FARAD CONTINUATION SHEET NO.

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

CRIMINAL APPLICATION NO. 3032 OF 2015
[Mayuri w/o Nilesh Shashtri Vs The State of Maharashtra]

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

Shri Ajinkya Kale, advocate h/f
Shri S.B.Talekar, advocate for applicant
Shri A.S.Shinde, A.P.P. for respondent

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CORAM : V.M.DESHPANDE, J.
DATED : 17th July, 2015

PER COURT : -

1] By the present application, the applicant is seeking her enlargement on bail, in the event of her arrest, in connection with Crime No. 109 of 2015, registered at Kotwali police station, Ahmednagar, for the offences punishable under Sections 418, 420 r/w 34 of the Indian Penal Code.

2] I have heard Shri Ajinkya Kale, advocate holding for Shri S.B.Talekar, learned counsel for the applicant and Shri A.S.Shinde, learned Additional Public Prosecutor for the respondent/State in extenso.

3] On reading of the first information report, the prosecution case in nut shell is as under : -

The first information report is lodged by Pravin Dattatraya Bhokare. He is Manager of Mahesh Nagari Pat Sanstha Maryadit, Bhingar. The said Pat Sanstha is having its Head Office at Bhingar. The first informant is working as Manager in the said Pat Sanstha since last three years. The said Pat Sanstha is having its Branch known as, "Adat Bazar, Ahmednagar Branch". The said Pat Sanstha engaged itself in providing loan facility if the intended borrowers wish to obtain the loan facility by pledging the gold. The time limit of the said gold loan is one year.

Three borrowers by name Sham Bhau Kale, Mahesh Vitthal Bendre and Sandeep Suresh Malwande obtained gold loan from the Pat Sanstha to the tune of Rs.80,000/-, Rs.40,000/- and Rs.80,000/-, respectively.

Said Pat Sanstha has nominated one Shantanu Dattatraya Bhosale as its Gold Valuer. It is his duty to test the purity of gold intended to be pledged. Thereafter, it is his duty to make the valuation of the said gold. After valuation and after testing its purity, he has to seal the said gold in a packet. After sealing the said packet, the said seal contains the signatures of the gold valuer and the borrower. After that, the said packet is to be handed over to one Mayuri Nilesh Shashtri (Applicant in this Criminal Application).

4] Though the loan limit of one year was expired and the afore said three persons failed to repay the loan and failed to come forward for taking their pledged gold, the Pat Sanstha issued various notices including the public notice in the news paper, in spite of that those persons chose not to claim the gold, neither they repaid the amount. Therefore, Pat Sanstha decided to auction the said gold. The auction was fixed on 6.5.2015. At that time, gold valuer, the other merchants dealing in the gold (Sarafa) and Clerk Mayuri opened the packets in said auction. That time, it was noticed by Pat Sanstha that the said gold is spurious one and not a gold. Thus, it was noticed that Pat Sanstha is cheated to the tune of Rs.2 Lacs and for that gold valuer Shantanu Bhosale and Clerk Mayuri are responsible.

5] When the complaint was lodged the investigating officer noticed that it discloses the commission of a cognizable offence. Therefore, the offence was registered.

6] According to the learned Additional Public Prosecutor, the investigation is in progress, and therefore, the application of the applicant may not be considered favourably.

7] No dispute is raised on behalf of the applicant that she is Clerk and discharging her duty as such with the Pat Sanstha. However, there is nothing available on record or with the investigating officer to show the duty chart of the present applicant. The learned Additional Public Prosecutor is relying on the statement of one of the Director Dr. Ashok Changediya and also the Manager to show that it is the duty of the applicant to keep eye on the transaction.

8] Learned counsel for the applicant invited my attention to a communication, dated 27.10.2014. The said communication is from the present applicant and it is given to the Chairman of the Pat Sanstha. The said communication is available at Page 26 of the compilation of the present bail application. It reveals that the communication from the present applicant was received by the office of the Chairman and its Inward number is 9617, having the stamp from the office of the Chairman.

From the said communication, it was brought to the notice by the applicant to the Chairman that the gold valuer was intentionally inflating the weight of the gold and on that basis the loans are being sanctioned. She pointed out to the Chairman that this fact was brought to the notice of Shri Tanpure the manager at the relevant time, however, Shri Tanpure did not pay any heed to the complaint made by the present applicant. Not only that, according to the communication, dated 27.4.2014 Shri Tanpure told to this lady that she should keep silence, otherwise she will be transferred. The said communication further states that it was revealed to her that Shri Tanpure and one Shri Barbare are making all mess in the gold loan. Therefore, she brought this fact to the notice of Shri Pravin Bhokare (present first informant), however, he also did not pay any heed. Not only that, the said communication states that in spite of the fact that she has brought to the notice of her immediate higher ups about the mess in the gold loan, instead of taking any action, her bonus for Dipawali was withheld.

This particular communication is much prior to the first information report, which is lodged on 8.5.2015. Thus, at the very first instance, this applicant has brought to the notice of her immediate higher ups about the mess in the gold loan and when no action was taken she brought the said fact to the notice of the highest authority namely the Chairman.

9] The first information report is very specific that the valuation and the weight of the gold has to be done by the gold valuer.

10] The valuation is a technical job and that can be done by the gold valuer, the expert. It cannot be expected from the Clerk to know about the degree of purity of the gold. It is not the case of the prosecution that the present applicant is having any specialization or skilled knowledge about the purity of the gold. Further as per the first information report, after the valuation and after certifying the purity, the gold valuer has to keep the said gold in the packet, seal the same and on the said seal he has to put his signature along with the signature of the borrower. Thereafter, such sealed and signed packet is handed over to the applicant.

All the packets of the gold were in the custody of the Pat Sanstha. It is not the case of the prosecution that the present applicant was having any control over the said packets after the same were handed over to the respective authority. Further, it is not the case of the prosecution that when the present applicant handed over the seal and signed packets to the authority, that time it was noticed that the seals were broken.

11] Primarily, therefore, it is crystal clear that it was the duty of the gold valuer to test the purity to weigh the same. It is the duty of the gold valuer to certify about the same and on the basis of such certification the loan is sanctioned to the respective borrowers.

12] In that background, if at the time of auction if it was noticed by the Pat Sanstha with the help of other gold merchants that the gold was not pure one and/or it was spurious one, for that the present applicant cannot be held responsible, at least prima facie, and it is for the gold valuer and the person who pledges the gold with the Sanstha to give the replies.

13] Further, the entire gold is in possession of the Pat Sanstha. All documents are also seized. Therefore, in view of the fact that the present applicant was not responsible for gold valuation, its purity or otherwise, and the present applicant has brought the fact to the notice of the earlier Manager Shri Tanpure, present first informant and the Chairman of the Sanstha about six months prior to lodging of the present first information report, I see no reason not to extend the discretionary relief in favour of the applicant. That leads me to pass following order.

ORDER

(i) Criminal Application is allowed.

(ii) Applicant-Mayuri w/o Nilesh Shashtri, in the event of her arrest, in connection with Crime No. 109 of 2015, registered at Kotwali police station, Ahmednagar, for the offences punishable under Sections 418, 420 r/w 34 of the Indian Penal Code, be released on anticipatory bail, on she executing P.R.bond of Rs.5,000/- with one solvent surety in the like amount.

(iii) Applicant-Mayuri shall attend Kotwali police station, Ahmednagar, as and when required by the investigating officer, however, for that the investigating officer shall give clear cut notice of 48 hours prior notice to the present applicant.

(iv) Application is disposed of.

(V.M.DESHPANDE, J.)

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