IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2479 OF 2016

1] Suresh Sitaram Chaudhari

2] Nayankumar Chimanlal Saraf / Gujrathi

3] Bhikan Kashinath Mali .. Applicants

Vs.

The State of Maharashtra .. Respondent

WITH
CRIMINAL APPLICATION NO. 2517 OF 2016

Satish S/o Bhaskarrao Patil .. Applicant

Vs.

The State of Maharashtra .. Respondent

WITH
CRIMINAL APPLICATION NO. 2584 OF 2016

Sudhakar Zipru Patil .. Applicant

Vs.

The State of Maharashtra .. Respondent

WITH
CRIMINAL APPLICATION NO. 2823 OF 2016

Anil S/o Bansilal Somani .. Applicant

Vs.

The State of Maharashtra and anr. .. Respondents

AND
CRIMINAL APPLICATION NO. 2991 OF 2016
IN
CRIMINAL APPLICATION NO. 2517 OF 2016

Vijay Bhaskar Patil .. Applicant

Vs.

Satish Bashkarrao Patil and anr. .. Respondents

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Mr. P.M. Shah, Sr. Advocate i/b Mr. Subodh P. Shah, Advocate for the applicants (2479/2016)
Mr. V.D. Salunke, Advocate for applicant (2517/2016) and for respondent no.1 (2991/2016)
Mr.Joydeep Chatterji, Advocate for applicant (2584/2016)
Mr. A.M. Gholap, Advocate for the applicant (2823/2016)
Mr. S.P. Brahme, Advocate to assist PP (2991/2016)
Mr. A.B. Girase, Public Prosecutor for the respondent-State

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CORAM : N.W. SAMBRE, J.
DATE : 28/06/2016

ORAL ORDER :

Heard.

2. The applicants herein are seeking pre-arrest bail in Crime no. 58 of 2016 registered on April 19, 2016 at Jilha Peth Police Station, Dist. Jalgaon for the offences punishable under section

420, 406, 409, 408, 465, 468, 120-B, 34 of the Indian Penal Code and under section 13(1)(C) and (D) of the Prevention of Corruption Act.

3. The prosecution case against the applicants, is as under:-

. That the Jalgaon District Central Co-operative Bank has financed the J.T. Mahajan Co-operative Cotton Textile Mill situated at Taluka Yawal, District – Jalgaon, which went into lay off and was non-functional.

. There was outstanding of the loan amount against the said Sut Girni and as such, the District Central Co-operative Bank decided to auction the assets of the co-operative textile mill. In response to the said auction notice, one Laxmi Textiles submitted the highest bid of Rs.11,17,15,000/-, of which 25% of the amount i.e. Rs.2,79,28,750/- was deposited on the date of opening of the offer. The balance amount was required to be deposited on or before 15 days.

. It is then claimed that instead of depositing the balance amount, 25% of the bid amount i.e. Rs.2,79,28,750/- was refunded by the applicants, thereby causing financial loss. It is claimed that while doing so, the offence in question is committed by the accused persons. Hence, the crime in question.

. In Criminal Application Nos. 2479 of 2016 and 2823 of 2016, the applicants are the partners of Laxmi Textiles, successful highest bidder, who has submitted their bid for purchase of the assets of J.T. Mahajan Co-operative Cotton Textile Mill. In Criminal Application No. 2517 of 2016, the applicant is the then Chairman of Jalgaon District Central Co-operative Bank and in Criminal Application No. 2584 of 2016, applicant is the Authorized Officer / Manager of the said District Central Co-operative

Bank.

4. Criminal Application No.2991 of 2016 is moved by one Vijay Patil, claiming to be the complainant and person interested in the investigation and the offence in question, with an intention to assist the prosecution. The said application, since is not objected and is moved in Criminal Application No.2517 of 2016 against the then Chairman of the Bank, stands allowed and disposed of.

