

BA.No.189/2022

: 1 :

RA.No.183/2022

**IN THE COURT OF SPECIAL JUDGE, C.B.I.
AT GREATER BOMBAY
ORDER BELOW BAIL APPLICATION NO.189 OF 2022
IN
REMAND APPLICATION C.B.I. NO.183 OF 2022
IN
R.C.NO.4/E/2017/CBI/EOB/Mumbai.
(CNR. NO. MHCC02-003952-2022)**

Mohmammed Gous Mohmammed
Hanif Shaikh @ Mohd. Gous
Aged about 41 years, Muslim,
Occupation-Business, Residing at Door
No.1402, 14th floor, Novel Tower
Chawal Gali Jakariya Street, Mumbai. .. Applicant/
Accused No.1

V E R S U S

C.B.I. E.O.B., Mumbai,
11th & 12th floor, CBI Building, "G" Block,
Plot No.C/35A, B.K.C. Bandra (East), .. Respondent/
Mumbai- 400 098. Complainant.

Ld. Advocate Mr. Harshad Meshram for Accused No.1.
Ld. P.P. Mr. J.K. Sharma for C.B.I.-E.O.B./Complainant.

**CORAM: HIS HONOUR SPECIAL JUDGE
SHRI. V.C. BARDE
C.B.I. SPECIAL COURT
(Court Room No. 50)**

DATE : 27th April, 2022.

ORDER

Applicant/Accused No.1-Mohmammed Gous Mohmammed Hanif Shaikh @ Mohd. Gous in the above crime under Sections 420, 467, 468, 471 read with Section 120-B of the Indian Penal Code (for short, 'I.P.C.') and under Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, (for short, 'P.C. Act'), has moved this application under Section 439 of the Code of Criminal Procedure, 1973 (for short,

'Cr.P.C.') for grant of bail.

2. The accused contended that he was arrested on 22.02.2022 and was produced before the Special Court on 23.02.2022. He was in police custody till 08.03.2022, and thereafter, he is in judicial custody. He contended that during investigation, after the arrest of the accused, respondent has added Sections 467, 468 and 471 of I.P.C. He contended that initially, aforesaid case was registered against the Directors and the 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. It is alleged by C.B.I. that through the aforesaid companies, remittance of the sum of Rs.2,252.82 Crores was transferred abroad with support of bogus and false invoices through six banks i.e. Punjab National Bank, Central Bank of India, Corporation Bank, Canara Bank, Axis Bank and E-State Bank of Hyderabad. The accused contended that the main reason to implicate accused in the matter is only that his real brother Mohd. Farooq Shaikh son of Mohd. Hanif Shaikh is prime accused in the case. He further contended that in the crime registered by the respondent, no role has been assigned to the accused at the time of registration of crime. The F.I.R. is very much silent about the alleged offence committed by the accused. The accused has not forged any document as alleged; he has not put anyone's signature on any documents and prepared any custom's bill of entry, challans, or any document as alleged by the respondent, and further such alleged documents were never used by the accused for remittance of huge funds. Therefore, Sections 467, 468 and 471 of

I.P.C. are not made out against the accused. He has not created any rubber stamp or forged any customs documents. During the house search by respondent, nothing was found as alleged. The F.I.R. is registered in year 2017, and accused is arrested in year 2022, after laps of period of five year. The act of the respondent is very much suspicious. In respect of the alleged role of the accused, investigation is over and further custody of the accused is not required. Till the date, no charge-sheet is filed. The accused has not forged any document submitted with Punjab National Bank or any other bank by opening accounts in aforesaid six banks. He never forged any bill of lading or invoice as alleged. Not a single witness supported the case of respondent. Witnesses are not in touch with the accused, and therefore, there are no chances of threatening or alluring to witnesses. The accused is innocent person and falsely implicated in the matter. He is permanent resident of Mumbai. There is no chance of his absconding from country. He is law abiding citizen, and residing with his family at the address mentioned. The family of the accused is consisting of his wife and two kids. The son and daughter of the accused are school going kids, and except accused, no other male member is there in family of accused to look after children and wife of the accused. Accused is 41 year 's old and suffering from Heart disease. He is real brother of prime accused Mohd. Farooq Hanif Shaikh, but residing separately since long back and earning his livelihood by doing his work/job separately from his all brothers. Accused has no concern with his brothers and no one is interfering in each other's work. The entire C.B.I. case is based on documentary evidence and all documents related to alleged offence are in custody of the respondent, and therefore, no further custody of the accused is required in the matter. Investigation is over and accused is now in judicial custody since

