(2021) 12 BOM CK 0096

In the Bombay High Court

Case No : Anticipatory Bail Application No. 306 Of 2020

Aarish Shaikh Fakaruddin Lokhandwala And Others APPELLANT

Vs

State Of Maharashtra RESPONDENT

Date of Decision : 18-12-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120(B), 406, 420, 465, 467, 468, 471
Information Technology Act, 2000 — Section 66B, 66C, 72(1), 75
Indian Telegraph Act, 1885 — Section 25A
Code Of Criminal Procedure, 1973 — Section 173

Citation : (2021) 12 BOM CK 0096

Hon'ble Judges : N.J. Jamadar, J

Bench : Single Bench

Advocate : A.M. Saraogi, Siddharth Jaiswal, Pallavi Dabholkar, N.K. Kulkarni

Final Decision : Dismissed

Judgement

N.J. Jamadar, J

1. The applicants who have been arraigned for the offences punishable under sections 120(B), 406, 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code, 1860 ('Penal Code'), sections 66B, 66C, 72(1) and 75 of Information Technology Act, 2000 and section 25A of the Indian Telegraph Act, 1885 have preferred this application for pre-arrest bail.

2. The indictment against the applicants is that the applicants were operating a Shell Company Alreef Trading Private Limited. The applicants had employed a number of persons including the co-accused, who were apprehended on 27th November 2019. In pursuance of the criminal conspiracy, the applicants and other accused illegally used the VPN (Virtual Personal Network) system and ran a call centre. The applicants made a false representation to foreign nationals of availing to them loan facility, particularly to those who had low credit rating. They gained the confdence of such persons and made them to part with personal login ID, Password or ATM number, PIN number and a VOID cheque bearing the

signature. The applicants and the accused committed forgery of the VOID cheuqe by making use of electronic means. Further, the applicants issued a forged loan sanction letter and transferred 13% to 15% of the sanctioned amount, representing that said amount was towards processing fees and tax. Thereafter, the accused made such customers to purchase wall mart card or ebay card etc. and further deceived them to part with the card number and PIN number and, eventually, got the amount transferred dishonestly.

3. The applicants claimed that the applicants have not at all indulged into the activities attributed to the applicants. None of the foreign nationals, who were allegedly deceived, has come forward to lodge report. Nor the investigating offcer has been able to show that any amount was credited to the accounts of the applicants. Thus, even if the prosecution case is taken at par, no offence can said to have been prima-facie made out. Moreover, all the 19 accused, who were apprehended in the instant crime, have since been released on bail. Hence, the custodial interrogation of the applicants is not at all warranted.

4. The prosecution resisted the application.

5. I have heard Mr. A.M. Saraogi, the learned counsel for the applicants and Ms. Pallavi Dabholkar, the learned APP for the State at some length.

6. Inviting the attention of the Court to the say and objection fled by the investigating agency before the learned Sessions Judge, wherein it was alleged that the applicants had deceived the foreign nationals to the tune of Rs.12,33,03,357/-, Mr.Saraogi would urge that the investigating agency had not been able to show that any amount, much less the aforesaid huge amount, had fraudulently been transferred to the account of any of the applicants. Since, the investigating agency has positively asserted that the sum of Rs.12,33,03,357/- was siphoned off, it was incumbent upon the prosecution to substantiate the said claim albeit prima facie. In any event, all the co-accused who were arrested, have since been released on bail. From the own showing of the prosecution, all the incriminating articles including the computer, hard-discs and record have been seized by the police. Post completion of investigation, charge-sheet has been lodged against the co-accused for the offences punishable under sections120(B), 406, 420, 465, 467, 468, 471 read with 34 of the Penal Code, sections 66B, 66C, 72(1) and 75 of Information Technology Act, 2000 and section 25A of the Indian Telegraph Act, 1885. Thus, at this juncture, the custodial interrogation of the applicants is not at all warranted. Therefore, the applicants deserve to be released on bail, in the event of arrest. An endeavour was also made to demonstrate that the applicants have roots in society and there is no likelihood of tampering with evidence and threatening the witnesses.

7. In opposition to this, Ms.Dahbolkar, the learned APP stoutly resisted the prayer for pre-arrest bail. It was submitted that the applicants are the mastermind behind the offences. There is adequate material in the form of the statements of witnesses and the disclosure statement made by the co-accused to indicate that

the applicants had employed the persons in pursuance of a well though out criminal conspiracy to deceive foreign nationals. Custodial interrogation of the applicants is indispensable for unearthing the fraud and to unravel facts as regards the modus operendi as well as benefciaries of the fraudulent activities. In the circumstances, the applicants do not deserve the discretionary relief, urged Ms. Dabholkar.

8. I have given anxious consideration to the rival submissions. With the assistance of the learned counsels for the parties, I have perused the material on record including the copy of the report under section 173 of the Code of Criminal Code, 1973 lodged against the co-accused.

9. In the backdrop of the nature of accusation which essentially revolves around the use of a call centre machinery, make unauthorised and unlawful use of database, make calls to the foreign nationals, persuade them to part with personal information, making them to repose confdence in the persons who made the calls, and eventually siphon off the amount, it can hardly be disputed that the matter warrants diligent investigation.

10. Undoubtedly, in the reply fled before the learned Additional Sessions Judge, the investigating agency had asserted that that the applicants has siphoned off a huge sum of Rs.12,33,03,357. At this juncture, the fact that the investigating agency could not substantiate the said claim qua the applicants, if viewed through the prism of the charge-sheet lodged against the co-accused, does not seem to be decisive. What is of critical signifcance is the fact that the one of the co-accused Trupti Rajesh Jaiswal made a disclosure statement and divulged the modus operendi. The disclosure statement led to discovery of the incriminating material including the documents pertaining to foreign nationals. At this stage, the statement made by the co-accused Trupti Rajesh Jaiswal assumes signifcance. It indicates that the applicants had assumed false names and even the employees introduced themselves by false names. Specifc role of furnishing the data and sending and receiving messages online to authorise the communication of the forged loan sanction letter and the transfer of amount have been levelled against the applicants.

11. In the backdrop of the aforesaid material on record, which indicates that applicants were fraudulently obtaining personal login ID, Password or ATM number and PIN number etc., to facilitate further investigation to unearth fraud and unravel the truth, custodial interrogation of the applicants seems indispensable.

12. The mere fact that the employees were arrested and released on bail does not necessarily imply that further investigation qua the applicants, is unwarranted. In the light of the nature of the accusation, in my considered view, it would not be expedient to exercise the discretion in favour of the applicants.

13. For the foregoing reasons, I am not inclined to consider the prayer of the applicants for pre-arrest bail.

14. Hence, the application stands rejected.

