

(2009) 10 BOM CK 0090

In the Bombay High Court

Case No : Criminal Application No"s. 3271 and 3272 of 2009

Fida Hussain Yahyabhai Bohra

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 120(B), 166, 167, 201, 34
Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2009) 10 BOM CK 0090

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—By Criminal Application No. 3271 of 2009, the applicant prayed for grant of bail in Crime No. 495/2006 reported at Gadege Nagar Police Station, Amravati under Sections 166, 167, 201, 406, 409, 420, 467, 468, 471, 477(A) read with Sections 120(B)/34 of the Indian Penal Code further read with Section 7, 13(i)(d)(i), (ii), (iii) of the Prevention of Corruption Act.

2. By Criminal Application No. 3272 of 2009, the applicant prayed for grant of bail in Crime No. 262/2006 reported at City Kotwali Police Station, Amravati under Sections 166, 167, 201, 406, 409, 420, 467, 468, 471, 477(A) read with Sections 120(B)/34 of the Indian Penal Code further read with Section 7, 13(i)(d)(i), (ii), (iii) of the Prevention of Corruption Act.

3. Heard Shri Majid Menon, the learned Counsel for the applicant and Shri D.B. Patel, the learned APP for respondent/State.

4. The learned Counsel for the applicant submitted that the charge sheets have already been filed in Special Case Nos. 5/2009 and 6/2009 in respect of accusations as mentioned. He further submitted that the trial in both the special cases would require long time. Therefore, the applicant be released on bail

subject to conditions that the applicant is ready and willing to abide by the conditions that may be imposed by this Court. It is also contended that most of the evidence in the special cases is of documentary nature and the charge sheets have already been filed. The applicant would be in a better position to defend the cases if he is released on bail. On the other hand, if he remains behind the bars during pendency of trial, it may amount to pre trial punishment. Learned Counsel for the applicant also contended that general rule is bail and not jail and, therefore, the denial of bail by the learned Additional Sessions Judge, Amravati to the applicant is unjust and improper by order dated 14.09.2009. He made a reference to the rulings in the cases of Bhagirathsinh Judeja Vs. State of Gujarat, and Fida Hussain Bohra .v. State of Maharashtra (reported in 2009 All MR (Cri) 1229 (SC)). It is submitted that the charge sheets containing about 4500 pages have been submitted in the trial Court and there is no likelihood to tamper with such voluminous evidence. Therefore, the applicant be released on bail with appropriate conditions. It is further submitted on behalf of the applicant that all other coaccused have been granted benefit of bail. Therefore, on the ground of parity also the applicant be released on bail.

5. Shri D.B. Patel, the learned APP appearing on behalf of the respondent/State vehemently opposed grant of bail in favour of the applicant on the ground that the accusations against the applicant are very serious particularly under Sections 409 and 467 of the Indian Penal Code, the offences are punishable to the extent of imprisonment for life. If the applicant is released on bail, he is an influential person and can influence witnesses and frustrate the trial. Learned APP also submitted that the learned Additional Sessions Judge, Amravati, rejected the pleas for bail advanced by this applicant after considering the submissions along with the rulings cited and also rejected the applications for bail filed by the applicant. Regarding the merits of the bail applications, learned APP contended that the accusations against the present applicant are very serious. The material collected during the investigation also prima facie indicates the involvement of the present applicant in both the cases reported in Amravati District at City Kotwali and Gadge Nagar Police Stations, Amravati. Crores of rupees belonging to the State Government were misappropriated as reported by Special Auditor in 2006 and the investigation revealed the involvement of the present applicant as Chief Operator of various bogus bank accounts acting along with his brothers and relatives. Some of them are still absconding. Various bogus companies were floated. Accounts were opened in the firms' name, such, as M/s. Sapna Enterprises, M/s. Unique Traders etc. Statements of various witnesses from the bank concerned also indicate the involvement of the applicant indicating as to how the applicant and his brothers had opened and operated various accounts in the bank in the name of various companies and fictitious persons. The applicant is facing accusation that he had on the basis of bogus documents, submitted various bills purportedly from various companies in respect of purchase of material which in fact were not supplied but obtained bogus sanction orders in order to recover the money from the government and misappropriate it. Thus,

according to learned APP, crores of rupees were siphoned off by the present applicant in connivance with others.