5. The contention of the respective counsel, would be summarized as under :-

6. Shri. Shah, learned senior counsel appearing for the applicants in Criminal Application No. 2479 of 2016 i.e. Directors of Laxmi Textiles, would submit that the applicants are the partners of successful bidders and were very much ready and

willing to honour their commitment pursuant to the acceptance of their offer. According to him, the applicants, as such, have deposited an amount to the tune of 25% immediately after their bid was found to be highest after borrowing the said amount from the financial institutions. He would then submit that the amount was deposited on 30/3/2011, whereas the Debts Recovery Tribunal, Aurangabad, vide common order below exhibit 5 and 13 in Misc. Application No. 81 of 2010 initiated at the behest of Jalgaon Sut Girni against the Jalgaon District Central Co-operative Bank granted ad-interim order restraining the District Co-operative Bank from confirming the sale. He would then submit that the amount though was accepted, the sale was not confirmed in favour of the present applicants. In view thereof, the amount, which was retained for quite long time, was asked to be refunded by the applicants and as such, the amount was refunded to the applicants, which was belonging to the applicants. He would submit that there is no *mens rea* or intention to commit the crime in question. In addition, he would submit that the bonafides of the applicants are writ large, as the applicants were ready and willing to perform their part of the contract but the interim orders passed by the Court continued upto 19/9/2011 and the applicants' firm was suffering financial loss that is interest was required to be paid to the tune of Rs.3,00,000/- per month to the financial institution and the creditors. According to him, in absence of *mens rea* or any wrongful gain to the present applicants, the applicants cannot be blamed for the alleged criminal offence. He would then submit that the transaction in question is of the year 2011 and there is a belated FIR filed in the year 2016. According to him, the applicants are entitled for grant of pre-arrest bail.

7. Shri. Gholap, learned counsel for the applicant in Criminal Application No. 2823 of 2016

would add to the above submissions for and on behalf of the other partner of Laxmi Textiles and would state that if the cumulative effect of Sub rule 3, 4 and 5 of Rule 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as “**the Rules**”) is taken into account, unless the sale is confirmed in favour of the applicant, the amount deposited by the applicant cannot be forfeited. He would then add that if the amount is not forfeited, the applicant has every right to reclaim the amount and there cannot be any liability, much less liability of forfeiture against the applicant.

8. In Criminal Application No. 2517 of 2016, Shri Salunke, learned counsel for the applicant would submit that the applicant was Chairman of Jalgaon District Central Co-operative Bank from 5/10/2010 to 4/10/2011. He would submit that he is a sitting M.L.A. belonging to Nationalist Congress

Party, who is in opposition to the ruling party in State. According to him, the panel headed by his client has defeated the panel sponsored by the complainant and his brother in Maratha Education Trust one of the pioneer education trust in Khandesh area. He would then add that his political opponent i.e. the earlier Revenue Minister has set up the complainant against him with an intention to implicate in a false offence and to settle his political score. He would try to justify the sponsoring of FIR by the political opponent with an intention to victimize the applicant by bringing to the notice of this Court the fact that the complainant has moved an application to assist the prosecution i.e. Criminal Application No. 2991 of 2016 only in the case of applicant and not in the Bail Application of other accused persons. Shri. Salunke then would submit that the recovery under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "**the SARFAESI Act**") is looked by the Authorised Officer and the Chairman has hardly any say therein. According to him, if any financial loss is caused by the act of the present applicant, section 83 and 88 of the Maharashtra Co-operative Societies Act (for short "**M.C.S. Act**") takes care of the same and inspite of the Auditor's report, no action is initiated against him for last couple of years. He would then submit that the applicant being the Chairman of the Bank, cannot be treated as a public servant and would draw support from the judgment of the Apex Court in the matter of ***State of Maharashtra V. Laljit Rajshi Shah and others*** reported in ***2000(3) Bom.C.R. 240***. According to him, there was no objection to the refund raised by the National Bank for Agriculture and Rural Developmen (for short "**NABARD**") or the auditor and as such, no action was initiated against his client.

9. Shri. Chatterji, learned counsel for the

Manager / Authorised Officer, in Criminal Application No. 2584 of 2016 endorses the above referred submissions and submits that by resolution no. 16 passed on 13/5/2009, he was authorised to act and do all the necessary things, as are necessary for securing the interests of the bank, including that of the sale of property under the SARFAESI Act. He would then submit that as the sale was not confirmed, he has recommended release of the amount in favour of Laxmi Textiles and there is nothing wrong or no financial loss caused to the Bank or financial gain to the applicant. He would submit that he is entitled to be released on pre-arrest bail, being a cancer patient.

