IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application No. 73 of 2015

Deepak s/o Shriram Gondse. .. **Applicant.**

Versus

The State of Maharashtra
And Another. .. **Respondents.**

Shri. Rajendrraa Deshmukkh, Advocate, for applicant.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for respondents.

Shri. S.J. Salunke, Advocate, for original complainant.

CORAM: T.V. NALAWADE, J.

DATE : 23rd JANUARY 2015

ORDER:

1) The application is filed for the relief of anticipatory bail in M. Case No.14/2014 registered in Ghansavangi Police Station for offences punishable under sections, 420, 406, 409, 467, 468, 471, 472, 34, 120-B of Indian Penal Code and also for offences punishable under sections 191, 192, 197, 198, Indian Penal Code. In a private complaint file by one Digambar Jadhavar order of investigation is made by the learned Judicial Magistrate

of investigation under section 156(3) of the Code of Criminal Procedure. The Sessions Court has rejected the application filed for relief of anticipatory bail. Both the sides are heard. This Court has perused the original papers of the investigation. Learned counsel Shri. S.J. Salunke was allowed to assist the learned Additional Public Prosecutor on behalf of the complainant.

2) The applicant was working as Branch Manager of Bank of Maharashtra, Branch Ghansavangi at the relevant time. There are allegations that during his tenure (2007 to 2012) many false loan transactions were made. There are allegations that he joined hands with accused No.3, a person from politics and who was also Sarpanch of the village,and huge amount of the bank was misappropriated. For this misappropriation a peculiar modus operandi was used. There were around 300 loan transactions in the name of fictitious person and for that also false record was created. In respect of more than 170 matters it was notice that the person who were not holding agricultural lands, there was no security but the loans were sanctioned for agricultural purpose. In many

other matters irregularities were found due to which the bank cannot recover the loan amount shown to be disbursed. Many persons have come forward against whom litigations are filed by bank and they have contended that they had not taken loan and the aforesaid persons have used their names and loans are taken in their names behind their back.

3) In the past, on the basis of private complaint filed by the same person, order of investigation was made sunder section 156(3) of the Code of Criminal procedure and M Case No.1/2012 was registered. Investigation of that mate was done and charge sheet is filed against the applicant, Pandurang Bhange, political person and 5 other persons for offences punishable under sections 409, 420, 467, 471, 201, 34, 120-B etc. of Indian Penal Code and also sections 192, 197, 196, 199 of Indian Penal Code.

4) It is the case of the complainant that transactions mentioned in the present complaint were not mentioned in the previous complaint of the year 2012 and the charge sheet is not filed in respect of the

transactions mentioned in the present complaint. It is contended that in the present complaint amount of more than Rs.11,90,990/- has been misappropriated by these persons by using the same modus operandi. It is alleged that in the names of fictitious persons bogus loans were disbursed and bogus bank accounts were opened in the following names such transaction were made :

(1) Vandana Kute.

(2) Godawari Choure.

(3) Dwarkabai Kute.

(4) Sushilabai Doiphode.

(5) Babasaheb Choure

(6) Indrabai Choure

(7) Latabai Andhale

(8) Ashamati Doiphode

(9) Dwarkabai Kute

(10) Sumanbai Nagare

(11) Usha Darade

(12) Fulabai Sanap

(13) Abasaheb Ghuge.

It is contended that during this tenure loan transaction was made in the name of Madhukar Bhange but this persons was not having any land and loan is shown to be disbursed for agricultural purpose.

5) Other transactions are shown to be made during the tenure of other Branch Manager. False accounts were opened, false, forged record of application etc was created and even false revenue record like 7/12 extracts was created and used for disbursement of the loan amount. There are allegations that the Branch Manage and some other employees of the bank joined hands with the aforesaid persons in those transactions and they have together misappropriated huge amount of the bank.

6) During investigation of the present complaint statement of present Branch Manager is recorded. According to him out of 20 persons mentioned in the present complaint bank found that 16 transactions are bogus and such persons are not in existence. The statement of this Branch Manager shows that there was

no proper identification of those persons for opening of the accounts. The statement shows that on most of the record there are signatures of the Vithoba Bhange and record of Vijay Jaggery Unit, a concern of this person was used for those transactions. There are statements of some villagers to show that such persons are not in existence in the village.

