IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.331 OF 2015

Ramchandra Vithal Ralkar & anr. ... Applicants

Vs.

The State of Maharashtra ... Respondent

Mr.Niranjan Mundargi i/b Ms.Sapana Rachure for the Applicant
Mr.S.S. Pednekar APP, for Respondent No.1 – State
Ms.V.D. Jaisingh for Resp. No.2

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

DATE: **APRIL 13, 2015**

P.C.:

1. The applicants/accused have moved this application under section 438 of the Criminal Procedure Code as they are prosecuted for the offences punishable under sections 420, 406 and 120B of the Indian Penal Code in C.R. no.43 of 2015 with the Alibaug police station, District Raigad. It is registered at the instance of one Shamprasad Rammurthy, working as an Assistant Vice President in Pegasus Assets Reconstruction Private Limited. The Complainant company is in the business of buying Non Performing Asset (NPA) accounts of the debtors in various banks. The company is registered under section 3 of the Securitization And Reconstruction of Financial Assets and Enforcement of Securities Act, 2002 (SRFAESI Act) and is authorised by the Reserve Bank of India to do

this business. The company has bought the NPA accounts of the applicants/accused, which is with the Indusind Bank. A loan of Rs.5,20,00,000/- was due against the applicants/accused. The applicants/accused have mortgaged 7 properties with the Indusind bank. It is the case of the prosecution that out of 7 properties, the applicants/accused fradulently sold 2 mortgaged properties and the sale proceeds of the 2 properties was shown as Rs.38,50,000/-. It is the case of the complainant that the mortgage value of these 2 properties was much higher and nearly Rs.1 crore for each property. It is the case of the prosecution that the amount of sale proceeds is to be deposited with the company. It is the case of the prosecution that the applicants/accused have acted fradulently and they have cheated the company by selling these 2 properties at a lower value and by not depositing the sale proceeds with the company, without the consent of the company and the bank. Hence, they lodged a complaint with the police.

2. The learned Counsel for the applicants/accused has submitted that the complainant company has filed proceedings before the Debt Recovery Appellate Tribunal (DRAT) as it is purely a loan transaction and the applicants/accused are before the Debt Recovery Tribunal praying that the sale proceeds of Rs.38,50,000/- which are to be deposited with them is rejected by the Debt Recovery Tribunal (DRT) and an appeal is pending before the DRAT. He further submitted that the entire transaction pertains

to business and loan transaction for which the custody of the applicants/accused is not required. The learned Counsel, on instructions, has further submitted that the applicants/accused are interested in settling the matter by paying off the loan.

3. The learned Prosecutor and the learned Counsel for the Intervener have opposed the application. The learned Counsel for the Intervener has submitted that the applicants/accused have not only sold the two properties but subsequently, after the FIR, they came to know that the applicants/accused have sold the third property for an amount of Rs.2,05,00,000/-, without consent. However, the said amount is not deposited in the loan account. She further submitted that if selling these properties is continued by the applicants/accused then, the company would not have any recourse open to recover the amount from the applicants/accused. She submitted that the applicants have cheated the company. While meeting these submissions, the learned Counsel for the applicants/accused has submitted that the third property which is sold, though was mortgaged, it was not mentioned in the FIR.

4. Perused the FIR and the relevant documents. 7 properties were mortgaged with the bank and it is a settled principle that when the properties are mortgaged, they cannot be sold without any intimation to the concerned bank or the concerned parties. At the time of lodging of the

FIR, the two properties were within the knowledge of the complainant. Two properties were sold and subsequently, the company found that the third property was also sold. Admittedly, this third property is mortgaged with the bank. The DRT while deciding the interim applications of the parties has injuncted the third party in the two properties, which were sold earlier i.e., the buyer of the two properties not to sell or transfer it further. Though there is cheating and the company has suffered a loss as on today, as alleged to the tune of Rs.9 crores, considering the nature of the offence, I am of the view that the custodial interrogation of the applicants/accused is not required. Hence, the interim bail granted to the applicants/accused is confirmed on the same lines. Further, the applicants/accused themselves or through their agents or any person, shall not sell or transfer or dispose off the remaining properties bearing plot Nos.19 and 20, on a land bearing Survey No.114A, hissa No.2, Village Kurul, Taluka Alibaug, District Raigad, without the permission of the Debt Recovery Tribunal.

5. Anticipatory Bail application is disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)