10. Shri Brahme, learned counsel for the applicant, who has moved an application to assist the prosecution being Criminal Application No. 2991 of 2016, would submit that the term of the applicant – Chairman was to end on October 5, 2011 and the

applicant / authorised officer, alongwith the Chairman has approved the note of release of amount in favour of the Laxmi Textiles on October 1, 2011. He would then urge that the above referred fact on the part of the applicant takes to the only conclusion that the decision was in a high handed manner and taken in haste. According to him, the same is an incriminating circumstance, to be considered against the accused persons, particularly when the decision of Board of Directors of District Central Co-operative Bank was not taken into consideration. According to him, the Debts Recovery Tribunal dismissed the complaint preferred by the Textile Mill on 23/8/2011 and continued the protection till September 19, 2011. He would then urge that the amount was released after the Debts Recovery Tribunal dismissed the proceedings. For the purpose of demonstrating that there is creation of record on the part of the applicants, he has invited my attention to the communication between the Bank and Laxmi Textiles, which are placed on record at page 82 to 86 in the application of Chairman i.e. Criminal Application No.2517 of 2016, as according to him, the inward number of the documents demonstrate that the documents are forged one and are subsequently inserted. While justifying the delay in lodging the FIR, he would submit that it is pursuant to query raised under the Right to Information Act, on June 13, 2015, the material sufficient to make out a case for lodging the FIR was received by him and, thereafter, he underwent a bypass surgery and his mother has expired, which have caused the delay in lodging the FIR.

11. Shri. Brahme, learned counsel would add that since the crime is having colour of economic offence, same is required to be viewed vivedly and is required to be dealt with iron hands and in such case, the Court should be slow in granting any protection to the accused persons. He relied on the

judgment of the Bombay High Court in the case of ***Kanhayya Traders and others Vs. State of Maharashtra and others*** delivered in Criminal Writ Petiton No. 36 of 2010 at Aurangabad Bench, decided on July 25, 2012, so as to substantiate that if the allegations against the accused are found to be *prima facie* correct, the applicants in such a case cannot be entitled for bail. He would also press into service judgment of the Apex Court in the matter of ***Nimmagadda Prasad Vs. Central Bureau of Investigation*** reported in ***2013 AIR (SC) 2821***, so as to submit that the offences involving financial implications are case apart and are required to be dealt with differently.

12. Shri. Girase, learned Public Prosecutor strenuously opposed the bail applications and would submit that it was the bounden duty of Laxmi Textiles to deposit the entire consideration pursuant to condition nos.5, 7 and 13 and rule 9 sub

rule 2, 3 4 of the Rules. According to him, Laxmi Textiles, once has sought extension to deposit the balance amount and in pursuance to their participation in the auction process, they were estopped from claiming back the amount and accused persons ought not to have refunded the amount to them. He would then urge that the documents are forged one and there are specific audit objections to the entire transaction of refund of the amount. To substantiate his contention, he would rely upon the audit report and submits that the forged record is produced, so as to demonstrate that the transaction of refund was in a lawful manner. He would then urge that the entire act on the part of the accused persons has caused loss to the bank and wrongful gain for the accused persons. According to him, the custodial interrogation of the accused persons is very much necessary. He would submit that the applications be rejected.

13. Having bestowed my thoughts to the submissions made, it is required to be noted that the applicants have deposited 25% of the bid amount on 30/3/2011, which was to the tune of Rs.2,79,28,750/-. On the very same day, there was an interim order passed by the Debts Recovery Tribunal, Aurangabad, restraining the Jalgaon District Central Co-operative Bank from confirming the sale proceedings. As such, the sale could not be confirmed in favour of Laxmi Textiles. It is then required to be taken note of the fact that there are certain documents which depict that a proposal for giving the textile mill on rent, was recommended and under consideration, to which NABARD has not agreed to. The above referred fact prompts this Court to consider that the bank itself was in two minds, whether to continue with the sale or to let out the property. Though, it is brought to the notice of this Court that certain communication between the bank and Laxmi Textiles were sought to be inserted,

by putting the inward number, which are not serial-wise, however, in my opinion, what is required to be noted is that in a contractual matter, a party having parted with 25% of the amount, if is required to wait for a long time, as is done in the present case, there is every likelihood of the party back-tracking from the contract itself, as their investments are without any returns and there is no scope for claiming compensation either by adjusting the interest accrued in the final consideration or by giving interest on the amount already deposited. In this view of the matter, the case of the applicants, as is sought to be put forth that Laxmi Textiles has sought refund of their 25% of the amount, is required to be appreciated. There is one more angle to the transaction i.e. creditors where after the borrower i.e. bidder was required to pay interest on the amount deposited that too without any assured return.

