IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. BAIL APPLICATION NO. 1283 OF 2016

Sanjay Suryakant Kadam … Applicant.

V/s.
The State of Maharashtra … Respondent.

WITH
CRIMINAL APPLICATION NO. 549 2016
IN
CRI. BAIL APPLICATION NO. 1283 OF 2016

Shree Ganesh Sahakari Sanstha Bank Ltd., … Intervenor.

In the matter between :
Sanjay Suryakant Kadam … Applicant.
V/s.
The State of Maharashtra … Respondent.

Mr. Niranjan Mundargi, Advocate i/by Vikram Sutaria, Advocate for the Applicant.
Mr. Deepak Thakre, A.P.P. for the Respondent – State.
Mr. Ashok B. Tajane, Advocate for the Intervenor.

CORAM : A. M. BADAR, J.
DATE : 29th JULY, 2016

P.C. :

1 Learned counsel appearing for the applicant / accused seeks leave to place on record affidavit of one Meerabai Kolhe, his relative, so also copy of the summons in

Civil Dispute No. 243 of 2015 filed by Ganesh Co-operative Bank Ltd., Nashik against the present applicant.

2 Leave as prayed is granted. The learned counsel for the applicant undertakes to serve a copy of the affidavit forthwith to the learned counsel for the Intervenor/Bank.

3 By this application under section 439 of Cr.P.C., the applicant/accused in Crime No. 190 of 2013 for the offences punishable under sections 403, 406, 409, 420, 465, 468, 471 r/w. 120 (B) of the Indian Penal Code, registered against him and other co-accused with Pimpalgaon Baswant Police Station, Dist. Nashik at the instance of informant-Suresh More, the Chief Executive Officer of the Shree Ganesh Sahakari Bank Ltd., Nashik (hereinafter referred as “the Bank” for the purpose of brevity) is praying for releasing him on bail on filing of chargesheet.

4 Heard the learned counsel appearing for the applicant/accused. He argued that the offence in question came to be registered against the present applicant and five co-accused. All are employees of the said Bank, working at its branch at Pimpalgaon Baswant. The learned counsel further argued that except the present applicant, all co-accused have been released on bail. Learned counsel for the applicant drew my attention to the last order passed by this court in bail

application no.1883 of 2015 on 20th April, 2016 and submitted that two co-accused have been lastly released on bail by this court. Learned counsel fairly stated that this court, while deciding the said application, has made it clear that the observations made therein are confined to the role of applicants therein.

5 In submission of the learned counsel for the present applicant, in the chargesheet 62 witnesses are cited and as yet even the charge is not framed. The applicant is arrested on 25.11.2014. Reliance is placed on the judgment of Hon'ble Supreme Court in the matter of **Sanjay Chandra** vs. **Central Bureau of Investigation,** reported in AIR 2012 Supreme Court 830. The learned counsel submitted that as vouched in the affidavit by Meerabai Kolhe, the relative of the applicant, she will not create any third party interest in her property, as stated in the affidavit. It is also argued that civil proceedings are already initiated by the Bank for recovery of the amount allegedly misappropriated by the present applicant as well as the co-accused.

6 I have also heard the learned APP. Learned APP argued that during the period of crime in question amounts of Rs. 20/- lakhs and Rs. 15/- lakhs came to be deposited in the bank account of the present applicant and subsequently that amount is shown to have been withdrawn. The learned APP

argued that the applicant is a witness to the deed of conveyance in favour of co-accused-Rajendra Kunde and Shriram More for the property costing Rs.1.25 crores. The learned APP further argued that the applicant is a kingpin in the crime in question, as at the relevant time he was holding the post of Branch Manager in the said intervener-Bank.

7 I have also heard the learned counsel appearing for the intervener Bank. Learned counsel argued that the applicant and co-accused have cheated about 30,000 investors of the Bank and this financial scam has resulted in closure of three branch offices of the Bank apart from imposing restrictions on the said Bank by the Reserve Bank of India. The learned counsel argued that the applicant being the Branch Manager of the Pimpalgaon Baswant, he was at the helm of the affairs of the Bank and as such is the kingpin in the crime in question.