6. Regarding the contentions as to parity, the learned APP submitted that the seriousness of the accusations against the present applicant are such that he is kingpin and Chief Operator as well as mastermind behind the economic crime by which crores of rupees belonging to State Government were siphoned off. Therefore, he cannot claim parity in respect of bail orders granted in favour of other coaccused in case, particularly when some of his associates are still absconding and further investigation as contemplated u/s 173(8) of the Code of Criminal Procedure is still going on. In respect of enormous gravity of the crime, the learned APP also submitted that it is economic crime and deliberately executed with cool calculations. Therefore, merely because the charge sheets have been submitted in the trial Court is no ground to grant benefit of bail in favour of the present applicant. More particularly when the applicant was involved in similar crimes and appears to be habitual offender. According to the learned APP, the applicant is also facing identical accusations in Crime No. 98 of 2004 reported at Sarkarwada Police at Nasik, in Crime No. 198/2004 reported at Chandrapur Police Station, Chandrapur and in Crime No. 122/2006 reported at Murtizapur Police Station, District Akola, apart from his prima facie involvement in the present economic crimes.

7. It is no doubt true that ordinarily when charge sheets have been filed in the cases, bail may be granted on the basis of principle that it may amount to pretrial punishment if accused has to remain behind the bars pending hearing and disposal of the trial. Normally, therefore, as a general rule, benefit of bail is granted in favour of the accused, but the Court cannot overlook or disregard the nature of accusations against the accused concerned. Some times bail is granted with stringent conditions in order to meet the ends of justice after investigation is complete and when the trial is pending. In the present case, it appears from the submissions advanced before me that further investigation as contemplated u/s 173(8) of the Code of Criminal Procedure in respect of accusations against the present applicant is still in progress. Some of the alleged offenders are still absconding according to the learned APP. Under these circumstances, considering the gravity and serious nature of accusations against the applicant as also number of past criminal cases pending against him, I think the learned Additional Sessions Judge, Amravati was well within his discretion to deny benefit of bail to the present applicant, considering huge financial scandal of wrongfully gaining quick or easy money worth crores of rupees from the government exchequer.

8. In the ruling *Fida Hussain Bohra .v. State of Maharashtra* (cited supra), it does appear that in the facts and circumstances of that case, the order by the High Court cancelling anticipatory bail granted by the learned Sessions Judge, was set aside by the Apex Court directing that the accused may be interrogated by investigating agency at any time suitable for the investigating officer either alone or with other accused persons as per direction from the learned Sessions Judge

concerned. To my mind, the ruling given in the peculiar facts and circumstances of that case cannot come to the rescue of the applicant in the present cases for claiming benefit of bail. The Apex Court in the case of State of Gujarat .v. Mohanlal Jitmalji Porwal and Anr. (reported in AIR 1987 SC 1321) has observed thus:

The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculations and deliberate design with an eye on personal profit regardless of the consequences to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National economy and National interest.

9. The above observations would indicate as to how economic offenders are treated as more dangerous than even murderers in the society. The gullible poor public always suffer when economic offences involving huge finances are committed against the State and the Society at large. The potential of injury is to those poor citizens who visit and suffer the most by going to public hospitals owned by government with minimum expectations to receive medical treatment with reasonable facilities as should be available in public hospitals. If any person has indulged into deliberate swindling of crores of public money to make quick and easy money with eye on personal profit, without in fact supplying the necessities to the hospitals and there appears prima facie grounds to believe into the accusations levelled against him, such person cannot be enlarged on bail to be let loose on the society particularly when past criminal cases were reported against him and are still pending.

10. Considering the prima facie serious nature of accusations as also the incriminating nature of material collected during the investigation, prima facie one may believe the involvement of the applicant/accused in serious economic offences amounting to misappropriation of crores of rupees from the government money as also criminal breach of trust attracting penal provisions under Sections 409 and 467 of the Indian Penal Code. The legislature do prescribe heavy punishment to the extent of life imprisonment for the offences punishable under Sections 409 and 467 of the Indian Penal Code, therefore, I think unless main witnesses on behalf of the prosecution are examined in the trial Court in respect of both these cases benefit of bail cannot be extended to the present applicant irrespective of the ground of parity along with other coaccused who may be mostly corrupt or negligent government officials indicted in the case. If the applicant is released on bail at this stage, he may abscond and it would be difficult to secure his presence at the time of trials in both the cases. Furthermore it is likely that he may use his influence to tamper with the evidence

of witnesses in view of probability of long sentences of imprisonment, in such cases economic offences are required to be proved in the larger interest of public, society and the State because real culprits shall be brought to justice.

11. Bearing in mind these reasons and totality of circumstances, I think there is no need to give overmuch importance to personal freedom which is myopic when compared with larger interest of public, society and the State. In view of the well reasoned order passed by the learned Additional Sessions Judge, Amravati, I do not propose to take any different view in the matter. Of course, when main witnesses are examined in the trial Court, the applicant shall be at liberty to move bail application afresh before the trial Court. The trial Court is expected to hear the trials giving top priority and to complete the hearings and decide the cases on merits as early as possible without being influenced by above observations limited for the purpose of deciding the bail applications.

12. For all these reasons, the applications are rejected.