08.03.2022. The respondent is trying falsely to implicate accused in the matter. Ingredients of Section 420 of I.P.C. are not made out. During the house search of accused and locker search in Bombay Merchantile Bank in the name of the wife of accused, nothing is found as alleged i.e. created rubber stamps and any forged documents, except the personal documents of accused and family members, and own cash and jewellery which are already in the custody of C.B.I. Accused has not obtained the KYCs of any person and opened any current account in six banks, and has not assisted Mohd. Farooq in committing the alleged offence. During the investigation, accused was confronted with the bank officers. The accused submitted to release him on bail subject to conditions.

3. Reply is filed by C.B.I.-EOB at Exhibit-2 opposing the bail application filed by the accused. It is contended that on the basis of complaint dated 13.05.2017, against the Directors/Proprietors of M/s. Stelkon Infratel Pvt. Ltd. and others, F.I.R was registered for the offences punishable under Section 120-B read with Section 420 of I.P.C. and under Section 13(2) read with 13(1)(d) of P.C. Act. During investigation, Sections 467, 468 and 471 of I.P.C. were invoked. It is alleged that the fraud in the case is in respect of amount of Rs.2252.82 Crores. It is contended that in pursuance of the conspiracy at Mumbai, and other places during 2014-2016, the accused persons Mohd. Farooq, Mohd. Gaus, Mohd. Hussain @ Raja, Brijesh Lohia, Kiran Kokare @ Sonu Kalia and other accomplices, induced poor and illiterate persons to share their KYCs, by giving petty amounts and using the same KYC documents, firms and companies were floated in their names by making them Directors and Proprietors of the said entities. The said accused persons obtained IEC, VAT and other registrations for 13

entities 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. It is further contended that accused Mohd. Farooque with the aid and assistance of other accused persons, collected huge unaccounted amount of cash running into crores of rupees from various entities, who wanted to fraudulently forex remittance abroad. The unaccounted cash was layered through various Angadias, Cheque discount brokers and the accounts of the 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. The low value Chinese goods were imported from Hong Kong through these name-sake accused entities, and consignments were cleared by filing Bills of Entry for low values online in the EDI system of Jawaharlal National Customs House (JNCH), Nhava Sheva and New Customs House (NCH), BPT, Mumbai. The value of the imported consignments in USD, declared in Bills of Entry filed for these entities is very less. The EDI system of customs allots a unique automated serial number for each Bills of Entry of an entity. The Bills of Entry is stated to be a vital document, to be submitted to bank for sending payment to the supplier of the imported goods. With regard to role played by the present accused it is contended by C.B.I. that he actively assisted prime accused Mohd. Farooque Shaikh in mobilizing name lenders for a petty amount, obtaining their KYCs, and thereby, floated firms/companies, with the name lenders as Proprietors and Directors. Accused-Mohd. Gaus actively assisted in obtaining IEC and other statutory registrations for the name-sake entities and opened accounts in said 6 banks. He assisted Mohd. Farooque Shaikh in collecting and layering of cash and

