

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

CRIMINAL APPLICATION NO. 1864 OF 2016

Anil s/o Rajdayal Rai

...Applicant

VERSUS

The State of Maharashtra

...Respondent

.....
Shri Rajendra S.Deshmukh, advocate for applicant
Shri N.T.Bhagat, A.P.P. for respondent no.1/State
Smt. H.S.Pande, advocate for respondent no.2

CORAM : INDIRA K.JAIN, J.

DATED : 6th May, 2016

ORDER :

This is an application for regular bail in Crime No. 415 of 2015, registered at MIDC Waluj police station, District Aurangabad, for the offences punishable under Sections 406, 420 r/w 34 of the Indian Penal Code.

2] Heard at length Shri R.S.Deshmukh, learned counsel for applicant and Shri N.T.Bhagat, learned A.P.P. for respondent no.1 assisted by Smt. H.S.Pande, learned counsel for respondent no.2. Perused case papers.

3] The first informant Anil Kumar Singh is the Chief Manager of Punjab National Bank, Adalat Road, Aurangabad. On 29.9.2015 he lodged report with the police station against the applicant and others. Applicant is the Director of Orbit Electromech Private

Company Limited, situated at Waluj, Aurangabad.

4] It is stated by complainant that in the year 2012 applicant approached Bank for sanctioning cash credit limit of Rs.3 crores 50 lacs to him. After completing the formalities cash credit facility was sanctioned to applicant on 27.12.2012. Applicant hypothecated the plot and machineries worth Rs. 1 crore 70 lacs 33 thousand towards security against the cash credit facility granted to him.

5] Till March, 2015 applicant was regular in maintaining the accounts. On 31.3.2015 he had withdrawn the remaining amount of cash credit facility and discontinued the transactions with the Bank. On 8.4.2015 Bank initiated action under SARFAESI Act and issued notice to applicant to make payment within 60 days. Bank also took symbolical possession of the machineries hypothecated at the time of granting cash credit facility.

6] Thereafter news was published in the news papers that applicant duped the Bank and his employees and had fled away. On getting this information through news papers officers of the Bank visited Orbit Company and found that machineries which were hypothecated to Bank and symbolical possession of which was taken were missing. They made inquiry from the security guard. He informed the Bank Officers that during night of 16.9.2015 applicant had removed the machineries from the site.

7] In the above background first information report was lodged and crime was registered against the applicant. He was arrested on 19.12.2015 and since then he is in custody.

8] Learned counsel for applicant submitted that charge sheet and supplementary charge sheet have been filed. Applicant is in custody since long. The learned counsel submits that his client is ready to create charge of Plot No. L-44, MIDC, Waluj, Aurangabad which is adjoining to Plot No. L-45 mortgaged with the Punjab National Bank, Adalat Road, Aurangabad against the cash credit facility. The valuation of said plot according to the applicant comes to Rs. 48 lacs. The valuation of plot which is mortgaged with the Bank in 2013 was Rs.1 crore 57 lacs 63 thousand. Learned counsel submits that in addition to adjoining plot L-44 applicant also owns Plot No. C-14 at Chanakyapuri, Darga Road, Aurangabad and applicant is ready even to create charge of Plot No. C-14.

9] Learned counsel submits that keeping the applicant behind bars would not serve the purpose and in case applicant is released on bail on the conditions interest of the Bank would be protected and refund of public money can be ensured.

10] Application is strongly opposed by the learned A.P.P. It is submitted that applicant is involved in offences of serious nature. He is the Director of Company and in case he is released on bail there is possibility of tampering with the prosecution evidence. It is also submitted that looking to the huge public money involved it would not be appropriate to enlarge the applicant on bail.

11] It appears from allegations in first information report that machineries worth Rs.1 crore 70 lacs were hypothecated and after the notice under SARFAESI Act was issued complainant removed those machineries from the site though Bank had taken its symbolic

possession. The accusations are indeed of very serious nature.

12] Even if it is so prima facie question that strikes to one's mind is how long to detain a person in prison. The trial would take its own time and is unlikely to conclude soon. Considering these circumstances this Court is of the view that it would be better to secure interest of Bank and ensure return of huge public money rather than to wait for conclusion of trial. This cannot be achieved if applicant remains behind bars. As indicated above, he is in custody since December 2015.

13] In the above premise this Court is inclined to enlarge the applicant on bail. Hence the following order.

ORDER

(I) Criminal Application No. 1864 of 2016 is allowed.

(II) Applicant-Anil Rajdayal Rai is released on bail in Crime No. 415 of 2015, registered at MIDC Waluj police station, District Aurangabad, for the offences punishable under Sections 406, 420 r/w 34 of the Indian Penal Code on the following conditions.

(i) Applicant to furnish P.B. and S.B. of Rs. One Lakh each.

(ii) He shall deposit Rs. Five Lacs before the Trial Court before his release on bail to

show his bona fides.

(iii) Applicant shall file an undertaking in respect of his assets which are mentioned in the undertaking submitted to the Court with the market value thereof. The undertaking submitted by the learned counsel for applicant is taken on record and marked 'X' for identification purpose.

(iv) The undertaking to be furnished by the applicant in terms of clause (iii) above shall be accompanied by requisite title documents or supporting evidence about the ownership of the properties.

(v) Applicant shall file the said undertaking before the trial Court within a period of one week of his release. If such undertaking is not filed in time this order shall stand automatically cancelled.

(vi) The properties which are offered by the applicant for satisfaction of such liability as may be eventually saddled on him would not preclude initiation of action by the Bank for recovery of dues by taking appropriate proceedings before the appropriate court which would be independently dealt with by the competent Court.

(vii) It is clarified that offer of all the properties stated in undertaking 'X' for satisfaction of the dues for the purpose of securing bail would not obstruct any recovery proceeding even against the properties which may be independently taken.

(viii) Applicant shall not leave Maharashtra State without prior permission of the Trial Court.

(ix) Applicant shall surrender his passport with the police before he is released on bail.

(x) Applicant shall not tamper with the prosecution evidence and shall make himself available as and when required.

(xi) Registrar (Judicial) to send copy of this order to the (a) Trial Court, (b) office of the Collector and (c) office of the Sub-Registrar.

(xii) Bail before the Trial Court.

[INDIRA K.JAIN, J.]