IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2249 OF 2014

Amritlal Bava ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 111 OF 2015
IN
CRIMINAL BAIL APPLICATION NO. 2249 OF 2014

Thane Bharat Sahakari Bank Ltd. ...Intervener

IN THE MATTER BETWEEN :

Amritlal Bava ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Harshad Ponda, Sr. Advocate with Mr. Yogendra Rajgor and Mr. Sanjay Bhatia i/b M/s. Legal Chartered for the Applicant

Mr. Y. M. Nakhwa, A.P.P for the Respondent-State

Mr. Ganesh Sovani for the Intervener

PI Mr. Tambe from E.O.W is present

CORAM : REVATI MOHITE DERE, J.

TUESDAY, 17TH FEBRUARY, 2015

***P.C.* :**

1. By this application, the applicant seeks his release on bail in connection with C.R. No. 71 of 2013, which was initially registered with the Mulund Police Station and thereafter transferred to the Economic Offences Wing (EOW), Unit-I, Mumbai, for the alleged offences punishable under Sections 465, 467, 468, 471, 420 and 120-B of the Indian Penal Code.

2. According to the prosecution, a complaint was filed by Mr. Khedekar, Branch Manager of the Thane Bharat Sahakari Bank Ltd. alleging that the applicant, along with other accused, had defrauded and cheated the Thane Bharat Sahakari Bank Ltd. to the tune of Rs. 1.90 crores. The applicant, the principal borrower; accused No. 2-Tejas Lodaya, the proprietor of Sourav Engineering Works, accused No. 3-Ramesh Somaiya, the proprietor of Automotive Manufactures, Mumbai and accused No. 4-Bhoir, the then Branch Manager of the Mulund Branch, are alleged to have conspired to defraud and cheat the Bank, by submitting fabricated and forged documents, for securing the loan.

3. According to the prosecution, on the basis of the forged and fabricated documents, loan came to be sanctioned by the said Bank for ten trucks/trailors. It is alleged that the vehicles were not in existence and that forged and fabricated documents with regard to the registration of the vehicles, insurance papers, etc. was submitted by the accused for getting the loan sanctioned from the Bank. It is the prosecution’s case, that the Bank has been cheated to the tune of Rs. 1.90 crores by the applicant and the other accused.

4. Mr. Ponda, the learned Senior Counsel for the applicant does not dispute the fact that the applicant had applied for the loan amount to the Bank. He submits that the circumstances in which the applicant applied for the loan, will have to be considered. He submitted that the applicant was in the business of clearing and forwarding agency and was running the business in the name and style of `Shree Vaishnavi Enterprises' for more than thirty years. He submitted that in the course of the business, the applicant came into contact with one Tejas Lodaya-accused No.2, who claimed to be the owner of a fleet of more than 100 trucks, doing business under the name and style of `V-Tej Roadlines'. He submitted that in the

course of business dealings, the accused No. 2-Tejas Lodaya lured the applicant to start the transport business and stated that there was huge scope for the same in the market. He submitted that though the applicant had expressed his inability, as he had no experience in the field and also his inability to invest in purchase of the trucks, the accused No. 2 persisted, stating that he would look after the entire business on behalf of the applicant, provided, the applicant funded him for the trucks. He submitted that the accused No. 2 even suggested, that the applicant can take a loan in his name, from the Thane Bharat Sahakari Bank Ltd., as most of his vehicles were being funded by the said Bank. It is submitted that, on being convinced by the accused No. 2 about the returns and no risk factor involved and trusting the accused No. 2, the applicant approached the Bank for the said loan. It is submitted that Mr. Bhoir-original accused No. 4, the Branch Manager of the Bank also assured the applicant that the accused No. 2 was a well-known transporter and that he should blindly trust him and accordingly, the applicant agreed to do the said business. He submitted that in fact, the applicant believing that the prime security for the loan are the ten trucks/trailors, which would be hypothecated to the Bank, gave his only residential flat as collateral security and in fact, made his wife as one of the guarantor, who is 50% owner of the said flat. Accordingly, on the basis of the documents i.e. quotations and all other relevant documents, the loan was sanctioned by the Bank.

