On 13.05.2017 a case registered by the complainant against the Directors and Proprietors of M/s. Stelkon Infratel Pvt. Ltd., M/s. Apollo Enterprises, M/s. Kundan Trading, M/s. Disney International, M/s. Anek Trading Pvt. Ltd., M/s. Lubeez Enterprises, M/s. Pawan Enterprises, M/s. Lemon Trading Company, M/s. Padilite Traders, M/s. Fine Touch Impex, M/s. Azure Enterprises, M/s. Seabird Enterprises and M/s. Iconic Enterprises and unknown others and public servants for the offences

mentioned in the opening para of order. It is alleged that during 2014-16, 13 entities i.e. 11 firms and 2 companies were floated by way of using Import and Export Codes (IEC) in the name of fictitious or non-existent. Further current accounts were opened in the name of said entities in the various banks i.e. Punjab National Bank, Central Bank of India, Corporation Bank, Canara Bank, Axis Bank, and E-State Bank of Hyderabad now State Bank of India, Mumbai. At the point of relevant time, false and fabricated import documents such as Bills of Entries, Invoices, Bill of Lading etc. purportedly issued by Jawaharlal Nehru Custom House (JNCH) Nhava Sheva, Mumbai and New Custom House (NCH) Mumbai in the name of these enterprises before the banks mentioned above and thereby fraudulently remitted foreign exchange in US Dollar equivalent to Rs. 2252.82 crores to various entities at Hongkong. It is alleged that the accused Mohd. Farooque, Mohd. Gaus, Mohd. Hussain @ Raja, the present applicant, Kiran Kokare @ Sonu Kalia and other accomplices induced poor and illiterate persons to share their KYCs, by giving petty amount and using some KYCs documents firms and companies were floated in their names making them Directors and Proprietors of the said entities. The said accused persons opened IEC, VAT and other registrations for the 13 entities (11 firms and 2 companies) and opened current accounts in the branches of Punjab National Bank, Canara Bank, Corporation Bank, e-State Bank of Hyderabad, Central Bank of India and Axis Bank at Mumbai. All the accused including the present applicant in pursuance of their criminal conspiracy collected huge amount of cash running into crores of rupees from the various entities, who wanted to fraudulently forex remittance at abroad. Specifically the unaccounted cash layered through various Angadias, cheque discount brokers and the accounts of members of

Multistate Co-operative Societies viz. Renukamata, Vishwakalyan, Mangaldeep, Venkatesh, Dyaneshwari and others. Further the said unaccounted cash was credited through RTGS into the account of the said 13 entities in the banks. It is alleged that the applicant being a Custom House Agent (CHA) was actively involved in the instant fraud which is evident from a property transaction which was purportedly made in between the applicant and Smt. Aasma Farooque Shaikh in the month of April 2017, by way of executing a Memorandum of Understanding to purchase the company i.e. M/s. GLS Electronics Industries Ltd. In such a way the applicant is one of party to huge conspiracy alongwith other accused.

4. This application was strongly resisted by the prosecution vide reply Exh.2 contending therein that the gravity and nature of offence is very serious as it is an economic offence. The present applicant has actively involved in the alleged crime as there is a property transaction of huge amount in between him and the other accused. The applicant is close associate of prime accused Mohd. Fqrooque Shaikh. The applicant used to hand over the format of Bill of Entries, Invoices, rubber stamps of Custom officers in order to accommodate to the said illegal forex transaction by way of forged documents i.e. Bill of Entries, Invoices, Bill of Lading etc. purportedly issued by JNCH, Nhava Sheva, Mumbai. There is a active complicity of the present applicant in the alleged crime with other accused. There is a clinching material to show the complicity of the present accused in the alleged crime while committing alleged offence. Further investigation is ongoing. In case the applicant is enlarged on bail, probability of absconding from court of justice may not be ruled out.

