IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1972 OF 2015

Vivek Anthony Aranha ... Applicant
Vs.
The State of Maharashtra ... Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO.1973 OF 2015

Vinay Vivek Aranha ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. Amit Desai, Sr. Adv., a/w. Harshad V. Nimbalkar, Adv. a/w. Rushikesh Ghorpade, Adv. a/w. Shailesh Mhaske, Adv. i/b. Satyam H. Nimbalkar, Adv. for the applicants.
Mr. Y.M. Nakhawa, APP for the State.
Mr. Rajendra Mulik, PI, EOW, Pune City present.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 10th February, 2016.

P.C. :

1. The applicants herein have filed these applications apprehending their arrest in Crime No.131 of 2015 registered with Lashkar Police Station, Pune for offences punishable under Sections 406, 420, 467, 468, 471 & 120-B of the IPC.

2. The applicant Vivek had availed a loan of Rs.46.50 Crores from Cosmos Bank. It is alleged that though the property under

survey No.394/2 situate at Talegaon-Dabhade is an agricultural property. The applicants herein had submitted to the bank a forged and fabricated NA order dated 30th June, 1997. It is further alleged that the applicants had suppressed that there is lis-pendense in respect of the said property. In view of the imputations made by Shivaji Kale in FIR dated 2nd September, 2015, the aforesaid crime came to be registered. Apprehending their arrest in the said crime, the applicants filed an applications for anticipatory bail before Sessions Court, Pune. Said applications were dismissed by the learned Addl. Sessions Judge, Pune vide order dated 23rd December, 2015. Hence the present applications.

3. Mr. Amit Desai, the learned senior counsel for the applicants has submitted that the applicants had executed composite mortgage deeds dated 22nd March, 2013 and 13th October, 2013 wherein the property under Survey No.394/2 was shown as an agricultural land. The learned Senior counsel Shri A. Desai has submitted that the applicants had purchased the property under survey No.394/2 by deed of sale dated 31st January, 2013. He has further submitted that the applicants had also furnished to the bank a copy of the sale deed dated 31st January, 2013 wherein the property

under Survey No.394/2 is described as an agricultural land. Mr. Desai, the learned senior counsel for the applicants has further submitted that the land has been valued as an agricultural land.

4. Shri Amit Desai, the learned senior counsel for the applicants has further submitted that the vendors had made a declaration in the sale deed that they have not created any lien on the said property, and that they have not mortgaged the said property with any financial institution, bank or any person. He has further submitted that 7/12 extract which was annexed to the sale deed also did not indicate that there was lis-pendense in respect of the said property. Mr. Desai, the learned senior counsel for the applicants therefore contends that the applicants were themselves not aware about lis-pendense in respect of the said property and had submitted the 7/12 extract in good faith. The learned senior counsel for the applicants has submitted that the applicants had not furnished the said NA order. The applicants herein had brought to the notice of the bank that the property which was mortgaged is an agricultural property and that they had not furnished any NA order in respect of the said property. Mr. Desai, the learned senior counsel for the applicants therefore submits that there is no prima facie material to

show that the applicants had either forged or fabricated any document or that the applicants had cheated the bank in any manner. He contends that the nature of the allegations levelled against the applicants do not justify custodial interrogation.

5. Mr. Nakhawa, the learned APP for the State submits that, the FIR as well as the letter dated 12th July, 2014 addressed by Cosmos Bank to RBI prima facie indicates that the applicants herein had submitted a forged and fabricated NA order to the bank for the purpose of availing loan. The learned APP further submitted that the applicants had also suppressed the fact that there was lis-pendense in respect of the said property and further furnished a 7/12 extract which did not record such lis-pendense. The learned APP therefore claims that the custodial interrogation of the applicants is necessary for the purpose thorough investigation of the crime.

6. I have perused the records and considered the submissions advanced by Mr. Desai, the learned senior counsel for the applicants and Mr. Nakhawa, the learned APP for the State. The records prima facie reveal that the applicants herein are the partners of M/s. Rosary Education Group and that they had availed loan to the tune of

Rs.46.50 Crores. Said loan was secured by executing mortgage deeds dated 22nd March, 2013 and 13th October, 2013. The records reveal that Manish Milani had made a complaint to the Public Grievance Cell at High Court in the month of August, 2014 alleging that, the applicants had secured loan of Rs.20 Crores by providing a false and fabricated NA order and 7/12 extract in respect of the land under survey No.394/2 of village Talegaon-Dabhade. The said complaint was enquired into by the Economic Offence Wing. The initial enquiry led to filing of the FIR.

7. The allegations against the applicants herein are that they had secured the loan by furnishing forged and fabricated NA order and 7/12 extract in property under survey No.394/2. A perusal of the records prima facie reveal that the applicants had executed deeds of mortgage dated 22nd March, 2013 and 30th October, 2013 and had thereby secured the loan by mortgaging four properties including the property under Survey No.394/2. A perusal of the mortgage deeds dated 22nd March, 2013 and 30th October, 2013 reveals that the property under survey No.394/2 was described as an agricultural land. These mortgage deeds do not make any reference to NA order.

8. The applicants had also furnished to the bank copy of the sale deed dated 31st January, 2013, whereby the applicants had purchased the property under survey No.394/2 from the erstwhile owner Ms. Sheetal Tejwani. A perusal of the said sale deed also reveals that the property under survey No.394/2 was described as an agricultural land. It is also pertinent to note that at the time of securing the loan the property under survey No.394/2 was valued as an agricultural land. All the aforesaid facts prima facie reveal that the applicants had not suppressed the fact from the bank that the property under survey No.394/2 was in fact an agricultural land.

9. A perusal of the sale deed indicates that the vendor had declared that there was no lien on the said property. The 7/12 extract annexed to the sale deed did not have any remark regarding lis-pendense. Hence prima facie it cannot be held that the applicant had knowledge of the lis-pendense and that they had suppressed the said fact or that they had forged the said extract with an intent to cheat the bank.

10. It is also pertinent to note that the applicants had mortgaged three other properties bearing survey Nos.107, 108 and

169 and the valuation report of these lands prima facie reveals that loan availed by the applicants is secured by mortgaging the three properties. The public notice issued by Cosmos bank also prima facie reveals that the loan sanctioned to the applicants has been secured to 150%. The records also prima facie indicates that till the date of lodging of the complaint by said Manish Milani, there was no default by the applicants in payment of the dues. Hence prima facie no wrongful loss was caused to the bank.

11. The nature of the allegations levelled against the applicants do not justify custodial interrogation. The records further reveal that pursuant to the interim order granted in favour of applicants, they have joined the investigation except on one date i.e. 4th December, 2015, when the father of the applicant was allegedly in Ruby Hospital. The applicants have roots in the society and there is no possibility of the applicants absconding or thwarting the course of justice.

12. Considering all the above facts and circumstances, the applications are allowed on the following terms and conditions.

1. In the event of arrest of the applicants in Crime No.131 of 2015 registered with Lashkar Police Station, Pune, the applicants shall be released on furnishing bail bonds of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount to the satisfaction of the JMFC, Cantonment Court, Pune.

2. The applicant shall report to investigating officer as and when required by the investigating officer.

(ANUJA PRABHUDESSAI, J.)