

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

CRIMINAL APPLICATION NO.4540 OF 2016

Shabbirbhai Mohammadbhai Kadiyani ... APPLICANT

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

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Shri V.J. Dixit, Senior Counsel with
Shri N.L. Choudhari, Advocate for applicant
Shri S.S. Dande, A.P.P. for respondent Nos.1 and 2
.....

CORAM: A.S. CHANDURKAR, J.

DATED: 8th December, 2016.

ORAL ORDER :

1. Heard. The applicant apprehends his arrest in Crime No.05/2010, registered at Dondaicha Police Station, District Dhule for the offences punishable under Sections 403, 406, 407, 409, 420, 465, 467, 468, 471, 477(A), 120(B) read with Section 34 of the Indian Penal Code.

2. As per the averments of the private complaint filed by the respondent No.3, there were certain irregularities in the

matter of grant of loan by the accused No.1 Co-operative Bank. The present applicant along with other accused were the Directors of the said Bank and during the period from 2002 to 2006, loans were disbursed without taking proper precaution to relatives of certain Directors, resulting in loss to the Bank. This complaint came to be filed in the year 2009. Pursuant to order passed under Section 156(3) of the Code of Criminal Procedure, the crime was registered being Crime No.05/2010.

3. It is submitted by Shri Dixit, learned Senior Counsel for the applicant that, though the applicant was Director of the accused No.1 Bank for the period from 2003 to 2006, no loan was sanctioned to any of his relatives. The allegations with regard to disbursing loan to relatives is with regard to other Directors. It is submitted that, proceedings were filed under the provisions of the Maharashtra Co-operative Societies Act after which report came to be submitted by the Assistant Registrar on 26/12/2006. The present applicant along with other Directors were exonerated in the said report. Criminal Writ Petition filed by the respondent No.3 challenging the aforesaid report came to be dismissed. It is submitted that, considering the nature of allegations against the present applicant of not taking proper precautions while sanctioning loans and further considering the fact that two other similarly situated Directors have been granted

protection, the same needs to be extended to the present applicant. It is then submitted that, the Bank has since merged with Nagpur Nagarik Sahakari Bank and the entire records are available for the purpose of investigation. It is therefore prayed that adequate protection be granted to the applicant.

4. Shri Dande, learned Additional Public Prosecutor opposed the prayer. He submitted that, the present applicant was member of the Loan Committee as well as Vice President of the accused No.1 Bank. Due to failure on the part of the applicant to take appropriate precaution, the Bank was put to further losses. It is submitted that, records of the Bank are yet to be seized and for the said purpose, custody of the applicant is necessary. He placed reliance upon the observations made in Criminal Application Nos.3882/2008 and 4045/2008 and submitted that, in offence of such nature, the applicant is not entitled for any protection. He also referred to the audit report to indicate loss sustained by the Bank.

5. I have perused the documents filed on record along with the police report. It is not in dispute that the applicant was a Director during the period from 2003 to 2006. He was also a member of the loan sanctioning committee. However, the allegations with regard to sanctioning of loans to relatives

pertains to other Directors and not the applicant herein. It is to be noted that, in the report dated 26/12/2006 submitted by the Assistant Registrar, Co-operative Societies, the present applicant and other Directors have been exonerated. The challenge to said conclusion has failed. The record indicates that accused No.8, who was also member of the loan committee and as no relative was granted loan by said accused, the Sessions Court has granted protection to him. Another accused at Sr.No.11 has also been granted such protection.

6. As regards the observations of learned Single Judge in orders referred to above, the fact indicates that the loans in said case were taken by the close relatives of the accused therein. In that factual background, this Court has refused to exercise discretion in favour of the applicants therein.

Considering the fact that no relative of the present applicant was granted any loan from the Bank and as the applicant is aged about 69 years, he can be directed to co-operate with the investigation especially when the offence is registered on the basis of a private complaint and the material is documentary in nature. It is also to be noted that, though the respondent No.3 is duly served, he has failed to contest the present application.

7. In view of aforesaid, in the event of applicant's arrest in connection with Crime No.05/2010, registered at Dondaicha Police Station, District Dhule for the offences punishable under Sections 403, 406, 407, 409, 420, 465, 467, 468, 471, 477(A), 120(B) read with Section 34 of the Indian Penal Code, the applicant Shabbirbhai Mohammadbhai Kadiyani be released on bail on executing P.R. bond of Rs.15,000/- (Rupees fifteen thousand) and on furnishing surety in like amount.

8. As a condition of this order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or to the Court.

9. The applicant shall not tamper the evidence of the prosecution.

10. The applicant shall attend concerned police station as and when reasonably called for the purpose of investigation.

11. Criminal Application is disposed of.

(A.S. CHANDURKAR, J.)

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