5. I have given my anxious consideration to the submissions made by both the sides and perused the material on record.

6. The Ld. Advocate appearing for the applicant vehemently submitted that there are only 4 circumstances upon which the applicant is implicated in the alleged case. It is submitted that period of offence was to be shown took place during period 2014.-16. FIR was registered on 13.05.2017, investigating agency has carried out detailed investigation running in number of pages and has concluded investigating and filed charge-sheet on 19.05.2022. According to Ld. Advocate for the applicant this being a documentary case everything has recovered during the investigation. It is submitted that there is no direct concern of the present applicant with the other accused. Whatever alleged transactions have been shown to be took place between the applicant and the accused Mohd. Fqrooque Shaikh were through account to account and not direct. The applicant is innocent and has not prepared or forged document in collusion with the other accused. The applicant had never provided any format and assisted the accused in committing the alleged offence. The present accused is arrested after 5 years of registration on 22.02.2022 and since then he is behind bar. The applicant is married and earning person of his family. Except him nobody other is remained to look after his family. Now the investigation is already completed and therefore no purpose would be served by keeping behind bar the applicant. The sum and substance of the argument of the Ld. Advocate for the applicant was that in circumstances as above, the applicant would be entitled for bail. In support of his submission, Ld. Advocate for the applicant relied upon the following citation :

Shelia Sebastian Vs. R. Jawaharaj & Anr. in Criminal Appeal No. 359-360 of 2010 decided on 11.05.2018, SCC 018 SCC OnLine SC 522.

By referring the citation supra, the Ld. Advocate prayed for allow the application and to release the accused on bail.

7. As against this, Ld. SPP for the prosecution while justifying its reply Exh.2 submitted that the present accused is a close associate of the prime accused viz. Mohd. Fqrooque Shaikh who committed huge fraud in multiple crores. According to Ld. SPP in pursuance to conspiracy, the present applicant has rendered his active participation to prime accused. During the investigation it is revealed that the present applicant is deeply involved in the alleged crime. There is a more than sufficient evidence available against the present accused on record which shows his active complicity of the present applicant in the alleged crime. This being an economic and serious offence whereby the applicant alongwith other accused committed huge fraud in multiple crores. The nature and gravity of offence is very serious. The further investigation is going on. Therefore, applicant would not be entitled for bail. While buttressing his contention, the Ld. SPP for the prosecution relied upon various authorities as follows :-

1. Jameel Ahmad Vs. Mohammed Umair Mohammad Haroon & Anr. reported in 2022 SC 222. Ld. SPP for the prosecution supplied his emphasis on the principles and guidelines while considering the bail application in the said judgment such as the court amongst others, must consider the prima facie view of whether the accused has committed the offence, nature of the offence, gravity, likelihood of the accused obstructing in any

manner or evading the process of justice. Grant of bail draws an appropriate balance between public interest in the administration of justice and protection of individual liberty in a criminal case. The prima facie examination is on the basis of analysis of the record, and should not be confused with examination in detail of the evidence on record to come to a conclusive finding.

2. Criminal Bail Application No. 3323 of 2021 in the matter of Radha Kapoor Khanna Vs. CBI of Hon'ble High Court, Bombay.

3. Akash Kumar Pathak Vs. State of Odisha, BLAPL No. 502 of 2021 decided on 17.06.2021 by the Hon'ble High Court Orissa.

4. State of Bihar & Anr. Vs. Amit Kumar @ Bacha Rai in Criminal Appeal No. 767 of 2017. The Hon'ble Supreme Court of India, in para 34 of the said judgment held that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Further in para 35 of the said judgment, it is alleged that while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/ State and others similar considerations.

By referring all these citations, the Ld. SPP prayed for rejection of the application.

8. I have carefully gone through the citations supra referred by both the sides. Upon perusal of material available on record it appears that the present applicant at the relevant time allegedly working as a Custom House Agent (CHA). In view of the citations submitted by the Ld. SPP for the prosecution while considering bail application, the court has to considered the foremost and important fact such as the nature and the gravity of the accusation, the antecedence of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by the court in respect of any cognizable offence, the possibility of the applicant to flee from justice and whether the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested. The Ld. Advocate for the applicant vehemently supplied his emphasis on mainly 4 circumstances such as an FIR registered on 13.05.2017, accused was arrested on 22.02.2022, investigation completed after 5 years and charge-sheet filed on 19.05.2022. Investigation is already completed and there is nothing remained to probe with the present applicant. Applicant is married person having responsibility of his family members, there is nothing serious role played by this applicant. While buttressing his contention, the Ld. Advocate tried to explain each and every circumstances which emerges in paras from 1 to 160 of the charge in charge-sheet dated 19.05.2022.

