

Order below Exh. 7 in R.C.C. No. 136/2022

CNR-MHSN-12-000784-2022

(State Vs. Sharik Mustak Ahamad Shaikh etc)

This is application filed by the accused no. 1 namely Sharik Mustak Ahamad Shaikh for grant of bail under section 437 of Cr. P. C. This is the second bail application filed after filing of charge-sheet. The first bail application and after filing of charge-sheet bail application was rejected.

2. Before filing of chargesheet, bail application was preferred but the accused failed to proceed further. Present second time application is filed by accused No. 1 Sharik Ahamad Shaikh. Before dealing with the application, it would be appropriate to mention the facts of the case.

3. It is case of the prosecution that informant namely Ranjit Ishwar Bagal has given money in installment to the accused for getting the post of Clerk in Railway Department. The accused have given false assurance for giving job in the Railway Department. Since 2018 they have been received about 10,05,000/- in installments.

4. The accused No. 1 is in jail. While accused No. 2 to 4 are absconded. Therefore, charge-sheet is filed accordingly. The accused No. 2 has met with informant and has given false assurance that he will assist in getting job in Railway Department for Clerk. The informant has given 4,00,000/- to accused No. 2. Thereafter, the accused No. 2 said to the informant that accused No. 1 Sharik Ahamad Shaikh is the Superior Officer and Sharik Shaikh has received 4,00,000/- rupees from accused No.2. Thereafter, accused No. 1 Sharik has made telephonic call to the informant and demanded Rs. 2,00,000/-. The informant is having faith over accused, therefore, he send Rs. 1,80,000/- through R.T.G.S. to

accused No.1. Thereafter, accused No. 1 again demanded Rs. 25,000/- for giving joining kit. Informant has given the amount of Rs. 25,000/- in cash. Not only this accused Sharik Shaikh again demanded Rs. 2,00,000/- and had given assurance that work of appointment as Clerk in Railway Department is going to be completed. The informant again has given Rs. 1,00,000/- to accused No. 3. Thus, this is the story of prosecution.

5. The Ld. Advocate for accused Adv. Ritesh K. Kuril vehemently argued that F.I.R. is lodged on 18/06/2022. There is delay of four years. The FIR is lodged after thought. Investigation is completed. No recovery is pending applicant / accused is ready to bind with any condition if imposed by this Court. He is ready to give surety. He will assist to the Police agency in investigation. He is the karta of family. Hence, he may be released on bail.

6. On the contrary the Ld. Advocate S. V. Patil for State argued that there is prima facie involvement of accused. Offence is serious one. Nature of offence is economic in nature. Applicant / accused is the prime accused. Only filing of charge-sheet is not a ground for releasing the accused. She relied upon authority of Apex Court reported in **Criminal Appeal No. 601 of 2017, Virupakshappa Gowda & ors. V/s State of Karnataka**. Wherein it is held that filing of charge-sheet does not in any manner lessen the allegation made by prosecution. On the contrary filing of charge-sheet establishes that after due investigation the investigation agency, having found materials, has placed the charge-sheet for trial of the accused persons. The Ld. A. P. P. further argued that offence is based upon documents and facts and circumstances. Considering the seriousness and gravity of the offence, the application of accused may be rejected. Say of Investigating Officer was also called upon but he failed to file his say today, hence, application was proceeded without say of Investigating Officer.

7. On perusal of FIR, remand paper and on hearing both the side, it is admitted that charge-sheet is filed against four accused. Accused No. 2 to 4 are abscond. They have given three cheques to informant. Though no any cheque given by applicant / Sharik, but in the FIR and charge-sheet it is mentioned that applicant / accused Sharik has been shown as superior officer of Railway Department. Further it shows that he has received Rs. 2,00,000/- from informant in cash. Again he received Rs. 25,000/- for giving joining kit. Moreover, again the applicant / accused Sharik demanded 1,00,000/- for joining of informant in the Railway Department for the post of Clerk. When the informant went railway station and met with Railway Authority realized that accused have cheated to him and induced to deliver amount in installment. Hence, there appears the prima facie involvement of applicant / accused Sharik.

8. So far as question relating to delay in logging FIR is concern it is lodged on 18/06/2022. The contents in FIR and charge-sheet showing that the accused have been cheated to the informant since 2018. The accused have falsely received total amount of Rs. 10,05,000/-. This amount is not received at one time. It is received by them in installment on various reasons. Hence, there appears continuous cause of action to file the criminal proceeding and delay is not fatal to the prosecution story. Therefore, I am agree with the argument advanced by Ld. A. P. P. and cited authority of Supra **Virupakshappa Gowda & ors. V/s State of Karnataka** that after filing of charge-sheet the accused would not be entitled as of right to be released on bail, when the charge against them is leveled and final report is filed. Therefore, he may be flee from justice can not be declined. There is every possibility that accused will abscond if released on bail and it will hamper the trial.

9. Today the matter is fixed for evidence for prosecution. Informant PW1 is present. Accused is produced through video conferencing but the advocate for accused Ritesh K. Kuril not ready to cross examine the informant. Admittedly, the present matter is being tried as under trial. No change in circumstances found which suggest to release the accused on bail. Trial is in progress but the accused is prolonging the matter by filing third bail application. Therefore, considering the facts and circumstances of the case, nature and gravity of offence, I am not inclined to allow the application. Accordingly, I pass the following order;

ORDER

Application stands rejected.

Date : 10/03/2023

Place :Palus

(I. A. Y. A. Khan)

Judicial Magistrate, F.C., Palus

CERTIFICATE

I affirm that, the contents of this P.D.F. file are same, word to word, as per the original.

Name of Stenographer	:	Mrs. S. V. Kadam Stenographer Grade III
Court	:	Jt. C.J.J.D. & J.M.F.C., Palus
Date	:	10/03/2023
Signed by P. O. on	:	10/03/2023
Uploaded on	:	14/03/2023