(2017) 04 BOM CK 0221

In the Bombay High Court

Case No : 2511 of 2016

Deepak Charandas Bhatia APPELLANT

Vs

The State of Maharashtra and ors. RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 82 - Proclamation for person absconding
Indian Penal Code, 1860, Section 120B, Section 468, <a href=1767-

Citation : (2017) 04 BOM CK 0221

Hon'ble Judges : A.S.Gadkari

Bench : SINGLE BENCH

Advocate : Charanjeet Chanderpal, Namita Shirke, B. Dsouza, M.K. Sanghani, P.P. Shinde

Judgement

1. This is an application under Section 439 of the Code of Criminal Procedure. The applicant is seeking bail in CR No.48/2013 dated 5.6.2013 registered with M.R.A. Marg Police Station, Mumbai under Section 409,4654, 467, 468, 471, 520 read with 120B of the Indian Penal Code

2. The record reveals that the first information report is lodged by Shri. Hemant Dave, Branch Manager of Kopol Coop. Bank, Ghatkopar Branch on 5.6.2013. It is the prosecution case that the applicant is the Proprietor of Decent Corporation. The co-accused Kuresh Taherbhai Rajkotwala and Zujer Rajkoltawa are partners/directors of M/s. Taher Impex Pvt. Ltd.. That, co-accused Manjula Nair was the Branch Manager of Indusind Bank and the co-accused Hiren Jaswant Mehta was the director of the Kopol Coop. Bank and co accused Hiren Mehata was Branch Manager of Kopol Coop. Bank.. It is the prosecution case that the applicant in conspiracy with other accused persons prepared forged and fabricated documents including the letter of credit and availed bill discounting facility. It is submitted that a letter of credit of Indusind Bank was prepared by the accused persons and the same was submitted for realization with the Kopol Coop. Bank

wherein the applicant was having an account in the name of Decent Corporation. That, by encashing the credit facility by submitting bogus and fabricated documents Kopol Coop. Bank was put to loss of 7,49,93,100/In the premises, the first information report was lodged on 5.6.2013.

3. The record further revels that during the course of investigation, co-accused Zujer Rajkotwala was granted pre-arrest bail by the Sessions Court on 28.8.2014. The co-accused Kuresh Rajkotwala and Smt. Manjula Nair were released on regular bail by the Trial Court in the month of January, 2014. That co accused namely Jayant Das is still absconding. That the applicant came to be arrested on 28.8.2016 and after completion of investigation the police have submitted the charge sheet on 25.11.2016.

4. The record reveals that when co-accused Kuresh Rajkotwala was in custody, he moved an application for regular bail and submitted an undertaking that he will pay the amount of Rs. 7.50 crores with the complainant Kopol Coop. Bank thereby making part of the loss good. On the basis of the said undertaking he was granted bail by the Trial Court. It appears that as he committed breach of the said undertaking, his bail was cancelled and subsequently this Court by an order dated 1.8.2014 passed in Criminal Application No. 1432/2014 granted bail to accused No.1 Kuresh T. Rajkotwala.

5. The learned counsel appearing for the original complainant submitted that the applicant was absconding for a period of 3 years. He is beneficiary of huge amount of Rs. 7.49 crores and it is the applicant who has prepared all bogus documents which were subsequently submitted to the bank for availing credit facility. He therefore submitted that as the present crime involves huge financial transaction thereby causing loss to the Kopol Coop Bank, the applicant may not be released on bail.

6. As stated earlier the record reveals that the present crime was registered on 5.6.2013 and the applicant was arrested on 29.8.2016. It appears that the record is silent about the steps taken by the investigating agency in either arresting the applicant in the intervening period or taking any steps for issuing proclamation as contemplated under Section 82 of the Cr.P.C. and therefore, the submission that the applicant was absconding for a period of 3 years according to me at this stage does not hold any substance in it. It further appears from the record that during the pendency of this application the applicant was released on temporary bail by this Court by its Orders dated 23.1.2017 and 2.2.2017 for attending the marriage of his son and daughter respectively and the applicant has complied with the conditions imposed upon him by the said orders and has surrendered to the Jail authorities within the stipulated period.

7. The investigation in the present crime is already completed and the investigating agency has submitted charge sheet on 25.11.2016. As stated earlier all other accused persons have been released either on pre-arrest or on regular bail by the trial Court or this Court. The applicant is aged about 60 years

as of today. In view of the earlier conduct of the applicant of his reporting to the Jail authorities in time, the apprehension of the prosecution agency that he may abscond according to me has no merit. In view of the above, the applicant has made out a case for releasing him on bail. However, the apprehension expressed by the prosecution that the applicant may abscond after release on bail can be taken care of by imposing stringent conditions upon him.

8. Hence, the following order. a) The applicant be released on bail on his furnishing PR bond of Rs. 1.00 lac with one or more solvent local sureties in the like amount.

b) Before his release from jail, the applicant shall submit the documents pertaining to his prospective residential address with the investigating agency and to the Trial Court. c) Before his release from jail the applicant shall deposit his pass port if he has, with the investigating agency.

d) After release the applicant shall attend the Investigation officer on every 1st Monday of the month between 11.00 a.m. to 2.00 p.m. till the completion of trial. e) The applicant shall attend all the dates before the Trial Court.

f) Any two consecutive defaults will attract the provisions of cancellation of bail. g) Application is allowed in the aforesaid terms.

Application allowed.