getting it as RTGS credit into the account of the accused entities. Mohd. Gous had obtained the stationery of the custodian for printing Bills of Entry, Bills of Lading and forged rubber stamps of Customs Officers/Chartered Accountants and other entities. The accused played a major role in the crime and assisted Mohd. Farooque Shaikh in all ways and means and is a part of the massive fraud in illegally sending USD equivalent to Rs.1463.35 Crores through the 8 entities to Hong Kong on numerous occasions. Further, he was also one of the ultimate beneficiary of crime proceeds in the form of commission per USD collected by Mohd. Farooque Shaikh from fund providers in Mumbai and other places. The accused alongwith Mohd. Farooque Shaikh and others had induced name lenders, obtained their KYCs, floated firms and companies with them as Proprietors and Directors obtained IE code and other statutory permissions for the firms and companies and opened accounts with Punjab National Bank and 5 other banks during 2014-2016. The accused actively assisted Mohd. Farooque Shaikh in collection of cash from various persons who wanted to send money to Hong Kong and layering the cash through Angadias, Cheque Discount brokers, etc. and brought it as a RTGS credit into the accounts of the accused entities in the said 6 banks. The accused assisted the main accused-Mohd. Farooque Shaikh who arranged low value imports of chinese goods in the name of accused entities at JNCH, Nhava Sheva, Mumbai, and NCH, Ballard Estate, Mumbai and the same imported goods were cleared by filing Bills of Entry. The value of the imported consignment declared in the Bills of Entry in the EDI of customs is very low. In order to make fraudulent forex remittance by way of adopting the *modus operandi* as above, the accused obtained forged seals, rubber stamps of the Customs Officers and other required stationery for creating false and fabricated documents. Thus, by using the

equipments of forgery obtained by accused, the main accused-Mohd. Farooque Shaikh got prepared the false and fabricated documents i.e. Bills of Entries and invoices in the name of these namesake entities with exorbitant value of amount at twenty-thirty times more than actual value of goods by way of putting forged signatures and seals/stamps of the Custom Officials. The accused himself with the aid and in assistance of principal accused submitted false and fabricated documents to banks and thereby, facilitated the forex remittance fraudulently from the account of accused entities, in Foreign Currency i.e. USD equivalent to Rs.1463.35 Crores through 8 entities to Hong Kong on numerous occasions to the accounts of various entities at Hong Kong with HSBC Bank, Hong Kong. Subsequently, the principal accused Mohd. Farooque Shaikh diverted the entire foreign remittance by way of debiting to the various parties at Hong Kong, and thereby, caused a wrongful loss in the form of remittance of forex on the basis of false and fabricated documents by receiving a huge amount in cash as the commission towards per USD sent at abroad. Accused had actively participated in the crime by mobilising name lenders, floating firms in their names, obtaining IEC and other registrations, collection and layering of huge amount of cash and getting it as RTGS credits, obtaining stationery, forged rubber stamps of customs officers and others for preparing forged Bill of Entry with high USD value, submitting the same to the bank and causing forex remittance on the basis of forged documents and diverting the funds abroad. C.B.I. has denied the allegations made in the application and the grounds raised by the accused claiming his release on bail subject to conditions. Accused is alleged to have willfully assisted the main accused and facilitated the commission of offences that resulted in the illegal forex remittance of huge amount. The settled legal principles enunciated by

the Hon'ble Supreme Court in respect of consideration of the bail application are relied on by C.B.I. wherein Hon'ble Supreme Court held that the contention of the accused who is an accused of such kind of white collar offences, should be viewed seriously by the court. The economic offence are a class apart and cannot be treated at par with conventional offences, as the economic offences have far reaching impact on the fiscal health of a nation. Therefore, C.B.I. submitted to reject the bail application.

4. Heard learned Advocate for the accused and learned P.P. for C.B.I., E.O.B., Mumbai. Perused the record of the case.

5. In the submissions of learned Advocate for accused, F.I.R. in this case was filed in the year-2017, under Sections 420 and 120-B of I.P.C. and Section 13(2) of P.C. Act, and offences under Sections 467, 468, and 478(1) have been added in February-2022, much after a delay of about 5 years. The house of accused was thoroughly searched by C.B.I. team on 22.02.2022, wherein Aadhar Cards, Pan-card relating to wife and child of accused came to be seized alongwith amount of Rs.2 Lakhs. Further, locker in the name of wife of accused was searched and her golden ornaments and property was seized from it. In the remand dated 08.03.2022, no evidence is produced or brought by C.B.I. against the present accused. As yet, since 5 years even-though bank officials are alleged to be accomplices in fraud, none of the bank officials has been apprehended or arrayed as accused. One Jamil who was arrested in P.M.L.A. case filed by E.D. out of the same facts, made a statement that accused no.1 is not connected with the offence. Director of Revenue Intelligence also arrested the accused, and was subsequently released, as no role of the accused was found in the