8 I have carefully considered the rival submissions so also the chargesheet. I have perused the order passed by this court of enlarging two accused persons on bail. Perusal of the report lodged by Suresh More, CEO of the Bank, shows the modus operandi of accused persons. According to the prosecution case, accused persons cheated the Bank by using as a genuine forged fixed deposit receipts and thereby disbursing loan amount of more than 2.09 crores. Accused

persons are alleged to have appropriated this amount among themselves. It is reported that by pledging fixed deposit receipt, the loan is advanced by the bank. For that purpose, the fixed deposit receipts is required to be discharged by obtaining signatures of the depositors on revenue stamp. Thereafter, the loan against the said fixed deposit receipts is disbursed. According to the informant, the applicant and co-accused have prepared bogus banks fixed deposit receipts in respect of 19 investors and the applicant accused had sanctioned loan against those forged fixed deposit receipts. It is urged that similarly forged cheques are prepared. Because of this act of accused persons, the Reserve Bank of India has imposed restrictions on the banking business of the Bank. Thus the charge against accused persons including the applicant is that of cheating and forgery and on basis of cheating as well as using a genuine forged documents, having extracted funds of the Bank by bogus loan cases. It is averred in the FIR that being Branch Manager of the Bank, the Applicant/accused was in possession of blank fixed deposit receipts as well as cheques and he has misused those documents.

9 It is not in dispute that out of six accused persons, five accused persons are already released on bail in this case. Except minor variations, role of the present applicant and that of other co-accused in the case in hand is similar. Additionally, it can be said that the applicant was custodian of

the stationery including the Bank FDRs and the cheques of the bankers. It is seen that this court while releasing two of the co-accused has relied on judgment of the Apex Court in the matter of Sanjay Chandra (supra). It is also noted by this court that relatives of the co-accused by filing affidavit showed their willingness to keep their properties in their own name without creating any third party interest or right over the said properties till disposal of the criminal cases. In the instant case Meerabai Kolhe, an aunt of the present applicant, in her duly sworn testimony has stated that she is owner of the land bearing CTS No. 549/1, Plot Nos. 18 and 17 at Pimpalgaon (B), Tal. Niphad, Dist. Nashik which are valued at about Rs. 41.30 lakh. She expressed her willingness to maintain the said property without creating any third party rights or interest over the said property till disposal of the criminal cases.

10 What is more relevant is the initiation of civil proceedings at the instance of the Bank for recovery of the amount allegedly mis-appropriated by the present applicant as well as co-accused. A dispute bearing no. 243 of 2015 is filed by the Bank against the applicant and other co-accused for claiming the amount of Rs. 2,09,10,000/- alongwith interest at the rate of Rs. 16% per annum and the present applicant is in receipt of summons of that dispute pending on the file of the learned Judge of the Co-operative Court at Nashik.

11 At this stage, it is apposite to quote the observations of the Hon'ble Apex Court found in para 28 of the judgment in the matter of Sanjay Chandra which reads thus :

> "28. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the chargesheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."

12 In that matter regarding 2G scam, the Apex Court has observed that the offence with which accused therein was charged is an economic offence of huge magnitude but still pre-trial detention of the accused therein was found to be unnecessary. Similar is the case in hand. Other co-accused are already released and, therefore, after completion of investigation, pre-trial detention of the present applicant when the chargesheet contains names of 62 witnesses and as yet the charge is not framed, is not at all warranted. Therefore, the order :

ORDER

i. The bail application is allowed.

ii. The present applicant/accused in Crime No. 190 of 2013 for the offences punishable under sections 403, 406, 409, 420, 465, 468, 471 r/w. 120 (B) of the Indian Penal Code, registered against him with Pimpalgaon Baswant Police Station, Dist. Nashik at the instance of informant- Suresh More, the Chief Executive Officer of the Shree Ganesh Sahakari Bank Ltd., Nashik, be released on bail on executing PR Bond in the sum of Rs. 1,00,000/- and on furnishing one or two solvent sureties in the like amount.

iii. As a condition of this order, the Applicant should attend each and every date of hearing of the criminal case against him and co-operate the trial court in expeditious disposal of the trial.

iv. In addition, the Applicant/accused is directed that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicant shall not tamper with the prosecution evidence in any manner.

v. The applicant should not commit any offence of similar nature in future.

vi. The bail application is disposed of accordingly.

In view of the disposal of the main application, the intervention application also stands disposed of.

(A. M. BADAR, J.)

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