

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5757 OF 2015

Sunil s/o Rajdayal Rai & Anr. **..... APPLICANTS**

V E R S U S

The State of Maharashtra **.... RESPONDENT**

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Mr. A.M.Gholap, Advocate for Applicants.

Mr. U.S.Mote, A.P.P. for Resp. - State.

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CORAM : INDIRA K. JAIN, J.

DATE : 21st NOVEMBER, 2015

ORAL ORDER :-

1. Here is an application for regular bail in Crime No. 0415/2015 registered with M.I.D.C. Waluj police station, Taluka Gangapur, district Aurangabad for the offences punishable u/ss 406,420 read with section 34 of the Indian Penal Code.

2. Heard Mr. A.M.Gholap, learned counsel for Applicants and Mr. U.S.Mote, learned A.P.P. for Respondent – State at length. Perused papers of investigation.

3. Prosecution case in brief is as under.

(i) Complainant is the Chief Manager of Punjab National Bank, Adalat Road branch, Aurangabad. In the year 2012 Cash Credit of ₹ 3,50,00,000/- was sanctioned by the bank to M/s Orbit Industries owned by Anil Rai. Applicant No. 1 is his brother who stood as guarantor and applicant No. 2 is the Administrative Officer of the Company.

(ii) In the year 2013 no objection was given by bank for the change of proprietary concern to the private limited company. No dues certificate was also issued in respect of Cash Credit facility.

(iii) It is the contention of prosecution that for the said Cash Credit facility plot was mortgaged and the machineries were hypothecated. Possession of the plot was taken and so far as machineries were concerned, only symbolic possession was taken by the bank. Factual possession remained with the proprietary concern. It is alleged that though machineries were hypothecated applicants with other co-accused sold major part of the machineries without the knowledge of bank and thereby cheated the bank and also committed criminal breach of trust.

4. Learned counsel for applicants vehemently submitted that in the year 2014 dispute arose between the employees and the owner of Orbit Industries. A complaint was lodged by the Administrative Officer of

Orbit Industries against the erring employees and therefore those employees had animosity against the owner and the management. It is submitted that complaint was filed in a due haste with the allegations that hypothecated goods were sold but in fact those goods were shifted to avoid danger at the hands of employees with whom dispute was going on.

5. Learned counsel further submitted that machineries hypothecated with the bank were never sold as alleged in the complaint and the allegations levelled against the applicants are absolutely false. It is submitted that the bank had already initiated civil remedy to recover the dues from the owner and since civil remedy is available, applicants be enlarged on bail as they are ready to abide by any condition if so imposed.

6. According to the applicants on their arrest six days police custody remand was granted by the learned Magistrate. Further P.C.R. was refused. This itself shows that custody of the applicants is no more required. In this backdrop applicants submit that they be enlarged on bail.

7. Per contra learned A.P.P. strenuously submitted that at the time of recording spot panchanama machineries were not found on the spot. Part of the machineries were found in the godown of Krushna Raosaheb Pawar. Learned A.P.P. submits that statements of employees who had shifted the machineries to the

godown of Krushna Pawar have been recorded and they have disclosed that the machineries were shifted at the instance of applicant No. 1 Anil Rai. According to the learned A.P.P. main accused are yet to be arrested, major part of the properties are to be recovered and if applicants are released on bail at this stage it would cause serious hindrance in smooth investigation and so application deserves to be rejected.

8. On perusal of case papers and particularly spot panchanama, seizure panchanama of part of machineries from the godown of Krushna Pawar, statements of the witnesses recorded so far, allegations made in F.I.R. and the huge public money being involved, this Court finds substance in the submission of learned A.P.P. that release of applicants at this stage would cause serious hindrance in smooth investigation. Hence application deserves to be rejected. In the result, following order.

9. Criminal Application No. 5757 of 2015 stands rejected with a liberty to applicants to file the same afresh after the charge sheet is filed.

[INDIRA K. JAIN]
JUDGE