alleged incident. In the thorough search made by C.B.I. uptill now, nothing incriminating is seized from the accused and no incriminating material is brought forth, so as to incarcerate accused in the present offence. He submitted that even-though in reply and in remand application, the role is alleged against the accused, no evidence is brought on record regarding collection of amounts/or manipulating documents for opening of accounts and assisting to Mohd. Farooq in the alleged nefarious activities. No documents, rubber stamps and forgery instruments are seized from the accused. The accused is in custody since 22.02.2022, which is not further required in this case in the background of role alleged against him. Specimen signature of the accused was taken in police custody, however, it did not match with the signatures alleged to have been used to commit offence and the forged documents. He submitted that accused never resisted C.B.I. officer from carrying out searches sought by them. He submitted that all the documents related to offence are in custody of E.D. and filed in Special P.M.L.A. case before the Special Court. There is no further progress in investigation. No company is shown to have been registered in the name of the present accused. He submitted to release the accused on bail, who is permanent resident of Mumbai, and he will abide by all the conditions, if bail is granted, including attending C.B.I. Office as and when called. He submitted to allow the application.

6. On the other hand, the learned P.P. for C.B.I. submitted that in the written reply filed by C.B.I., role of the accused in details is given. Accused induced poor people to part with documents of KYCs. In conspiracy with prime accused Mohd. Farooq, he formed companies and obtained IEC code for the purposes of import export business. The poor persons induced by accused, were taken to banks for opening

accounts. The current accounts so opened were also used for foreign remittances. Out of 13 accused Companies, Companies at Serial Nos.1 to 9 in F.I.R., have been created by the present accused with Mohd. Farooq. The accused obtained and prepared stationery for the purpose of creating forged bills and stamps of JNCH and NCH, which were submitted to bank. The documents used in the name of poor persons, were not known by them to be false. A remittance of Rs.1500 Crores was made through 9 companies formed by accused with Mohd. Farooq. Accused collected un-accounted cash from fund providers. The accused used a *modus operandi* to show low value of goods reached at the ports. While C.B.I. team was at the premises of accused, he resisted access to them, and they had to enter the house forcibly. Thus, the learned P.P. submitted that in view of the ongoing investigation, and the role played by accused, no bail shall be granted to the accused as there is likelihood of tampering evidence/witnesses and abscondance of accused. Learned P.P. relied on following citations:

i) In **Radha Kapoor Khanna Vs. Central Bureau of Investigation, [Criminal Bail Application No.3323 of 2021 with Criminal Bail Application Nos.3325, 3326 and 3334 of 2021, decided on 28.09.2021]**, it is held by the **Hon'ble Bombay High Court** that:

“In cases where the offences alleged indicate that they are grave, heinous, barbaric, seditious or aimed at damaging the financial health of the State, then in that case the concerned Court is expected to take into consideration various factors and parameters, including the gravity of the accusations which by this time are crystallized in form of the charge-sheet while deciding the entitlement of the accused as to whether to admit him to bail or otherwise.”

“In the instant case, it is apparent that all the Applicants are alleged to have indulged in commission of offences, which have resulted in serious dent to the financial health of the State as well as defrauding the public at large.

Such offences are occurring in plenty and have resulted in stultifying overall growth of the nation and also have caused tremendous impairment to the economy of the nation. These crimes are more heinous in nature as they intend to destroy the economic fabric and financial edifice of the State. Such crimes have the tendency to degrade and defy the faith of the public in law and order situation as it tantamount to a serious blow to its economic/financial condition.”

ii) In **Akash Kumar Pathak Vs. State of Odisha, [BLAPL No.502 of 2021, decided on 17.06.2021]**, it is observed by the **Hon'ble High Court of Orissa, Cuttack** that:

“Law is well settled that at the stage of granting bail, detailed examination of evidence and elaborate discussions on merits of the case need not be undertaken but when the accused is charged with economic offences, the order must reflect the reasons for arriving and prima facie conclusion as to why bail was being granted.