5. Mr. Ponda, the learned Senior Counsel, appearing on behalf of the applicant relied on certain documents and made the following submissions;

(i) The statement of Sachin Harishchandra Shingvan, an employee of accused No.2, who, in his statement, has stated that the quotations and some of the receipts were signed by the accused No.2 on behalf of Sourav Engineering Works and Automotive Manufactures;

(ii) The statement of one Nitin Naikoji Patil, who has stated in his statement that when he verified the xerox documents from the RC books, the applicant was not present;

(iii) The statement of account of Fast Forwarders, although opened in the name of the applicant, was being handled by accused No. 2- Tejas Lodaya. He submitted that there were two accounts opened in the name of the `Fast Forwarders’, one in the name of the present applicant and one in the name of Shyamsunder. He submitted that from a perusal of the said statement of accounts, it would be evident that none of the amounts have gone to the present applicant. In fact, some of the debits that were shown in the statement of accounts had gone to VTR Freight, which belonged to an employee of the accused No. 2 and Trans India, which stood in the name of the mother of the accused No.3;

(iv) He submitted that on learning from the Bank that the installments were not being paid, he sent a legal notice to the Branch Manager of the Thane Bharat Sahakari Bank Ltd. sometime in January, 2014, placing on record certain facts that had transpired with regard to the loan transaction. In fact, vide the said legal notice, he sought certain documents and information with regard to the loan transaction.

(v) He also relied on the letter dated 28th January, 2013, which is part of the charge-sheet, which was sent by accused No. 2 to the applicant, wherein the accused No. 2 has specifically admitted, that the loan which was availed for the purchase of ten container carrier trailers, were purchased by him in the applicant's name, for the purpose of developing his business and had also given an undertaking to clear the said loan and to release the applicant's property which was given as a collateral security. Learned Counsel pointed out, that in the said letter dated 28th January, 2013, the accused No. 2 had admitted that he had collected 30 blank letters and 60 blank cheques duly signed by the applicant for utilising the same for developing his business. In fact, vide the said letter, accused No. 2 had sent a cheque for the amount of Rs. 2,66,70,000/- in favour of `Shree Vaishnavi Enterprises' to enable the applicant to clear the loan.;

(vi) The letter dated 19th February, 2013 sent by the applicant to the Additional Commissioner of Police, Economic Offences Wing, setting out the facts which led to the fraud being committed on the applicant. He has alleged in the said letter that he was cheated by accused No. 2 in connivance with the Bank officials and in fact, there was a fraud committed on him;

(vii) Lastly, he submitted that the documents do not show that the applicant had received any of the monies. He also submitted that the investigation is complete and charge-sheet has been filed and that two other co-accused namely accused No.3 and accused No. 4 have been released on bail, despite their criminal antecedents.

6. Learned A.P.P on the other hand, opposed the bail application and contended that the applicant is the principal borrower and that he had obtained the loan, on the basis of forged and fabricated documents. He relied on the statements of one Ramchandra Indalkar and Shivaji Metkari in support of his submission. According to him, the documents were tendered by the applicant to the Branch Manager and that the pay orders were handed over to the applicant.

7. Mr. Sovani, learned Counsel appearing on behalf of the intervener, supported the submissions made by the learned A.P.P. He submitted that considering the huge fraud and the money involved, the applicant does not deserve to be enlarged on bail.

8. Heard learned Counsel for the parties at length. Perused the charge-sheet and the relevant statements and documents.

9. It is not disputed that the applicant is the principal borrower and that he had sought a loan from the said Bank and that the pay orders

were handed over to him. It is not necessary, at this stage, to consider whether the applicant is the mastermind or is a scapegoat. With regard to the documents which are on record including the statements of some of the witnesses namely Sachin Shingvan and Nitin Patil, *prima facie* it appears that certain incriminating documents were prepared by the accused No.2. The learned A.P.P has not been able to show that the money in the Fast Forwarders' Account was withdrawn by the applicant or transferred by him, although the account which was opened, was in the name of the applicant. It also appears that the applicant has given his residential flat by way of collateral security to the Bank and action is initiated against the applicant for non-payment of the loan and as such the law will take its own course with regard to the same. The learned A.P.P has not been able to point out from the statement of any of the witnesses that the documents which were forged and fabricated were prepared by the present applicant, or at his instance. The applicant has no antecedents, whereas there are similar cases registered as against the other accused i.e. seven cases against the accused No. 2, six cases against the accused No.4-Branch Manager and four cases against the accused No.3.

10. Considering the material and the fact that the investigation is complete and charge-sheet is filed, the applicant deserves to be enlarged on bail on the following terms and conditions :

ORDER

(i) The applicant Amritlal Bava be released initially on cash bail of Rs. 1,00,000/- in connection with C.R. No. 71 of 2013 registered by Economic Offences Wing, Unit-I, Mumbai. Thereafter, within four weeks, applicant to furnish one or two solvent sureties in the like amount;

(ii) The applicant shall not tamper or attempt to contact any witness concerned with the case;

(iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Economic Offences Wing, Unit-I, Mumbai;

(iv) The applicant to cooperate with the conduct of the trial;

(v) The applicant shall deposit his passport, if any, with the investigating officer;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of applicant's bail.

11. The Application is allowed in the aforesaid terms and is accordingly disposed of.

12. In view of the above, nothing survives for consideration in Criminal Application No. 111 of 2015. The same stands disposed of.

13. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.