MHCC020105602024

IN THE COURT OF SESSION FOR GREATER BOMBAY

CRIMINAL BAIL APPLICATION NO.1707 OF 2024

Sheriar @ Shoeb Mushtaq Chattriwala] ...Applicant.

Versus

The State of Maharashtra]
(At the instance of Kurla Police Station Vide F.I.R.]
No.103 of 2024)] ...Respondent.

Advocate Kazi for applicant /accused.
APP Sulbha Joshi for the State.
Advocate Neha Dedhia for intervenor.

CORAM : SHRI. S.B. PAWAR,
THE ADDL. SESSIONS JUDGE (C.R. No.58)
DATE : 19th JULY, 2024.

<u>O R D E R</u>

The applicant, who is in custody in connection with FIR No.103 of 2024 registered for offence under sections 419 and 420 of the Indian Penal Code, has filed the present application for regular bail under section 439 of the Code of Criminal Procedure, 1973.

2. The FIR is registered on the basis of complaint lodged by first informant Ghanshyam Kishorilal Verma. As per the case of informant, in the year 2018 he was residing at Goregaon, Mumbai. On 26.07.2018 he received message and call from a person and the said person informed him about investment scheme. The applicant thereafter

met him and informed that on the investment of Rs.1 lakh, he would get Rs.10,000/- per month for 12 months. The applicant executed one agreement in his name as Memon. First informant issued cheque of Rs.1 lakh to the applicant but he did not receive Rs.10,000/- per month as promised by the applicant. Applicant avoided contact with the first informant on telephone.

3. It is further alleged that in August, 2023 applicant made call to the first informant and asked the first informant to invest in Forex scheme to get back his amount of RS.1 lakh. Thereafter, from time to time, the applicant demanded money from the first informant and first informant transferred the amounts to the bank accounts on the instructions of the applicant. It is alleged that till June, 2023 first informant transferred aggregate amount of Rs.80 lakhs to the applicant in various bank accounts by Paytm, Money Transfer, Phone Pay, RTGS etc. However, the applicant avoided to repay the amount to the first informant. Therefore, he ultimately lodged complaint against the applicant.

4. Heard learned Advocate for the applicant, learned APP for the State, Investigating Officer and learned Advocate for the intervenor. Learned Advocate for the applicant argued that the occurrence period as per FIR is from 26.07.2018 to 05.07.2023. It indicates that there was business between the applicant and first informant for almost six years. There is delay in lodging FIR. In the WhatsApp chats between the applicant and first informant, the print outs of which are annexed with the application, first informant has acknowledged receipt of amounts from the applicant. The claim of amount of Rs.80 lakhs in the FIR is not substantiated as there is no witness to the said transaction. During the

business transactions of six years, first informant never questioned identity of the applicant. There is no case of investment. During investigation, house of the applicant is searched. Nothing is remained to be recovered. The transactions with other persons can not be clubbed together in the transaction with first informant. As on today, there are no dues left to be paid by the applicant. Dispute is of civil nature. On the same grounds, complaint was lodged by the first informant at Nashik. Kurla Police Station have no jurisdiction in the matter. Therefore, he urged to admit the applicant to bail on any terms and conditions.

5. *Per contra*, learned APP argued that large amount is involved in the offence. Reply filed by investigating officer shows that applicant has criminal antecedents. There is possibility that applicant may flee out of India or he may tamper with the evidence as large amount is involved. Learned Advocate for intervenor, in addition, argued that the first informant had amount available with him as he had received service fund of Rs.35 lakhs and sale consideration of Rs.60 lakhs of his flat. He has produced on record the details of transactions. During investigation, investigating agency has collected material to show that amount around Rs.46 lakhs was transferred by the first informant and witnesses in the bank accounts of the applicant and remaining amount out of Rs.80 lakhs is transferred by the first informant by withdrawing cash from his account and transferring it to the applicant through Phone Pay, G pay etc. There is sufficient material against the applicant and therefore, he can not be released on bail.

