IN THE COURT OF THE ADDL. CHIEF METROPOLITAN MAGISTRATE,
47TH COURT, ESPLANADE, MUMBAI.
B. A. No. 219/BA/2019

Amar Bishwnath Agarwal — Applicant/accused

V/s.

The State (E. O. W) — Complainant

C.C. No.605/PW/2019 (C. R. No.74/2017)

ORDER BELOW BAIL APPLICATION

1. This is an application for bail u/sec. 437 of Code of Criminal Procedure 1973.

2. The accused is arrested in respect of Crime Register No. 74/2017 for offence u/sec. 406, 420, 465, 467, 468, 471, 120(B) of Indian Penal Code. This offence is investigated by Economic Offences Wing .

3. The prosecution case is as follows.

It is alleged by the prosecution that accused in furtherence with common intention with other two accused, have prepared false and fabricated documents and cheated informant Mr. Ronald Charles Ward for huge amount by maintaining false and fabricated account statements.

4. The accused is arrested on 12.06.2019. He is in magisterial custody from 24.06.2019.

5. This is the second bail application of the accused. The first bail application of the accused was filed before filing of the charge-sheet and it was rejected on 08.07.2019. The prosecution came with the case that huge amount is siphoned by the accused.

6. Regarding the status of investigation, charge-sheet has been filed by the Investigating Officer.

7. The grounds for bail raised by the accused are incorporated in the application. This order is passed below the same, therefore its reproduction is avoided for the sake of brevity.

8. Prosecution has filed its say to this application for bail. The prosecution side has strongly opposed the bail application contending that offence is serious and accused may tamper the evidence, if he released on bail. The accused may also dispose off the siphoned amount, if he released on bail.

9. Perused the application, say and record of the case. Heard the advocate for the accused, Learned APP, Investigating officer and advocate for the first informant at the length.

10. The accused has prayed for bail on ground that investigation is completed. It is submitted that accused has co-operated the investigation prior to registration of F.I.R. and he will not abscond.

11. This case is outcome of frustration of contract between accused and informant company. The arbitration proceeding has been initiated in the year 2013 and arbitration award has been passed. The FIR is lodged on 27.09.2017 and accused is arrested on 12.06.2019. This delay itself speaks in volume.

12. There is marked distinction between breach of trust and breach of contract. Breach of contract would become breach of trust, only if, there is intention to deceive from the period of inception of contract. On perusal of documents, it appears that informant company invested for the purpose of expansion of its business and it comes with calculated risk. The business module could not work out. It is not the case of the prosecution that accused has siphoned all the amount invested by the informant company. It is the case that work was not upto mark and accused did not credit his proportionate contribution towards equity. The arbitration award has been passed and it is pending for execution.

13. However, accused is in jail for the period of more than 92 days. The charge-sheet has been filed. On careful perusal of the charge-sheet and on hearing arguments, this court is of the opinion that no purpose could be achieved by keeping accused behind bar as under-trial prisoner. This case is based on documentary evidence. All the documents are seized. There is no probability of accused interfering with the investigation or tampering with the evidence. The offence alleged are triable by Magistrate.

14. The other apprehension raised by the prosecution side is that accused may abscond, if he is released on bail. The possibility of accused absconding from India can be eliminated by way of condition as to surrender of passport with police. In addition to it, condition as to attend the police station and disclosure of whereabouts is put as a condition to ensure that the activity of the accused remains within the knowledge of the police.

15. It is settled law that bail is a matter of right and jail is an exception. It is held that the presence of accused can be secured at trial if accused is released on bail with conditions. There is least possibility of tampering of evidence by the accused. Accused is permanent resident of New Delhi. The presence of accused can be secured if he is released on bail with heavy surety and conditions. In this background, this application for bail deserves to be allowed on following terms and conditions.

ORDER

1. Accused Amar Bishwnath Agarwal be released on P.B. and S.B. of Rs.5,00,000/- (Rs. Five Lakhs Only) with solvent surety of like amount in addition to cash security of Rs. 3,00,000/- (Rs.Three Lakhs Only). Four weeks time is granted to accused to furnish surety. Accused be provisionally released on depositing cash security of Rs.3,00,000/-.

2. He should not tamper with the evidence and prosecution witnesses.

3. He shall not leave India without permission of the Court.

4. He is directed to provide two contact numbers of his relatives and provide proof of his permanent resident in India.

5. He is directed to deposit his passport, if any, to the Investigating Officer.

6. He is directed to attend E.O.W. office in between 11 a.m. to 5 p.m. on every first and third Monday till further orders.

Dt. 13/09/2019

(Smt.S. G. Shaikh)
Addl. Chief Metropolitan Magistrate,
47th Court, Esplanade,Mumbai.

Sabiha Gulamhusen Shaikh

Digitally signed by Sabiha Gulamhusen Shaikh