IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 924 OF 2015

Reggie Lawrence Fernandes. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Hemen S. Thakkar, advocate for Applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 20, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 178 of 2014 registered at Sahar Police Station for offence punishable under Section 465, 467, 468, 471 and 420 of the Indian Penal Code.

3 At the outset, the learned APP submits that in the course of investigation, it is revealed that the applicant has committed offence only under Section 420 of the Indian Penal Code and not under Section 465, 467, 468, 471 of the Indian Penal Code.

4 It is the case of the prosecution that on 21st April, 2014 the officer of Citizen Credit Cooperative Bank Ltd. lodged a report at the police station alleging therein that the said bank has granted an overdraft facility of Rs. 8 Lakhs to M/s. Royal Orchid, a proprietorship firm of Mr. Reggie L. Fernandes i.e. the present applicant. The loan was sanctioned and disbursed. It is alleged that the present applicant had executed an equitable mortgage dated 18/4/2011 in favour of the bank. It is submitted that he had valid title to the said property which was given as an equitable mortgage. It was represented to the bank that the property belongs to Mrs. Verginia Diana Archangela Fernandes and her husband Benedict K. Bernard Sequeira as well as the present applicant and his wife. It is alleged that Mrs. Juliana i.e. the wife of the present applicant had executed irrevocable General

Power of Attorney in his favour to deal with the said house on her behalf. That the applicant had also executed a declaration that they would not create the third party interest in the said property. He had deposited NIL CERTIFICATE OF ENCUMBRANCE on the said property issued by Sub-Registrar, Bardez stating that there is no encumbrances in respect of the said house. He had obtained overdraft facilities. He is in default of total sum of Rs. 9,64,509/-. Bank had initiated action under the provisions of SARFAESI Act, 2002 and accordingly, issued notice to the applicant under Section 13(2) of the said Act calling upon him to repay the amount within 60 days from the date of the notice.

5 The bank had received a letter dated 8/2/2014 from one M/s. Benedict D. Nazare & Associates, Advocates informing the bank that they had never authorised any person including Reggie Fernandes on their behalf to represent themselves on the basis of alleged Power of Attorney. The bank had proceeded to take action. Upon reaching the said premises at Goa, the authorised representative of the bank had

learnt that the said property was purchased by Francis De'Souza and his wife from erstwhile owners Mr. Diago D'Souza and his wife vide registered sale deed dated 23rd March, 2010. The bank has also learnt that the present applicant had availed two loans from Jammu & Kashmir Bank, Goa Branch for an amount of Rs. 10 Lakhs and the second loan which was sanctioned on 17/3/2009 and closed on 8/3/2011. The bank was therefore, constrained to approached the police and lodge a report on the basis of which the present offence is registered.

6 The learned Counsel for the applicant submits that in fact, he had sold the said property to one Daigo D'Souza and alongwith registered sale deed there was a memorandum that the purchaser shall make a payment within a stipulated time, on failure the amount will be forfeited and sale deed would become void. The amount was not paid within stipulated time and therefore, Mr. Daigo D'Souza has filed civil suit for specific performance.

7 It is apparent on the face of the record that the applicant had suppressed material fact while obtaining loan from the bank. Upon query made by this Court as to why disclosure was not made to the bank. The learned Counsel submits that the officers of the bank were in knowledge about the transaction of the said property. Reply to the query does not inspire confidence as it is not a reasonable explanation for suppression of facts, where public money is involved. It is apparent that the applicant has indulged into offence of cheating. Bank officers had learnt about the same only at the time of executing provisions under the SARFAESI Act, 2002. The applicant has also obtained loan from the other banks, where same property is mortgaged. In view of this, the applicant does not deserve grant of pre-arrest bail.

8 The observations made hereinabove are prima facie in nature. The same shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial. The same be decided on its own merits in accordance with law.

9 The application being sans merit stands rejected. The interim relief granted in favour of the applicant vide order dated 1st July, 2015 stands vacated.

10 The application is disposed of accordingly.

(**SMT. SADHANA S. JADHAV,J)**