IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6305 OF 2017

Sanjay Suganchand Kasliwal ..APPLICANT

VERSUS

State of Maharashtra ..RESPONDENT

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Mr. R.N. Dhorde, Senior Advocate h/f Mr. V.R. Dhorde, Advocate for applicant.
Mr. S.Y. Mahajan, A.P.P. for respondent – State.
Mr. S.S. Patil, Advocate for Assist to P.P.

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CORAM : V.L. ACHLIYA, J.
DATED : 28th NOVEMBER, 2017

ORDER :

1. The applicant lying arrested in connection with offence u/s 406, 420, 465, 467, 468, 471 of I.P.C. registered vide C.R. No. 0342 of 2017 with City Chowk Police Station, Dist. Aurangabad, has preferred this application seeking release on bail.

2. Heard the learned Counsel for the applicant, learned A.P.P. for State and the learned Counsel representing the informant. Perused the affidavit filed by the Investigating Officer, order passed by Sessions Court and the documents relied in support of the application.

3. Before adverting to appreciate the submissions advanced, it is useful to refer to the complaint lodged against the applicant. On 29th September, 2017, Branch Manager of Malkapur Urban Co-operative Bank Ltd., having branch office at Gulmandi lodged complaint against the applicant alleging therein that on 24th December, 2012, cash credit facility to the extent of Rs.4 crores was sanctioned to the applicant. As a collateral security, the applicant has created equitable mortgage of plot nos. 1 and 16 admeasuring 148.69 sq. mts. and 148.10 sq. mts. respectively being part Gut no. 74 (Part) at village Satara. Before sanctioning the proposal, the bank has got scrutinised the title of the property offered as security through its advocate Mr. Ghansham Pol. So also the report of valuation was also obtained from the valuer of the bank. Both of them issued respective reports. On the basis of report, properties were found to be free from encumbrances and marketable title. On fulfillment of requirement which include the execution of various documents and equitable mortgage, cash credit limit to the extent of Rs.4 crores was sanctioned to the applicant. The applicant has overdrawn the account. Inspite of repeated requests, the amount was not paid. Therefore, the complainant – bank has invoked provision of SARFAESI Act, 2002 and issued statutory notice u/s 13(2) of the said Act on 30th August, 2016 to the applicant. The applicant challenged that notice before D.R.T. by filing Securitization Application No. 95 of 2017. Subsequent to receipt of notice from D.R.T., the officials of bank perused the

application filed before the D.R.T. by the applicant. On perusal of paragraph nos. 9 and 11 of the said application, it was revealed that the applicant had taken defense that plat nos. 1 and 16 are not form the part of sanctioned lay out. Therefore, officials of the bank tried to verify the factual position. It was revealed that on plot no.1, building has been constructed and the flats were also sold to various persons. Since the plot was mortgaged with the complainant bank, the complaint came to be lodged, which leads to registration of aforesaid offences against the applicant. Immediately after registration of offence, the applicant came to be arrested on 29th Separately, 2017.

4. Mr. Dhorde, learned Senior Counsel appearing for the applicant strenuously contended that the complaint lodged by the complainant is based upon incorrect information. He submits that plot nos. 1 and 16 mortgaged are part of private lay out and same were purchased by the applicant vide registered sale deed dated 03rd December, 2009 from Jasbirsingh Johar. He submits that said plots are still in existence. Besides plot nos. 1 and 16, the applicant has created equitable mortgage in respect of another plot located in Garkheda which he jointly owns with his father and property at Tisgaon stands in the name of his wife. He has also furnished additional security by way of agricultural land located at Lohagaon. He submits that properties mortgaged

by the applicant are of much more value than the claim of the bank. He submits that the dispute is pending before D.R.T. In the proceeding before D.R.T., the informant has appeared and made statement that all the properties mortgaged with the bank, including plot nos. 1 and 16 are taken in possession by the bank. He, therefore, submits that the contention that on the mortgaged plot no.1, the applicant has constructed the building without consent of the bank is per se incorrect and based upon wrong information. He further contended that subsequent to mortgaged of said plots, the owner of Gut No. 74 appears to have submitted plan for approval of lay out. He may have given respective plot numbers to plot in his lay out. He submits that the plots which are mortgaged to complainant are in existence and there is no construction made over the said plots. It is further contended that investigation of case is practically over. The applicant is lying in jail since last two months. The applicant is reputed person dealing with real estate business and owns huge landed property. He submits that the applicant is having deep roots in society. There is no likelihood that the applicant will abscond if released on bail. He submits that the evidence relied by the prosecution is in nature of documents and therefore there is no question of tampering the evidence in the event of release of the applicant on bail.

