IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1957 OF 2017

Vijaykumar Ramnath Mantri & Ors. .. Applicants

Versus

The State of Maharashtra .. Respondent

Mr.Anand P. Bhandari, Advocate for the applicants.
Mr.S.M. Ganachari, A.P.P. for respondent/State.

CORAM : T.V. NALAWADE,J.
DATED : 04.05.2017

P.C. :-

1. This application is filed for the relief of anticipatory bail. Both the sides are heard. Papers of investigation were made available for perusal.

2. The submissions made and record show that in the past on the basis of report given by the Manager of Jalna Peoples Co-operative Bank, Crime No.17 of 2016 was registered in Badnapur Police Station, Dist. Jalna on 28.01.2016 for the offences punishable under section 420, 406, 467, 468, 471, 120-B read with section 34 of the Indian Penal Code. In that case along with debtors one

Gaurav Rajkumar Mantri – Gold Valuer, other Gold Valuer – Vispute and Rajkumar Mantri – father of Gaurav were made accused. The charge-sheet came to be filed against these persons for the aforesaid offences along with offence punishable under section 120-B read with section 34 of the Indian Penal Code. After filing of the charge-sheet, the debtors, who are made accused in C.R. No.17 of 2016 filed application under section 156(3) of Cr.P.C. in the Court of J.M.F.C., Badnapur, bearing Misc. Criminal Application No.166 of 2016 and in that matter order is made for making investigation under section 156(3) of the Cr.P.C. by the learned J.M.F.C. Present accused are shown as accused in the said matter and they are real brothers of Rajkumar Mantri.

3. In the report given by the Bank Manager, he had made allegations against the Gold Valuers and the debtors that by pledging fake gold ornaments, the debtors had taken huge loan from the bank and for that they had joined hands with the aforesaid two Gold Valuers. The

amounts which were shown to be given by way of loan on gold were mentioned and that amount was more than Rs.1.62 crore. Even Rajkumar Mantri had taken such loan and there was similar gold loan given to Pritesh – other son of Rajkumar Mantri under many loan transactions. In view of the nature of allegations against the debtors and the valuers, the charge-sheet was filed only against the debtors and the valuers.

4. In application given under section 156(3) of the Cr.P.C., it is contention of the applicants that they are poor persons and they were working with present applicants as driver or labour and present applicants had promised them to see that loan will be repaid by them and due to that promise they had signed on some documents like application, slip etc. It is their contention that by using their signatures, fake gold ornaments were pledged by these persons with the bank and loan amount was actually lifted by them. It is their contention that only when they received notice of the bank and when the

bank asked them to deposit the amount, they realized that the loan was not repaid by these persons. Thus in the application they contended that real debtors are Gaurav Mantri, Pritesh Mantri and Rajkumar Mantri and brothers of Rajkumar Mantri like present applicants and they have lifted the amount, but the applicants are made scapegoats. It is contention that the investigating agency did not act fairly and they filed charge-sheet only against them when real debtors were different.

5. Learned A.P.P. took this Court through the record of enquiry made by the office of Registrar, Co-operative Societies. The record shows that during enquiry also the debtors - applicants in the application filed under section 156(3)of Cr.P.C. had contended that present applicants had given promise that they would repay the loan even by mortgaging their house.

6. Learned Counsel for the applicants submitted that the applicants are neither Directors in the bank and

they were not involved in any way in the fraud. There is virtually no explanation as to why these poor persons who were not having that much gold for pledging, are making such allegations against present applicants. The most striking feature of the present matter is that in C.R. No.17 of 2016, nobody from the bank is made accused. Unless and untill somebody from the bank had joined hands, it was not possible to sanction such loans to poor persons like applicants from the proceedings filed under section 156(3) of Cr.P.C. It does not look probable that they were having that much gold in the year 2012-13 for getting loan shown to be sanctioned.

7. The instances of taking loan in the name of poor persons are increasing and poor persons are made scapegoats due to approach of the investigating agency. Such possibility is very much there in the present matter. The papers of investigation now made available show that many properties were purchased in the name of Gaurav and Pritesh etc. It can be said that thorough

investigation was not made in C.R.No.17 of 2016 and virtually no attempt was made to find out as to what happened to the money which was shown to be paid to the debtors. There is probability that the money did not go to the debtors shown on record but the money had gone to the hands of third person. This Court has no hesitation to observe that previous investigation was not properly made. Fortunately, the J.M.F.C. has made order to make investigation into the allegations made against present applicants. This Court hopes that this time the investigation will be made fairly and real culprits will be booked. In such cases of fraud, where poor persons are made scapegoats, discretionary relief of anticipatory bail cannot be given by the Courts. In such cases, custodial interrogation is must. Only after custodial interrogation, it can be ascertained that where the money has gone. Surprisingly in the previous Crime No.17 of 2016, nothing is shown to be recovered and this is other shocking feature of the previous matter. The property made by that amount needs to be attached/seized, as it is public money and in any form the property may be, that needs to be attached by the investigating agency. For that also custodial interrogation is must.

8. Learned Counsel for the applicants submitted that there is delay in giving application under section 156(3) of Cr.P.C. On this point, it can be said that poor persons were already under pressure of the investigating agency as they were made accused in Crime No.17 of 2016 and the only thing they could do in the past was to get out of the jail. Learned Counsel for the applicants further submitted that during investigation of the present matter, statements of two applicants were recorded and they have already co-operated the investigating agency. This Court has no hesitation to observe that unless there is custodial interrogation, truth may not come out. Poor persons are arrested and they are not summoned to give their statements. Influential persons like present applicants, who are businessmen, are given special treatment by the

investigating agency. This possibility and the aforesaid circumstance cannot be ignored in the present matter.

9. This Court holds that this is not fit case to grant the relief of anticipatory bail. In the result, the application stands rejected.

[T.V. NALAWADE,J.]

snk/2017/MAY17/cria1957.17