9. In view of the above submission of both the sides and in view of the principles laid down in various cited decisions supra in respect of

principles and guidelines while considering the bail application, it needs to prima facie reassess as to what material reflects against the accused. So far as the present applicant, it is alleged by the prosecution that the present applicant is also one of the party of huge conspiracy in alleged fraud with the prime accused Mohd. Fqrooque Shaikh. In para no.12 of charge, the prosecution alleged that the present applicant being CHA was privy to the conspiracy with Shri. Mohd. Fqrooque Shaikh and both used to meet in their office and at the Hotel Sabalan and had discussions. The present applicant hosts for Customs officers at this hotel and arranged meeting with Shri. Mohd. Fqrooque Shaikh. In addition to this, the applicant gave huge amount of cash of his clients to Shri. Mohd. Fqrooque Shaikh for illegally sending in Forex to the parties at Hongkong. Further the applicant managed the officers of DRI, Customs, to hush up the illegal activities committed by Shri. Mohd. Fqrooque Shaikh in his imports and exports of Chinese goods and the consequent forex payment.

10. Whereas in para no.49 of charge of the charge-sheet, the allegations against the applicant appears that after small scale imports Mohd. Fqrooque Shaikh obtained ECC bill of entry of the said entities with low value from the CHAs for preparing forged BE. When more Bes are required, the applicant used for furnish the Bill of Entry No. of the imports made by other entities. The applicant used to provide computer generated format of Bes, rubber stamps of Customs officers, invoice models of Chinese suppliers, Bill of Lading etc.

11. In para no.54 of charge of the charge-sheet, it is alleged against the applicant that subsequently Smt. Bushra and Smt. Nazneen

prepared the invoice in the name of Chinese company, as per the format provided by the present applicant. In para no. 146 of charge of the charge-sheet, serious allegations against the applicant appears that the applicant acquired a company named M/s. GLS Electronic Industry Pvt. Ltd. at Haridwar and had availed a Term Loan and CC loan from SBI. The said loan became NPA on 24.12.2010 and bank took physical possession of the factory under SARFAESI Act. Mohd. Fqrooque Shaikh gage a letter through his wife Smt. Aasma Farooque Shaikh that she will acquire the factory for Rs.9 crores and paid Rs.75 lacs through cheque on 19.11.2016. The wife of Mohd. Fqrooque Shaikh paid Rs.9 crores approximately in the said company's account from her account held with IndusInd Bank. The applicant has received approximately Rs.9.75 crores to Rs.10 crores in his company's account from Mohd. Fqrooque Shaikh through Aasma Farooque Shaikh.

12. On careful perusal of the paras of charge-sheet cited supra, prima facie it appears the active involvement of the applicant with the prime accused Mohd. Fqrooque Shaikh in the alleged fraud. There are many specific allegations made against the present applicant in respect of the alleged fraud which is in multiple crores. There is a prima facie clinching material to show the active complicity of the present applicant in the alleged huge fraud. Keeping in mind as the above specific serious allegations against the present applicant, this court is of the considered opinion that though in this case charge-sheet has been filed but so many facts remained to be unearth relating to allege fraud. No doubt, this is a serious and economic offence relates to multiple crores, in such circumstances this court is of the considered opinion that if the applicant is enlarged on bail, probability of tampering the prosecution

evidence and witnesses may not be ruled out. The argument of the Ld. Advocate for the applicant was though appreciable on the facts of the case, however, the active complicity of the applicant in the alleged crime would not be entitled to applicant enlarge him on bail. An application deserves to be rejected. Hence order :

ORDER

Bail Application No. 153 of 2022 is rejected and disposed of accordingly.



(A.S. Sayyad)
Special Judge (C.B.I.),
City Civil & Sessions Court,
Gr. Bombay.

Date : 03.06.2022

Dictated on : 03.06.2022
Transcribed on : 03.06.2022
Signed by HHJ on : 03.06.2022

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

UPLOAD DATE AND TIME

03.06.2022 (04.42 p.m.)

NAME OF STENOGRAPHER

MRS. K.Y. INAMDAR

(STENOGRAPHER)

Name of the Judge
(with Court Room No.)

Shri A.S. Sayyad
C.R. No.52

Date of Pronouncement of JUDGMENT/
ORDER

03.06.2022

JUDGMENT/ORDER signed by P. O. on

03.06.2022

JUDGMENT/ORDER uploaded on

03.06.2022