*In the case of **Ash Mohammad Vrs. Shiv Raj Singh** reported in **(2021) 9 Supreme Court Cases 446**, it is held that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardized, for the rational collective does not countenance an anti-social or anti-collective act.”*

iii) In **The State of Bihar & Anr. Vs. Amit Kumar @ Bacha Rai, [Criminal Appeal No.767 of 2017 (Arising out of Special Leave Petition (Criminal) No.1762 of 2017), decided on 20.04.2017]**, it is held by the **Hon'ble Supreme Court** that :

“Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of the Code of Criminal Procedure, 1973, which is the bail

provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although 'bail is the rule and jail is an exception' is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail."

iv) In **Serious Fraud Investigation Office Vs. Nittin Johari & Anr.** [Criminal Appeal No.1381 of 2019 (@ S.L.P. (CRL.) No.7437 of 2019), decided on 12.09.2019], it is observed by the Hon'ble Supreme Court that:

*"Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of the Cr.P.C. Specifically, heed must be paid to the stringent view taken by the Court towards grant of bail with respect of economic offences. In this regard, it is pertinent to refer to the following observations of this Court in **Y.S. Jagan Mohan Reddy (supra)**:*

"34. 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.

35. 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 other similar considerations."

*This Court has adopted this position in several decisions, including **Gautam Kundu v. Directorate of Enforcement (Prevention of Money Laundering Act), Government of India, (2015) 16 SCC 1, and State of Bihar v. Amit Kumar, (2017) 13 SCC 751.** Thus, it is evident that the above factors must be taken into account while determining whether bail should be granted in cases involving grave economic offences."*

v) In **Jameel Ahmad Vs. Mohammed Umair Mohammad Haroon & Anr.**, [Criminal Appeal No.230 of 2022 (Arising out of S.L.P. (Cri.) No.245 of 2022), decided on 15.02.2022, 2022 Live Law (SC) 222], it is held by the **Hon'ble Supreme Court** that:

“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.”

7. In further rejoinder arguments, learned Advocate for the accused submitted that C.B.I. officers never communicated the accused for conducting raid, and did not disclose their identity in order to raid the house of accused, and therefore, the accused was not knowing that the persons outside were C.B.I. officers. He submitted that though the forgery is alleged, no documentary evidence is brought on record during investigation. There are mere allegations without any evidence, and therefore, the accused may be released on bail.

8. In this case, F.I.R. is registered by C.B.I. vide RC.No.4/E/2017 under Sections 420, 467, 468 and 471 of I.P.C. and under Section 13(2) read with Section 13(1)(d) of P.C. Act against 13 accused firms run by Proprietors/Directors. The above Sections 467, 468 and 471 of I.P.C. are later on added by C.B.I. before arresting the present accused and three others. The contention of C.B.I. is that the case has been registered against the Directors and Proprietors of accused nos.1 to 13 that between 2014-2016, 13 accused entities floated IECs and obtained other registrations, and current accounts were opened for the said

entities in 6 banks viz.-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. The said entities submitted forged 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, to the said 6 banks and had sent Forex remittance in USD equivalent to Rs.2252.82 Crores, between 2014-2016, to various entities in Hong Kong. The value of the imports in the Bills of Entry submitted to bank is very high than the value declared in the Bills of Entry filed with customs. It is further contended by C.B.I. that the Bills of Entry were submitted to different banks and payments were made multiple times to the entities in Hong Kong. The accused entities in conspiracy with the unknown bank officers, had illegally transferred funds out of India as import payments through forged Bills of Entries, Invoices etc., and caused huge loss of foreign exchange reserve of the country to the tune of Rs.2252 Crores. It is further contended that in pursuance of the conspiracy at Mumbai and other places during 2014-2016, the accused persons Mohd. Farooq, Mohd. Gaus, Mohd. Hussain @ Raja and other accomplice induced poor persons, to share their KYCs, by giving petty amounts and floated firms and companies in their names making Directors and Proprietors. The said accused persons obtained IEC, VAT and other registrations for 13 entities and opened current accounts in 6 Banks. Further, it is the contention of C.B.I. that during 2014-2016, the above said accused with assistance of Sona Kalia @ Kiran Kokare collected amounts to the tune of Rs.2252 Crores from various entities, who wanted to send money to Hong Kong illegally. The amounts so collected were layered through Angadias, Cheque Discount Brokers and through the accounts of the members of

