IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.310 OF 2016
WITH
CRIMINAL APPLICATION NO.386 OF 2016 (FOR INTERVENTION)
WITH
CRIMINAL APPLICATION NO.780 OF 2016 (FOR INTERVENTION)

Taj Ameer Khan Lodhi .... Applicant

versus

State of Maharashtra ... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.311 OF 2016
WITH
CRIMINAL APPLICATION NO.387 OF 2016 (FOR INTERVENTION)
WITH
CRIMINAL APPLICATION NO.781 OF 2016 (FOR INTERVENTION)

Amjad Ameer Khan Lodhi .... Applicant

versus

State of Maharashtra ... Respondent

…....

Mr.M.S. Mohite a/w. Advocate Zia Sayed a/w. Sneha Sanap i/b. Ms. Akshata Kumavat, Advocate for the Applicant in ABA Nos.310/16 and 311/2016.

Mr.Shriram Kulkarni a/w. Advocate Sachin Chavan, i/b. Advocate Mr.Mandar S. Kulkarni for the Intervenor in APPP Nos.386/16 and 387/16.

Mr.R.V. Raghuvanshi, Advocate i/b. Ratnesh Dube, Advocate for Intervenor in APPP Nos.780/16 and 781/16.

Mr.Sooraj S. Hulke, APP for the State/Respondent.

PSI – Mr.Sandeep M. Madale, Rasayani Police Station.

CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 24th FEBRUARY, 2017.

P.C. :

1. This application is moved for pre-arrest bail by the applicants/accused. The applicants/accused apprehend arrest in C.R.No.8/16 registered at Rasayani Police Station, District Raigadh, for the offences punishable under sections 419, 420 r/w 34 of the Indian Penal Code. In this C.R. 10 persons are made accused alongwith present two applicants/accused. Out of these 10 accused two are the bank persons. The applicants/ accused as per the case of prosecution have sold four properties in the village Lohop, though those properties were mortgaged and though certificate u/s 100 of the Co-operative Societies Act, 1960 was issued in favour of the bank. It is the case of prosecution that one Ameer Lodhi, the father of the applicants/accused have taken

a loan of Rs.2.75 Crores for the business, which was obtained on 28/09/2000 and against which he has mortgaged the properties in five villages including village Lohop.

2. Late Mr.Ameer Khan could not repay the loan and therefore proceedings were filed before the co-operative Court. In the said proceedings Consent Terms were filed on 31/12/2002, where father of the applicant/accused and the borrower was a signatory alongwith bank officers. Pursuant to the Consent Terms the certificate u/s 100 of the Co-operative Societies Act, 1960 was issued in favour of the bank and thus the bank became the owner of the said properties and thus nobody can transfer the said properties, except the bank. The father i.e. Ameer Lodhi expired on 10/04/2004.

3. It is the case of prosecution that, thereafter the applicants/accused alongwith other LRs of Ameer Khan Lodhi sold four properties in Village Lohop on 08/03/2007 by a registered sale deed to one M/s Eirich Tranweigh Pvt. Ltd. and

also to one Sambhaji Dhondu Patil for a total amount of Rs.60,00,000/-. The said sale proceeds were not deposited by the applicants/accused with the bank against the loan and the said amount was taken by the applicants/accused and thus as the wrongful loss was caused to the bank, the said amount was wrongfully taken by the applicants/accused. Hence the offence was registered at C.R.No.8/16 at Rasayani Police Station. Hence this bail application.

4. The learned counsel for the applicants/accused has submitted that the applicants/accused were not aware of this loan transaction, which has taken place between the bank and their father. He further relied on the certificate given by Mr.Purushottam Joshi on 15/01/2007 by the CEO that the bank has received the amount of Rs.25 lakhs. He also relied on the sale of property. He further submitted that the documents i.e. registered sale deed, registered conveyance, which has taken place on 08/03/2007 between the applicants/accused and M/s Eirich Tranweigh Pvt. Ltd. of the transaction of Rs.60,00,000/- is

submitted to the police and also submitted that the sale deed which has taken place between Sambhaji Dhondu Patil and the applicants/accused dated 17/05/2007 for an amount of Rs.6,74,000/-, is also produced with the Investigating Officer. The learned counsel has relied on the letter dated 10/01/2007 written by M/s Eirich Tranweigh Pvt. Ltd. to the bank, in respect of release of charge on property at Lohop, wherein CEO Mr.Joshi has given the permission. He further submitted that M/s Eirich Tranweigh Pvt. Ltd. has deposited Rs.23,00,000/- in fixed deposit. He further submitted that the applicants/accused shall abide by the conditions of the Court if they are granted bail and shall cooperate the police.

5. The learned prosecutor and learned senior counsel Mr.Raghuvanshi for the complainant while opposing this bail application have submitted that the applicants/accused have cheated bank by selling the property of the bank at village Lohop, where certificate u/s 100 was issued. The bank was having a complete charge over the property and thus property

ought not to have been sold without consent of the bank. It is further submitted that the transaction taken place shows that the permission of the bank was obtained from CEO Mr.Purushottam Joshi, who is also co-accused in the present case. It is submitted that in connivance with Mr.Joshi, Bank Manager Mr.Pradeep Krushna Mhatre and the Revenue Officers, the offence of cheating is committed and the applicants/accused were allowed to sale the property, which is mortgaged with the bank. The learned senior counsel Mr.Raghuvanshi submitted that once the certificate was issued, then no NOC to sale the land can be given at Lohop.

6. Perused the complaint, the documents pointed out by the learned counsel, so also the affidavit filed by Investigating Officer Mr.Sandeep Madhale. The property at Lohop was mortgaged with the bank and certificate under the Co-operative Societies Act was issued in favour of the bank and thus, the property belonged to bank and the said property ought not to have been sold by the applicants/accused. The fact that

Mr.Ameer Khan Lodhi had borrowed loan of Rs.2.75 Crores and could not repay the amount is not disputed. Thus, the property has been sold fraudulently as the bank has charge over it and the certificate is given by Mr.Joshi, who is the co-accused, has no value. Prima facie, the said sale of land at Lohop, when certificate u/s 100 of the Co-operative Societies Act is issued, is not valid and the property and amount should go back to bank. However proper steps are to be taken before the appropriate Court.

7. So far as the present offence is concerned, it appears that only Rs.25,00,000/- are deposited towards the NP account. However, it appears that Lohop property, which were mortgaged earlier with the bank, those properties were never transferred in the name of bank till 2007. Though they were having certificate u/s 100 of the co-operative bank granted on 05/02/2003 and pursuant to which the Registrar passed order of transfer in the name of bank, the bank did not take further steps of making entry of the bank as an owner in the revenue

record and so the name of bank was not appearing in the revenue record of Lohop property.

8. Under such circumstances, I am of the view that as all the documents are available with the police, the custodial interrogation of the applicants/accused is not necessary. Hence I grant interim bail with following terms and conditions :

ORDER

(i) In the event of arrest, the applicants/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.40,000/- each with one or two solvent sureties each in the like amount.

(ii) The applicants/accused shall cooperate with the Investigating Officer and attend the concerned police station as and when called till filing of the charge-sheet.

(iii) The applicants/accused shall produce all the documents which they are having in custody and shall cooperate in investigation.

(iv) The applicants/accused shall not deal with any property which is mortgaged with the bank.

9. The applications for anticipatory bail stand disposed of on above terms.

10. In view of the disposal of the bail applications, all the applications for intervention also stand disposed of.

(MRIDULA BHATKAR, J.)