7) The record of investigation shows that investigating officer found that the aforesaid transactions were made during the tenure of the present applicant. It is mention that amount of more than Rs.23.97 lakh has been misappropriated as per the investigation made till today in the present matter. It is surprising and shocking that the Bank did not give report to police even when the aforesaid instances were noticed and the complainant was required to file a private complaint. There is clear possibility of involvement of other persons also and that is why probably they want to protect the present applicant. Investigation needs to made on that line also so that the persons behind the applicant can be traced and their responsibly can also be ascertained. Circumstance that

after filing of the charge sheet in the previous matter more instances are noticed is itself sufficient to show that there is a possibility of transpiring more information and detection of more such transaction after custodial interrogation of the present applicant. Whenever such offences are detected it is always advisable to allow the investigating agency to make investigation with full opportunity and custody of the accused needs for the investigation. The Courts are not expected to grant relief of anticipatory bail in such cases. The investigation made and interrogation made when accused is protected is not that effective. The present case is an illustration as to how the police could not make thorough investigation in the past due to the relief of anticipatory bail which was granted in favour of the present applicant.

8) The learned counsel for the applicant argued that in M. Case No.1/2012 charge sheet is filed against the applicant and most of the transactions are of the aforesaid tenure and so no new case can be filed against him. He submitted that it was necessary for police to make investigation in respect of all instances of the said

period. This submissions is not at all acceptable. It is already observed that the officers of the bank are trying to protect the present applicant and it can be said that they are not cooperating wholeheartedly. The aforesaid facts show that more transactions are traced. Even the persons in whose names transactions are made behind their back can come forward to give FIR in respect of their cases as litigations are filed against them. It cannot be said that those cases also need to be clubbed by making further investigation in the charge sheet already filed. Repetition of such instances can be avoided only after custodial interrogation of the present applicant. If that is not done, unnecessarily poor persons in whose names the transaction are made will suffer. They cannot agitate their grievances as they have no resources. Even the bank will not be able to recover the amount from such poor persons. In view of aforesaid circumstances, there is possibility that they were attempting to cover up the things. There is question of public money and bank will be loosing that money. It can be said that due to relief granted in favour of the present applicant in the past, the stolen property, the amount misappropriated is not recovered. Whenever there are such cases, offences, investigation on that line always needs to be made and the stolen property needs to be recovered. Otherwise criminal action has no meaning in such cases.

9) Learned counsel for the applicant has placed reliance on some reported cases like :

(i) **(2013) 6 SCC 348 (Amitbhai Anilchandra Shah v. C.B.I.)**;

(ii) **2013 (3) Mh.L.J. (Cri) 315 (Surender Kaushik v. State of U.P**.

He submitted that in respect of the same incident two FIRs are not possible. There cannot be any dispute over this proposition. The present matter involves many offences. Many persons are aggrieved and they have right to agitate their grievances. Though it is true that section 120-B Indian Penal Code is used, after detecting aforesaid instances, investigation in some more offences can be made. It is always open to police to exercise their statutory power and to make investigation in other cases. This Court has no hesitation to observe that separate charge sheet also can be filed in those cases. Provisions of sections 219 to 224 of the Code of Criminal Procedure are enabling provisions and they do not give any right as such in favour of the accused. The tenure of the present applicant was comparatively long, from 2007 to 2012, and so there is possibility of tracing of more such cases. It is noticed that the authorities from the nationalized bank and the Government officers show little interest when their own persons like the present applicant are involved. Even they try to write off the amount as bad debts.

10) The learned counsel for the applicant has argued on one more ground. He submitted that in earlier M Case No.1/2012 application was filed for anticipatory bail in the Sessions Court and it was allowed. It appears that the order of anticipatory bail made by the Sessions Court was cancelled by this Court in Criminal Application No.2255/2013 which was filed under section 439 (2) of the Code of Criminal Procedure. This order dated 23-9-2013 was challenged by the present applicant in Hon'ble Apex Court and Apex Court has set aside the order of this Court in Criminal Appeal No.467/2014 decided on 19-2-2014. It is observed by the Hon'ble Apex Court that cancellation

of order of anticipatory bail was meaningless as statement was made that regular bail was granted. This ground is not available in view the aforesaid circumstances. The relief was granted in favour of the applicant in altogether different crime.