5. The learned Counsel for the applicant further submits that the

applicant has no intention to defraud the informant – bank. He submits that the account was over drawn due to some financial crisis. He further submits that the applicant is ready and willing to settle the dispute with the complainant – bank. The account was over drawn by Rs.58 lakh when same was treated as N.P.A. By way of bonafides and intention to settle the dispute, the applicant has deposited Rs.58 lakh in this Court. He submits that the applicant has no objection if bank decides to withdraw that amount and work out modalities to settle the dispute.

6. The learned A.P.P. submits that initially the investigation was lying with City Chowk Police Station and same is now handed over to the Economic Offence Wing by the order of Commissioner of Police. During the course of investigation and interrogation of the applicant, the applicant could not point out the exact location of plot nos. 1 and 16 which he was expected to point out. He further submits that the Investigating Officer has seized the new lay out plan, got approved by Anupama Developers through its partner. He has requested the Taluka Inspector of land records to furnish information regarding the subsequent approval of lay out. Request was also made to office of land records vide letter dated 22nd October, 2017 to furnish his opinion in the matter and particularly existence of plot nos. 1 and 16. Pursuant to the request of the Investigating Officer, on 07th November, 2017, the Deputy

Superintendent of Land Records has measured the entire land. Officials of the informant bank were also requested to remain present at the time of measurement. He submits that accordingly the land has been measured. Report of joint measurement is awaited. In the facts and circumstances of the case and nature of allegations, the learned A.P.P. urged to reject the application.

7. The learned Counsel representing the informant submits that the informant – bank is not interested to see the applicant behind the bars, but interested to recover its money. He submits that in case the applicant is released on bail, the applicant be directed to give the schedule of payment. He further submits that though it is stated in the proceeding before the D.R.T. that possession of plot nos. 1 and 16 has been taken, but the statement refers to taking over paper possession and not in respect of physical possession of those plots.

8. On due consideration of the submissions advanced in the light of the controversy, I am of the view that case is made out to entertain the application. The applicant is lying in jail since last two months. No purpose would be achieved by keeping the applicant behind the bars. It will take long time to proceed with trial. If we consider the overall facts of the case, the entire

dispute revolves around plot nos. 1 and 16 forms part of the private lay out. The fact is not in dispute that the applicant had purchased the plot in question in the year 2009 and created equitable mortgage in the year 2012. The search report issued by the Advocate engaged by the bank found the property as holds marketable title. After due formalities and requirements, cash credit limit was sanctioned to the applicant. The dispute crop up when the account was over drawn and inspite of requests made by bank officials, the applicant failed to deposit the amount. Since the amount over drawn was not paid, the informant invoked provision of SARFAESI Act, 2002 and issued notice u/s 13(2) of the said act and proceeded to take possession of the property. Action of the bank came to be challenged by filing proceeding before the D.R.T. Certain statements came to be made in application which leads to creating doubts in the mind of the bank. It appears from affidavit filed by the Investigating Officer that there is some dispute about the location of plot nos. 1 and 16. The Investigating Officer got measured the land through Deputy Superintendent of Land Records. The report in respect of the same is awaited. Probably the report from Superintendent of Land Record may help in identifying the plot nos. 1 and 16 and factual position as to its existence. In order to show bonafide, the applicant has deposited Rs.58 lakh in the Court i.e. the amount by which account was over drawn. It will take long time to proceed with trial. Therefore, looking to the overall facts of the case, controversy involved in respect of identity of plots, nature of accusation and the applicant is already interrogated while in police custody, I am of the view that applicant deserves to be released on bail with certain conditions. Hence the following order :-

ORDER

(i) Application is allowed.

(ii) Applicant be released on bail in connection with offence u/s 406, 420, 465, 467, 468, 471 of I.PC. Registered vide C.R.No. 0342 of 2017 with City Chowk Police Station on his furnishing bail in the sum of Rs.50,000/- with one or two surety in the like amount on following conditions :-

(a) The applicant shall deposit his passport with officer in-charge of Economic Offence Wing, Aurangabad within one week from the date of his released on bail.

(b) The applicant shall not leave the country without prior permission from this Court.

(c) The applicant shall furnish names and addresses of his three close relatives with their contact numbers.

(d) The applicant shall appear before the

Investigating Officer as and when directed by the Investigating Officer to and cooperate in investigation.

(e) The applicant shall not indulged into any act amounting to tampering of prosecution witnesses.

(iii) In the event of breach of any of the condition of bail, the bail granted to the applicant liable to be canceled.

(iv) Informant bank will be at liberty to make application to withdraw amount lying deposited by applicant with notice to applicant.

(v) Bail to be furnished before the trial Court.

(vi) Authenticated copy be issued.

(vii) Application stands disposed of in above terms.

(V. L. ACHLIYA, J.)

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