FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2290 OF 2015
[Karbhari s/o Uttam Nerkar Vs The State of Maharashtra & anr.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Shri C.R.Deshpande, advocate for applicant
Smt. P.J.Bharad, A.P.P. for respondent

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CORAM : V.M.DESHPANDE, J.
DATED : 29th April, 2015

PER COURT : -

1] This is an application for anticipatory bail since the applicant apprehends his arrest in connection with Crime No. 73 of 2014, registered at Nandurbar (Upnagar) police station, District Nandurbar, for the offences punishable under Sections 420, 408, 468, 471 r/w 34 of the Indian Penal Code.

2] I have heard Shri C.R.Deshpande, learned counsel for applicant on the application as well as his prayer for interim relief in extenso.

3] The submission of the learned counsel is that the applicant was working as a Branch Manager of Ad-Menum Finance Company Limited at Nandurbar Branch. The said Public Limited Company is having its due approval from the Reserve Bank of India. The Company is engaged in extending loan facility to the needy persons who need financial assistance for purchasing vehicles. According to the learned counsel, the applicant resigned from his job as a Branch Manager on 13.6.2013 and entire charge was handed over on 15.6.2013. He further submitted that in the year 2014 more specifically on 18.3.2014, the Finance

Company in which the present applicant was working as a Branch Manager, got executed in its favour a deed of mortgage from the present applicant showing that the present applicant has availed the loan facility from the Company to the extent of Rs.20,00,000/- for agricultural improvements. Therefore, according to the learned counsel, the applicant's land is already mortgaged with the Finance Company and thus interest of the Company is well secured, and therefore, according to the learned counsel he is entitled for anticipatory bail, since he has reasonable apprehension in his mind that he is likely to be arrested in connection with the crime.

4] The first information report is lodged on 20.12.2014 by one Dhiraj Mohanlal Soni, who is a General Manager of Ad-Menum Finance Limited having its Head Office at Indore (M.P.). The first information report shows that the Company is having its Branch at Nandurbar since last 15 years. At Nandurbar Branch the present applicant was working as a Branch Manager.

The first information report further reveals that on 12.12.2014 the auditor of the Company by name VSK and Company has done the audit of Nandurbar Branch. The audit period was from 2009 to 12.12.2014. During the audit, it was revealed to the auditor that at Nandurbar Branch, the dummy files of the customers were prepared and on the basis of said dummy files without disturbing any loan to any of the borrowers the amount was withdrawn from the Company. Further, it is also revealed in the audit report that the amount repaid by the borrowers major part of such amount was not credited in the account of the Company. According to the audit report, the auditor found that there is misappropriation of Rs.1,75,88,366/- at Nandurbar Branch. It is also stated in the audit report that the applicant being the

Branch Manager, he along with other persons indulged themselves in an act by which the afore said amount is misappropriated.

5] Learned counsel Shri Deshpande submitted that the other co-accused are granted anticipatory bail by the learned trial court, though for a limited period of four months. With the assistance of learned counsel, I have gone through the said orders. Those orders clearly show that the learned Judge of the court below has found that in so far as those applicants/co-accused are concerned, there is no incriminating material against them and in that view of the matter, the learned Judge of the court below thought it fit to grant protection for limited duration till investigation is over.

6] In the present case, the present applicant cannot run away from the fact that he was a Branch Manager. There is no dispute that the applicant was having direct control over all the functions and activities of the Finance Company at Nandurbar Branch. Further, the audit period is from 2009 to 2014. Thus, the audit period is the period wherein the applicant was discharging his duties as a Branch Manager at Nandurbar. The first information report shows that the applicant created dummy files of the customers and thereby has withdrawn amounts from the Company and siphoned the said amount. Further, on recovery of the loan amount from the genuine customers, in stead of crediting the said entire amount in the Company's account, only part of the same was credited. Thus, the audit report shows the extent of misappropriation worth Rs.One crore.

7] The submission of the learned counsel for the applicant is that in view of the mortgage deed in favour of the Finance Company, custodial presence of the present applicant is not at all necessary. The argument of the learned counsel for the applicant at the first blush appear to be attractive, however, on the closure scrutiny the same has to be rejected.

8] The applicant is trying to mix the issue in respect of the mortgage deed and his culpability in the present crime.

In so far as mortgage deed is concerned, the applicant is having his independent cause of action to challenge the same before the appropriate court of law.

One of the factors while considering the application for anticipatory bail, as laid down by Hon'ble Apex Court in **Gurubaksh Singh Sibbia vs State of Punjab [AIR 1980 SC 1632]**, is the seriousness of the accusation made against the applicant. The allegations and accusation against the applicant in the present case show that those are very serious in nature. According to the first information report, if it is examined in its correct perspective, then it is clear that the present applicant is the author of creating dummy files. Thus, he has fabricated the documents. In that view of the matter, custodial presence of the present applicant is absolutely warranted. Since the court is not inclined to grant interim anticipatory bail in view of the proviso to Sub-section (4) of Section 438 of the Criminal Procedure Code the present application needs to be rejected.

9] In the result, Criminal Application is rejected.

The learned Judge, who shall deal with the application for regular bail, shall not get influenced with the observations made in the present order, since those are restricted only for the decision of the present application for anticipatory bail.

(V.M.DESHPANDE, J.)

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