Multistate Co-operative Societies viz.-Renukamata, Vishwakalyan, Mangaldeep, Venkatesh, Dyaneshwari & others and brought as RTGS credits into the account of the said 13 entities in the said banks. It is further contended by C.B.I. that said accused persons, along with assistance of others, prepared forged Bills of Entry for the name-sake firms in the same serial number, with inflated high USD value of the consignment and other details, and affixed forged seals and signatures of the Customs Officers of JNCH, Nhava Sheva and NCH, Mumbai. Further, the accused persons are alleged to have prepared forged invoices of Chinese suppliers for high value and forged Bills of Lading and other documents, and submitted to the said 6 banks between the years 2014-2016. The required funds were already layered into the accounts of the said accused entities. It is contended by C.B.I. that the banks converted the INR into USD as per the exchange rate and sent forex remittance on the USD value found in the forged Bills of Entry and Invoices to various entities in Hong Kong.

9. Delay in lodging F.I.R. initially in the year-2017, and thereafter, adding further sections and arresting accused in February-2022, is argued by learned Advocate for accused canvassing that in view of such conduct of prosecution, the accused may be released on bail. He further submitted that in the house-search of the accused, nothing was found as incriminating and C.B.I. seized Aadhar Card and Pan-Card of his family and child. C.B.I. further seized golden ornaments from the locker of wife of accused. Thus, he submitted that there is nothing on record against the accused to implicate him and proceed further. At this stage of the matter, the material so far gathered as appearing from case-diary and the case brought by C.B.I. in remand papers, shows the role of the present accused in the offence is that of assisting the prime

accused Mohd. Farooq Shaikh for inducing the poor persons, obtaining their KYCs and forming companies in their names. The accused is alleged to have actively participated in the crime while obtaining IEC and other registrations required as per law in the name of said persons, and accounts in the six banks were also opened by him. The accused is stated to have participated with Mohd. Farooq in collecting and layering of cash and getting the same as RTGS credit into the account of the accused companies. Accused had obtained stationery of the custodian for printing Bills of Entry and Bills of Lading, and forged rubber stamps of Customs Officers/Chartered Accountants and other firms. A major role is attributed to the accused in the offence acting in conspiracy with Mohd. Farooq, which has resulted into fraud to the tune of Rs.1463.35 Crores by means of 8 companies. The accused is also alleged to have been part of beneficiary of proceeds of crime as he collected funds from fund providers at Mumbai and other places for sending them to Hong Kong.

10. A further role of accused as is revealed during investigation is stated to be that of assistance to Mohd. Farooq. who arranged low value imports of chinese goods in the name of accused companies at JNCH, Nhava Sheva, Mumbai, and NCH, Ballard Estate, Mumbai, which were cleared by filing Bills of Entry. The value of the imported consignments as declared in the Bills of Entry in custom's record has been shown low. For effecting fraudulent forex remittance with above *modus operandi*, the accused is alleged to have obtained forged seals and rubber stamps of the customs officers and stationery for creating false and fabricated documents. By using the same, Mohd. Farooque Shaikh got prepared false and fabricated documents i.e. Bills of Entry, and invoices in the name of accused companies with magnified value at

twenty to thirty times, being more than the actual value of goods, by making forged signatures and affixing forged seals/stamps of Customs Officials. The accused, in furtherance of conspiracy with principal accused-Mohd Farooq, is alleged to have submitted false and fabricated documents to banks concerned, and thus, alleged to have facilitated the forex remittances fraudulently from the accounts of accused companies in Foreign Currency, being USD equivalent to Rs.1463.35 Crores, through the 8 entities to Hong Kong for number of times with HSBC Bank, Hong Kong. Thereafter, the principal accused Mohd. Farooque is alleged to have siphoned foreign remittance by debiting to the various parties at Hong Kong, and caused wrongful loss in the form of remittance of forex on the basis of false and fabricated documents and corresponding wrongful gain to the main accused Mohd Farooq and the present accused and others in addition, by receiving a huge amount in cash as the commission towards per USD sent abroad.

