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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1072 OF 2016
WITH
CRIMINAL APPLICATION NO.496 OF 2016

Arun Subrao Kapse ..Applicant.

V/s.

State of Maharashtra ..Respondent.

AND

District Co-operative Bank Solapur ..Intervenor.

Mr.A.P.Mundargi, Senior Advocate i/b. Sachin K.Hande for the applicant.

Mrs.Veera Shinde, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 11TH JULY, 2016

P.C. :-

1. The applicant / accused in Crime No.131/2016 for offences punishable under section 420, 408, 409, 120B read with 34 of the Indian Penal Code registered with Vairang Police Station, District Solapur at the instance of one R.R.Gabne, Senior Inspector of the Satara District Central Co-operative

Bank Ltd. (hereinafter referred to as “Co-operative Bank” for the sake of brevity) by this application is praying for anticipatory bail.

2. Heard the learned senior counsel appearing for the applicant / accused. The learned senior counsel by drawing my attention to the F.I.R. pointed out that on 20th December, 2014 as per the recitals in the F.I.R., 2477 tons of jaggery powder was given in the custody of the informant bank. It is not the case of the first informant that the present applicant or the other Directors of the factory have sold the products without giving to the godown keeper. Undisputedly, entrustment of the finished product with the informant / bank on 20th December, 2014 was after measurement by adopting Shetaka method. The learned senior counsel argued that the inventory was prepared as per the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 27th January, 2015 and submitted at that the time of taking out the inventory, jaggery powder weighing 35,000 quintals was taken in possession of the informant bank. The learned senior counsel further argued that the keys of the godown was with the informant bank.

Two inventories show that the jaggery powder weighing 35000 and and 40000 tons was in possession of the informant bank. As such, in submission of the learned senior counsel, the applicant / accused cannot be said to have cheated the informant bank or committed criminal breach of trust reposed on him.

3. I also heard the learned APP who is assisted by the learned counsel appearing for the informant. The learned APP submitted that huge amount of loan was taken by the factory owned by the present applicant and the Co-operative Bank was cheated by the present applicant by selling out the finished product in open market as seen from the record of the Central Excise Department. The learned APP has further submitted that the present applicant has criminal antecedents and several offences are registered against him, including offence punishable under section 420 of the Indian Penal Code.

4. Perused the papers of investigation produced by the learned APP so also the F.I.R. lodged by the Senior Bank Inspector of Co-operative Bank.

5. The applicant / accused is the Chairman of Adityaraj Sugar Pvt. Ltd. It is seen that he is also the ex-Director of the bank which has advanced loan to his factory. The sugar factory of the applicant is engaged in producing jaggery powder.

6. Record of investigation shows that in the year 2012-13 loan of Rs.10 crores was demanded from the Co-operative Bank towards working capital by pledging goods. Loan amounting to Rs.8 crores was sanctioned as against the proposal of the factory. The Investigating Officer has collected the terms and conditions of the sanction of this loan by pledging the finished product. Perusal of the terms and conditions shows that the finished products of 2012-13 season was to be entrusted to the bank for recovery of loan. Subsequently, the sugar factory proposed for grant of additional loan. Rs.5 crores was accordingly sanctioned by the sub-committee of the Co-operative Bank.

7. In this backdrop, recitals in the F.I.R. shows that the applicant with Directors of the Sugar Factory sold out the

entire jaggery powder produced in the season of 2012-13 and accordingly a legal notice was issued to the Sugar Factory. In response, the present applicant on 20th December, 2014 addressed a letter to the Chief General Manager of the Co-operative Bank. By this letter, the applicant / accused has accepted the position of outstanding loan amount, sale of Jaggery powder and non crediting the sale proceeds thereof to the loan account. Perusal of the letter dated 20th December, 2014 further goes to show that the present applicant, therefore, proposed for entrusting 24770 quintals (2477 tons) remaining stock of jaggery powder in custody of the Co-operative Bank. In clear terms, the present applicant further undertook to pledge the entire future product of the Sugar Factory in favour of the Co-operative Bank. The applicant / accused undertook to bear all expenses of crushing of cane payment. It is thus clear that the present applicant by letter dated 20th December, 2014 has in unequivocal terns agreed to pledge the entire future finished products with the Co-operative Bank.

8. On this factual backdrop, it is seen from the F.I.R. lodged by the Senior Inspector of the Bank that on 20th

December, 2014, 2477 tonnes of the product was entrusted to the bank. Perusal of the F.I.R. goes to show that this product which in the godown was not physically measured but it was measured in volumes. The F.I.R. makes it clear that each and every bag as well as contents thereof was not checked by the bank. The product pledged was kept in the godown of the factory itself.

9. It is the case of the informant that after taking necessary permission under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 the product pledged was sold and at the time of delivery on 4th May, 2015 and 5th May, 2016, it was found that the bags were actually containing saw dust and candy cole. The F.I.R. makes it clear that the outer layer of the stack was containing bags of jaggery powder and inner layer was containing bags of saw dust and candy cole.

10. The learned APP has also pointed out the fact that the total product of the Sugar Factory for the period from October, 2014 to March, 2016 was 88304.3 quintals and the product worth 77486.45 quintals was sold out by the Sugar

Factory. This record is traced out from the excise duty paid by the Sugar Factory. Obviously, this sale was without the permission of the Co-operative Bank. As per the undertaking given by the bank, the entire product was to be entrusted to the bank rather than selling it out by the Sugar Factory itself. Similarly, prima facie it is seen that at the time of entrustment of 2477 tonnes of jaggery powder instead of jaggery powder, most of the bags were containing saw dust and candy cole as it was not physically possible to check out the contents of each and every bag.

11. True it is that on two occasions inventories were prepared but bags were not physically checked in order to ascertain whether those were containing jaggery powder or saw dust and candy cole.

12. In this view of the matter, it cannot be said that the applicant / accused has no complicity in the crime in question. The recitals of the F.I.R. goes to show that electric supply to the factory was disconnected in order to prevent the working of the shutters of godown. This prima facie was done for causing obstruction in sale. Ultimate beneficiary of this

offence is the applicant himself.

13. In this view of the matter, considering the nature of the crime and position held by the present applicant in the Sugar Factory, he is not entitled for the relief as claimed. Hence the order:-

(i) The application is rejected;

(ii) In view of the disposal of the main application Criminal Applications, if any, are also disposed of.

(A.M.BADAR, J.)