IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.02 OF 2015
WITH
CRIMINAL APPLICATION NO.87 OF 2015
WITH
ANTICIPATORY BAIL APPLICATION NO.18 OF 2015
WITH
CRIMINAL APPLICATION NO.48 OF 2015
WITH
ANTICIPATORY BAIL APPLICATION NO.19 OF 2015
WITH
CRIMINAL APPLICATION NO.45 OF 2015
WITH
ANTICIPATORY BAIL APPLICATION NO.20 OF 2015
WITH
CRIMINAL APPLICATION NO.46 OF 2015
WITH
ANTICIPATORY BAIL APPLICATION NO.21 OF 2015
WITH
CRIMINAL APPLICATION NO.47 OF 2015

Sabastian A. D'Souza and Others ... Applicants
vs.
State of Maharashtra ... Respondent

Mr. Harshad Nimbalkar i/b. Ms. Aarti Bhosale, for the Applicant in ABA.No.02/2015.
Mr. A.P. Mundargi, Senior Advocate i/b. M/s.Mannadiar & Co., for the Applicant in ABA. Nos.18/2015, 19/2015, 20/2015 and 21/2015.
Mr. D.P. Adsule, APP for the State in ABA. Nos. 02/2015 and 21/2015.
Mr. J.H. Ramugade, APP for the State in ABA Nos. 18/2015 and 20/2015.
Ms. Veera Shinde, APP for the State in ABA No. 19/2015.
None for the Applicants/Intervener in Cri. Application Nos. 87/2015, 48/2015, 45/2015, 46/2015 and 47/2015.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JUNE 10, 2015**

P.C.:

. This matter was posted and called out on Monday however, the counsel for the intervener not present and therefore opportunity was given to appear today. None appears today for the intervener. Hence, the intervention applications are disposed of.

2. All the applications for pre arrest bail filed by the applicants/accused heard and decided together as they are arising out of one and the same C.R. No. 452 of 2014 registered at Nigdi police station, Pune on 6th October, 2014 at the instance of one Uma Mahadik. They all are facing charges for the offences punishable under Sections 380, 403, 406, 409, 418, 420, 444, 445, 448, 452, 506(2) read with 34 of Indian Penal Code.

3. The applicants/accused Mallikarjun Sankh, Amit Mardikar, Santosh Tiwari and Manish Kale who are applicants/accused in Anticipatory Bail Application Nos. 18 to 21 of 2015 are the bank employees of the ICICI bank and other two applicants/accused i.e. Sabastian D'Souza and Sambhaji Dive are working in the company who is a service provider

for the implementation of the action taken under the SARFAESI Act by the bank.

4. The complainant in the month of October, 2006 wanted to purchase a flat at Akurdi, Pune for which she obtained home loan of Rs. 10 lacs from the ICICI bank. The said flat was mortgaged against the said loan as a security. In May, 2007 she received possession of the said flat and she got it furnished and started residing there. She paid EMIs regularly till 2009. However, her husband had heart-attack and he was operated. Thereafter again in November, 2010 her husband had suffered paralysis and kidney failure. So she shifted to Gujrat in 2009. At that time, she kept 50-60 tola gold and also silver articles in the said flat. Thereafter, she came to Pune in August, 2011 and approached accused No.1.

5. It is the case of the complainant that in the month of August, 2011 she deposited Rs. 9,73,000/- through Demand Draft in the bank towards the said loan and accused Mallikarjun Sankh assured her that she should not bother of EMIs and take care of her husband. However, in November, 2014 when she came to her flat at Akurdi, she found her flat was sealed and somebody was using it. When she questioned about it to the four applicants/accused, they gave evasive answers. She found that one

Santosh Tiwari who is an officer of ICICI bank had occupied the said flat since last two years. The bank officers who are four applicants/accused threatened her of her life and did not return the flat to her. She thereafter approached police at Nigdi police station who did not initiate any criminal action against these persons and therefore on 7th April, 2014 she lodged private criminal case against these accused in the Court of J.M.F.C., Pimpri, Pune. Pursuant to the directions given under Section 156(3) of Criminal Procedure Code, police carried the investigation and her complaint was recorded on 5th October, 2014 and the offence was registered. Thus, the offence committed by the applicants/accused. They took forcible possession of the flat of the complainant illegally by using their power and have also stolen gold ornaments and silver articles from the said flat. Hence, complaint.

