IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPTORY BAIL APPLICATION NO. 344 OF 2017

1. Girdhari Asudomal Banwani,
2. Akash Nirmal Banwani ...Applicants

Versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 240 OF 2017
IN
ANTICIPTORY BAIL APPLICATION NO. 344 OF 2017

PEN Co-operative Urban Bank Ltd. ...Applicant/Intervener

IN THE MATTER BETWEEN :

Girdhari Asudomal Banwani & Anr. ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr. Jayant Joseph Bardeskar for the Applicants

Mr. Prashant Jadhav, A.P.P for the Respondent-State

Mr. R. B. Raghuwanshi i/b Mr. Ratnesh Dube for the Intervener in APPP/240/2017

PSI Mr. Sandip M. Madhale from Rasayani Police Station, Raigad, is present.

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 18th APRIL, 2017

P.C.

1. Heard learned Counsel for the parties.

2. By this application, the applicants seek pre-arrest bail in connection with C.R. No. 6 of 2016 registered with the Rasayani Police Station, Raigad, for the alleged offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code.

3. Learned Counsel for the applicants submitted that no offence as alleged is disclosed *qua* the applicants. He submitted that there is an amount of Rs. 80 lakhs lying in the account of M/s. Dai-Ichi Realtors Pvt. Ltd. and that the applicants are ready to transfer the said amount to the Bank. He further submitted that the allegation that the applicants purchased land from accused No. 3 on the basis of forged and fabricated documents, is absolutely baseless. He submits that as the Bank was not ready to issue the Sale Certificate, the applicants had no option but to purchase the land from accused No.3-Sudhir Sawant, in order to secure their interest in the land i.e. the auctioned property. He submitted that infact the applicants were required to pay an additional amount of Rs. 30 lakhs to Sudhir Sawant (accused No.3) as he was selling the auctioned land to some persons. According to the learned Counsel, custodial interrogation of the applicants is not required.

4. Mr. Raghuwanshi, learned Counsel for the intervener/complainant submits that the complainant had deposited an amount of Rs. 80 lakhs in his own account, instead of depositing it in the Bank account. He further submitted that since the Bank has gone into liquidation, the said amount of Rs. 80 lakhs cannot be transferred. Learned Counsel for the complainant further submitted that the applicants had disposed of the property, when the charge was with the Bank. The said statement is disputed by the learned Counsel for the applicants. He submits that the property was not disposed of, but was infact purchased from accused No.3-Sudhir Sawant and that the Bank is in possession of the said property till today.

5. Learned A.P.P submits that the applicants should not utilize the said amount of Rs. 80 lakhs which is lying in their Current Account and should take efforts to transfer the same to the Bank.

6. Perused the papers. The complainant is Kashinath Gavand, Administrator of Pen Urban Cooperative Bank Ltd. It is the case of the

prosecution, that Sudhir Sawant's property was auctioned under the SARFAESI Act, for recovering the loan. The applicants bid for the said property for a sum of Rs. 1,01,00,000/-. It appears that the said bid was accepted by the Bank, pursuant to which, the applicants deposited a sum of Rs. 25 lakhs with Pen Urban Co-operative Bank Ltd. As far as the balance amount of Rs. 80 lakhs is concerned, the said amount was deposited by the applicants in the account of M/s. Dai-Ichi Realtors Pvt. Ltd., which is the private account of the Company. The Bank went into liquidation and in 2010, a Liquidator was appointed. It appears that despite the applicants having bid for 21 plots, the bank failed to issue Sale Certificates for the said plots, in their favour. Learned Counsel for the applicants states that the possession of the 21 plots is with the Bank. It appears that the applicants have purchased the said plots from accused No. 3-Sudhir Sawant by Sale Deed dated 12th August, 2011 and by paying an additional sum of Rs. 30 lakhs to Sudhir Sawant. It appears that the said Sale Deed is a registered Sale Deed and that stamp duty has also been paid on the same. Learned Counsel for the applicants makes a statement that the applicants will not touch the said amount of Rs. 80 lakhs which is lying in their account. The said statement is accepted. The learned Counsel also states that the applicants are also ready to transfer the said amount in favour of the Bank, as and when so directed. The said statement is also accepted. Learned Counsel for the applicants submits that the applicants had infact even written a letter dated 23rd August, 2010 expressing their willingness to transfer the said amount in favour of the Bank.

7. Considering the peculiar facts of the case, custodial interrogation of the applicants is not required. Accordingly, the application is allowed and the applicants are granted pre-arrest bail on the following terms and conditions :

ORDER

(i) In the event of the arrest, the applicants be enlarged on bail on executing P.R. Bond in the sum of Rs.30,000/- each, with one or two sureties in the like amount ;

(ii) The applicants shall report to the Investigating Officer of the concerned Police Station as and when required;

(iii) The applicants shall not part with Rs. 80 lakhs, lying in their accounts;

(iv) The applicants shall not leave the Country without prior permission of the trial Court;

(v) The applicants to cooperate with the investigating agency.

8. The application is accordingly disposed of in the aforesaid terms.

9. It is made clear that the observations made herein are *prima facie*, for the purpose of deciding this application.

10. In view of the above order, intervention application being Criminal Application No. 240 of 2017 also stands disposed of.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.