6. I have carefully considered rival submissions of both the sides. It is matter of record that applicant had approached this Court by

filing Anticipatory Bail Application No.686 of 2024. This Court initially had granted interim pre-arrest bail to the applicant vide order dated 26.04.2024. The investigating agency was directed to file additional reply and the applicant was directed to co-operate the investigating officer by attending the police station. At the time of passing final order, whereby the application came to be rejected by vacating pre-arrest bail, this Court had observed that the nature of transaction between the applicant and first informant is not clear from the documents on record. However, after going through the WhasApp messages between the parties as it appeared prima facie that by taking undue advantage of helpless situation of the first informant, the applicant compelled him to make numerous transfers in order to get back his amount, his custodial interrogation was felt necessary for the purpose of investigation. Accordingly, thereafter the applicant came to be arrested and after initial police custody, he is remanded to judicial custody.

7. It is the case of the first informant in the FIR that not a single penny out of Rs.80 lakhs is repaid to him by the applicant. Alongwith the application for bail, print outs of WhasApp chats dated 17.12.2022, 01.01.2023, 31.01.2023, 01.02.2023 and 07.02.2023 are annexed which prima facie indicate that first informant acknowledged receipt of certain amounts from the applicant and some messages also acknowledged that no dues were pending. WhatsApp number in those chats is not disputed by the first informant. Thus it prima facie appears that the real transaction is not disclosed in the FIR.

8. Learned Advocate for the intervenor has produced on record a bunch of print outs of WhatsApp messages between the first informant and the applicant. These messages appear to be of the period

from 30.01.2023 to October, 2023. The nature of transaction is not made clear by both the sides. The investigating officer does not seem to have investigated about the WhatsApp messages between the parties as reply Exh.4 is totally silent on those messages.

9. It appears from the print outs of WhatsApp messages brought on record by the first informant that it is prima facie a case of investment in Forex or Forex Trading. During investigation with the applicant, nothing incriminating appears to be seized at his instance. In order to ascertain the real transaction between the parties, trial of the matter is required. However, at this stage, when the contents of FIR are not consistent with the documents in the form of WhatsApp communications between the parties, the applicant is in custody since 31.05.2024 and sufficient custodial interrogation has been carried during investigation, in my opinion, his further detention in the custody is not necessary and he can be enlarged on bail on suitable terms and conditions. Thus, I pass following order:

O R D E R

1. Criminal Bail Application No.1707 of 2024 is allowed.

2. The applicant Sheriar @ Shoeb Mushtaq Chattriwala, who is accused in F.I.R. No.103 of 2024 registered with Kurla Police Station for offence under sections 419 and 420 of Indian Penal Code, be released on his executing PR Bond of Rs.50,000 /- (Rupees Fifty Thousand Only) with one or two sureties in the like sum on following conditions:-

(a) The applicant shall attend Kurla Police Station on every first Monday of the month in between 10.00 a.m. to 1.00 p.m. till further order.

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

(c) The applicant shall not tamper with evidence of the prosecution.

(d) The applicant shall not commit similar offence while on bail.

(e) The applicant shall submit documents regarding his permanent address and contact details to the concerned police station and the Court, within seven days of his release and if in future, there is any change in his address or contact details, intimate the same to the concerned police station.

(f) The applicant shall not leave India without prior permission of learned trial Court.

(g) The applicant shall deposit his passport with the concerned police station. In case, he has no passport, he shall file affidavit to that effect.

3. Breach of any of the above conditions shall entail the cancellation of the bail.

4. Provisional cash bail of Rs.50,000/- allowed for the period of 6 weeks.

5. Criminal Bail Application No.1707 of 2024 stands disposed off accordingly.

DISTRICT COURTS MAHARASHTRA
सत्यमेव जयते

SACHIN BALVANT PAWAR
Digitally signed by SACHIN BALVANT PAWAR
Date: 2024.07.22 16:52:05 +0530

(**S.B. PAWAR**)
Additional Sessions Judge
City Civil & Sessions Court,
Gr. Bombay

Date : 19/07/2024

Order Dictated on: 19/07/2024
Transcribed on : 20/07/2024
Checked on : 20/07/2024
Signed on : 20/07/2024

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Name of Stenographer
22.07.2024	4.50 p.m.	ARUN ANNAMALAI MUDALIYAR

Name of the Judge (With Court Room No.)	SHRI. S.B. PAWAR (CR 58) THE ADDL. SESSIONS JUDGE
Date of Pronouncement of JUDGEMENT /ORDER	19.07.2024
JUDGEMENT /ORDER signed by P.O. on	20.07.2024
JUDGEMENT /ORDER uploaded on	22.07.2024