11) As aforesaid submissions was made by learned counsel for the applicant, he was directed to produce order of regular bail made in favour of the present applicant in M Case No.1/2012. The record of this case and the submissions made show that application for anticipatory bail was filed in Sessions Court and in that matter interim relief was granted. After grating interim relief, police showed nominal arrest of the present applicant on 16-3-2013 and bonds were taken from him. Final order was made on the application for anticipatory bail by Sessions Court on 2-4-2013. Charge sheet came to filed by police on 16-5-2013. It appears that on 16-8-2013 application was moved before the Judicial magistrate by the present applicant in which it was mentioned that anticipatory bail was in his favour. The order of anticipatory bail was cancelled by this Court on 23-12-

2013. The applicant requested the trial Court for granting regular bail. It appears that after the order was made by the Sessions Court of anticipatory bail the applicant was directed to furnish PR and SB of Rs.15000/-. The provision of section 438 (3) of the Code of Criminal Procedure reads as under :

> **"438. Direction for grant of bail to person apprehending arrest :**
>
> (1) .....
>
> (2) .....
>
> (3) If such person is thereafter arrested without warrant by an officer-in-charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decided that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1)."

It appears that the learned Judicial Magistrate acted in accordance with the provision of Section 438(3) of the Code. The charge sheet was filed and cognizance was taken. No other document was produced to show that regular bail was granted to the applicant by any Court.

12) Instances of aforesaid nature have increased at least in this area.

13) After getting interim relief in the proceeding filed for anticipatory bail either by making misrepresentation or by joining hands with police accused plays tactics. Their formal arrest is shown and bonds are taken. In many cases it is noticed that anticipatory bail applications are subsequently withdrawn. As the bonds are taken in view of the previous order no further action like arrest is taken by police. Many Judicial Officers of the subordinate Courts accept the submissions made for the accused that bail is already granted. Thus the interim orders made by the Sessions Court and High Court are being misused. Provision of Section 438(3) shows that it is not regular bail but it is only compliance of the order made under section 438 of the Code. This way the accused persons avoid the detention both in police custody and judicial custody and that is affecting the investigation. Stolen property cannot be recovered in

such cases. On the applications filed under section 438 of the Code many Courts are granting interim relief on the first day and the applications remain pending for many months. Investigating Agency becomes helpless and one day it files charge-sheet. After filing charge sheet, it is presumed that investigation is over when practically it is not completed. When interim relief is granted by Sessions Court, it is continued for many months and after rejection of the main application, when applicant files application the High Court, the accused claims that he is entitled to the relief of interim nature and in many cases the accused gets such relief. The matter remains pending in this Court also for many months. Thus, there has been misuse of the provision of Section 438 of the Code and something needs to be done.

14) The discussions made above shows that the second ground has no application in the present matter as the present crime is totally different. Learned counsel for the applicant placed reliance on the cases reported as (1) **AIR 1980 SC 785(1)** (**Niranjan Singh** v. **Prabhakar Rajaram);** and (2) **(2009) 7 SCC 559 (Sukhwant Singh v.**

State of Punjab). There cannot be any dispute over the propositions made in these two cases by the Hon'ble Apex Court. The point involved was different and so those propositions are not of help to the applicant to get relief in the present matter.

15) This Court has no hesitation to hold that thorough investigation is necessary in the matter and that can be done only after getting custody of the applicant. Only after that the stolen property can be recovered and other persons who might be involved in the matter can be traced. Other instances also can be traced. The applicant appears to be an influential person as even after filing of the charge sheet, it appears that he got promotion. This Court holds that if relief is granted in favour of the applicant it will definitely interfere in the statutory powers of police to investigate and there will not be effective investigation. The poor persons will suffer due to such relief. In the result, the application is rejected.

Sd/-
(T.V. NALAWADE, J.)

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