14. Whether request for refund was required to be pressed or not, if is considered, based on the communication and the fact about the pendency of the proceedings before the Debts Recovery Tribunal, for the reasons stated hereinabove, in my view, even though by the resolution, the bank has not confirmed the sale but has given go ahead to the sale transaction in favour of Laxmi Texhitle, still the fact remains that the interim order passed by the Debts Recovery Tribunal has not permitted to confirm the transaction in their favour. The resolution of the bank, as such, will be hardly of any assistance once there is an order by the Debts Recovery Tribunal not to confirm the sale. The sale, if not confirmed, does not put an embargo on the right of either of the parties i.e. bank official or the prospective purchaser not to refund the amount claimed, as the same is not subjected to forfeiture pursuant to rule 9 of the rules. Once the amount cannot be subjected to forfeiture for non-

confirmation of the sale, then refund of the amount, as claimed and granted by the bank, in my opinion, cannot be termed as any illegality or such an irregularity, which prompts registration of crime. The same, as such, cannot be termed to reflect *mens rea* on the part of the accused persons.

15. Mr. Salunke, in my opinion is right in pointing out that the FIR, which was moved after a period of 5 years, that too by his political opponent, is required to be viewed as the one to victimize the applicant / accused. The complainant has moved an application to assist the prosecution only in case of Chairman and not in case of other accused persons, which speaks of the ill intention and mind of the complainant of being political opponent of the Chairman of the bank. Apart from above, there was an initial enquiry in the year 2011 itself, however, no further steps were taken in the matter to conduct complete enquiry pursuant to the

provisions of section 83 of the M.C.S. Act, to find out as to whether any financial loss is caused by the applicants to the co-operative bank and if caused, whether the recovery is required to be made under section 88 of the M.C.S. Act. Apart from above, it is to be noted that the Chairman is an M.L.A. and holds and enjoys certain position in society. He is very much available for the investigation and there is hardly any likelihood that the applicants will run away from the process of law.

16. The reliance placed by the respective learned counsel, on the judgment of the Apex Court in the matter of ***State of Maharashtra V. Laljit Shah*** (cited supra), so as to demonstrate that the applicants cannot be termed as public servants within the provisions of Prevention of Corruption Act, is *prima facie* requires to be accepted.

17. For last almost 5 years, there is no action against the present applicants, particularly in relation to the alleged transaction, however, suddenly the compliant came to be lodged that too without any justifiable explanation for registering the crime and the applicants are sought to be roped in.

18. In my opinion, in view of the above position, particularly, when the applicants are very much available for the investigation, the alleged offence is claimed to have been committed almost 5 years back, and the fact that the offence is based on documentary evidence and the evidence is very much available, the custodial interrogation of the applicants, in my opinion, is not necessary.

19. For the reasons stated hereinabove, in my opinion, case for grant of pre-arrest bail is made out. In view thereof, the ad-interim relief granted

in favour of the applicants by this Court is confirmed on the following conditions :-

20. In the event of the arrest of the applicants in Crime no.58 of 2016 registered with Jilha Peth Police Station, Dist. Jalgaon for the offences punishable under section 420, 406, 409, 408, 465, 468, 120-B, 34 of the Indian Penal Code and under section 13(1)(C) and (D) of the Prevention of Corruption Act, they be released on bail upon their executing P.R. bonds in the sum of Rs.2,00,000/- (Rs. Two Lakh) each with one surety each in the like amount.

21. The applicants shall not tamper with the prosecution evidence or influence the prosecution witnesses.

22. The applicants shall co-operate in the investigation and also in the trial and shall not

protract the trial by remaining absent or seek unnecessary exemptions and if required and called, shall attend the Police Station to extend co-operation in investigation.

23. If the Sessions Court notices non co-operation on the part of any of the applicant/s, the Sessions Court will be at liberty to proceed with the cancellation of pre-arrest bail of the applicant/s.

24. Criminal Applications stand allowed in the above terms.

[N.W. SAMBRE]
JUDGE

arp/-