11. Keeping in view the role played by the present accused in the offence, at this stage of the matter it cannot be said that there is nothing incriminating against the accused in the case, and that on the ground of delay in arresting the accused after filing of F.I.R., he shall be released on bail. The seizure so far effected in this case by C.B.I., is in pursuance of the crime alleged against the accused, wherein he has actively participated. The learned Advocate for accused has further submitted that further custody of accused is not required as he is not main accused. He submitted that the accused may be released on bail as his family is dependant on him. On the other hand, learned P.P. submitted that the investigation is going on and is at a crucial stage, which will be affected if accused is released on bail, as there are chances of tampering evidence/witnesses. Learned P.P. relied on cases

of **Radha Kapoor, Akash Pathak, Serious Fraud Investigation Office v/s. Nittin Johari** (*supra*), wherein the matters dealt with were economic offences, and the above observations are made. In case of **State of Bihar v/s. Amit Kumar** (*supra*) the Hon'ble Supreme Court held that although 'bail is the rule and jail is an exception' is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail. In case of **Jameel Ahmad** (*supra*), the principles to be taken into consideration are restated. After careful perusal of the case-diary and the role alleged against the accused, at this stage of the matter, a sufficient *prima facie* evidence is appearing in order to show that the accused has actively participated in crime with Mohd. Farooq, and the activities so carried out were of criminal nature entailing consequences, whereby a fraud to a huge extent has been committed. The offence alleged against the accused is economic offence. The statements of witnesses and material shows such involvement of the accused in the crime. Therefore, the arguments made for accused of no role played by him in the offence cannot be accepted, and the accused cannot be released on bail in view of the ongoing investigation in such a huge scam.

12. Perusal of the facts of the present case at this stage of the matter show that accused is alleged to have played active role in the offence by mobilising name lenders, floating firms in their names, obtaining IEC and other required registrations, collecting and layering huge cash and getting the same as RTGS credit, securing stationery, forged rubber stamps of Customs officers and other authorities for forging Bills of Entry with high US Dollar value, and submitting the same to the banks for forex remittances on the basis of forged documents and diverting

the funds to abroad. The loss caused to the Government Exchequer by the act of accused in active participation with Mohd. Farooq is Rs.1463.35 Crores by illegally sending US Dollars of the said amount through 8 entities at Hong Kong at number of times. Considering the nature of accusations against the accused relating to the offence and the role played by him of participating in criminal activities alongwith accused Mohd. Farooq, at this stage of the matter, no case is made out to grant bail to the accused, as the prosecution is collecting the evidence and there is every likelihood of tampering evidence or threatening witness as is expressed by prosecution. The total amount alleged to have remitted as foreign exchange is Rs.2252.82 Crores to various entities in Hong Kong. The offence under Section 120-B read with Sections 420, 467, 468 and 471 of I.P.C. is being investigated by C.B.I. Out of the accused persons, the present accused came to be arrested on 22.02.2022. Therefore, release of the accused at this stage on bail may hamper the progress of investigation of a case of complex nature. Therefore, no case is made out to grant bail of the accused. Hence, I proceed to pass the following order.

Order

Bail Application No.189 of 2022 filed by applicant-accused No.1-
Mohammed Gous Mohammed Hanif Shaikh @ Mohd. Gous is
hereby rejected.



Date : 27.04.2022

(V. C. BARDE)
C.B.I. Special Judge,
City Civil & Sessions Court,
Gr. Bombay.

Dictated on : 27.04.2022
Typed on : 27.04.2022
Signed by HHJ. : 27.04.2022

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

**28.04.2022/ 12.58 p.m.
UPLOAD DATE AND TIME**

**Mrs. Pradnya S. Naik
NAME OF STENOGRAPHER**

Name of the Judge (with Court Room No.)	Shri. V.C. BARDE (CR.No.50)
Date of Pronouncement of JUDGEMENT/ORDER	27.04.2022
JUDGEMENT/ORDER signed by P.O. on	27.04.2022
JUDGEMENT/ORDER uploaded on	28.04.2022