6. The learned counsel for the applicants/accused have submitted that it is a false case filed against the applicants/accused. It is submitted that the chronology of the events were placed before this Court in respect of the action taken by the bank about issuance of notice as the loan account of the complainant is declared MPA and she was defaulter as MPA. It was pointed out that first notice was issued and published on 31st May, 2011 and symbolic possession of the said flat was taken on 20th October,

2011 under Section 13(4) of the SARFAESI Act and the actual physical possession was taken on 12th January, 2013. At that time, bank prepared the inventory of the articles which were found in the said flat. It is further submitted that act of taking physical possession also published in the newspapers on 15th January, 2013 at Pune. The learned counsel further submitted that applicants/accused who are working in the bank have acted in their official capacity and under the SARFAESI Act and have not committed any offence. The learned counsel submitted that applicants/ accused have been falsely implicated under the false allegations that they took away 50-60 tolas gold and silver articles from her flat. There is no theft committed by these persons.

7. The learned counsel Mr. Harshad Nimbalkar for the applicant in Application No. 02 of 2015 have submitted that these two applicants/ accused have acted as an employee in the service provider company to implement action under the SARFAESI Act and they have nothing to do with the bank loan and its transactions and they have not committed any offence much less theft.

8. While opposing these applications, the learned prosecutor submitted that accused Nos. 1 to 4 are the bank employees of ICICI bank and they ought to have acted within the limits of SARFAESI Act and should

not have taken possession of the flat without following the due process of law. These applicants have committed offence. They break open the flat, committed theft of gold and silver articles from the said flat which belonged to the complainant. The learned prosecutor further submitted that the learned judge has considered that there is discrepancy in the list of articles in the complaint and inventories taken by the bank. There is a procedure flaw in the steps taken by the applicants/accused i.e. bank employees under the SARFAESI Act. It is further submitted that their custodial interrogation is required to recover gold and silver articles.

9. The fact of obtaining loan by the complainant from the bank is not disputed. It appears from the record that she was a defaulter and her account was declared NPA and therefore the bank was justified of taking action under the SARFAESI Act. Thus action taken by the bank employees are challenged by the complainant as they have not followed due process of law. If it is so, a proper Forum for the complainant was available to approach DRT and seek relief under the Act and get flat restored to her. However, on a query, it was informed by the learned counsel for the applicants/accused that she did not take timely steps before the DRT and DRT has dismissed her application of condonation of delay and the proceedings were dismissed at threshold. The appeal is pending.

10. The flat is already auctioned by the bank towards the settlement of loan amount. Thus if at all the employees have not taken proper steps under the SARFAESI Act, it is altogether a different matter. The main charge is of theft of 50-60 tolas gold and silver articles. It is difficult at this stage to accept that the gold of 50-60 tolas and silver articles were kept by the complainant in her flat. Moreover, *prima facie* it appears improper that if a person has knowledge of theft on 11th March, 2014 and however she filed a private complaint on 17th April, 2014 though it is said that she approached Nigdi police station, there is no copy of said complaint on record.

11. It appears that as per her complaint she visited last earlier to her flat in August, 2011 and thereafter she visited in March, 2014 and found that her gold and silver articles are stolen. *Prima facie* to consider that the persons have stolen the gold and silver articles, it is necessary to get assurance that the said articles were there in the flat. It is, of course, a matter of evidence. However, it is to be noted that in the present case, the bank employees have taken steps. The notices were issued and published in the newspapers about the symbolic possession of the said flat under the SARFAESI Act and thereafter the flat was taken in actual possession. Under such circumstances, the complainant having revenge against the applicants/accused can not be ruled out.

12. Moreover, the property which she claims to be in her flat as mentioned and listed in the private complaint *prima facie* it appears that she had capacity to pay of the loan. Moreover, it is to be noted that the complainant is a lawyer by profession and it is expected that she must be aware of the procedure under the SARFAESI Act and the steps to be taken to get her flat restored if possession is taken illegally.

13. Hence, I grant anticipatory bail as under:

a) In the event of arrest, the applicants/accused be enlarged on bail on furnishing P. R. Bond in the sum of Rs. 30,000/- (Thirty Thousand) each with one or two solvent sureties in the like amount;

b) The applicants/accused shall attend Nigdi police station, Pune once in a week on every Saturday in between 4.00 pm to 6.00 pm for one month (including Saturday dt.11th July, 2015).

14. Anticipatory bail applications are disposed of on the above terms.

(MRS.MRIDULA BHATKAR, J.)