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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.260 OF 2014
(For Cancellation of Bail)
IN
CRIMINAL BAIL APPLICATION NO.1026 OF 2011

General Manager,
Pune District Central Cooperative Bank Limited ...Applicant
Versus
Suhas Kamlakar Nibandhe and Anr. ...Respondent

Mr.V.B.Tapkir, for the Applicant.

Mr.Subhash Jha i/b Law Global, for the Respondent No.1.

Ms. Rutuja Ambekar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
DATE : 30th JUNE, 2017

P.C. :

1. Heard learned counsel for the parties.

2. By this application, the applicant seeks cancellation of the bail granted to respondent no.1-Suhas Kamlakar Nibandhe, by this Court (Coram:R.C.Chavan,J.), vide order dated 18th August, 2011, passed in Criminal Application No.1026 of 2011.

3. Mr.Tapkir, learned counsel for the applicant states that the respondent no.1 has breached the order dated 18th August, 2011 and the undertaking given by the respondent no.1. He relied on the said order dated 18th August, 2011, enlarging the applicant therein i.e. respondent no.1-Suhas Kamlakar Nibandhe, on bail. The said order is on page 12 of the application. He also relied on the undertaking dated 19th August, 2011, filed by the respondent no.1, pursuant to the order dated 18th August, 2011. He submitted that till date, respondent no.1 has failed to hand over all the original papers of the property mentioned in clause 1 (i) of the undertaking to the Manager, Pune District Central Co-operative Bank Limited, Hadapsar Branch, Pune.

4. Mr.Jha, learned counsel for the respondent no.1 vehemently opposed the application. Learned Counsel has tendered an affidavit of the respondent no.1, dated 29th June, 2017. During the course of the arguments today, Mr.Jha states that a housing loan was taken by the respondent no.1, on the property mentioned in clause 1 (i) of the undertaking, from the Standard Chartered Bank in the year 2003. He does not dispute the fact, that the said fact was not brought to the notice of the Court granting bail in

2011 nor was the same mentioned in the undertaking filed in August, 2011. He, however, seeks time to secure the original papers from the Standard Chartered Bank and states that after the housing loan is repaid, the respondent no.1 will hand over the said original documents to the applicant. He submits that civil proceedings are pending between the applicant and respondent no1. He submitted that the applicant has obtained an order of attachment before Judgment from the Co-operative Court, Pune, with respect to the very property.

5. Perused the papers. Vide order dated 18th August, 2011, passed in Criminal Application No.1026 of 2011, this Court (Coram:R.C.Chavan,J.), was pleased to pass the following order:-

> 1. By order dated 29th July 2011, it was suggested that the Investigating Officer and Bank Officers shall consider the feasibility of the proposal voluntarily given by the applicant, namely, the sale of two movable properties for securing the dues payable to the bank.
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> 2. The learned APP states that the dues of the bank are

over Rs.2,37,00,000/- and the properties are only worth Rs. 67,80,000/-. Since at least that amount of the bank would be secured by way of sale of the said property, the proposal is worth considering. No purpose will be served by keeping the applicant behind bar till the trial is over. The learned APP states that the Investigating Officer and the Officers of the Pune District Central Co-operative Bank are present. The bank officers may check up the applicant's title in respect of the properties and ensure that no third party interest or mortgages are created in these properties. The applicant shall file an undertaking on oath duly attested by the Superintendent of Prison where the applicant is lodged agreeing to put these properties to sale towards part of the dues which are recoverable by the Pune District Central Cooperative Bank at whose instance offence has been registered. On such undertaking being given and after ensuring that these properties are owned exclusively by the applicant and there are no third party interests or charges created on these properties, the applicant is ordered to be released on bail in C.R. No. 152 of 2011 of Hadapsar Police Station, Pune, on his furnishing P.R. Bond in the sum of Rs.50,000/- with one or more solvent sureties in the sum aggregating to Rs.50,000/- on the condition that the applicant shall attend the Police Station concerned on first Sunday of the month between 10.00 a.m. and 1.00 p.m. till the trial is over. The application is accordingly disposed of.

6. Pursuant to the order dated 18th August, 2011, the respondent no.1 filed his undertaking dated 19th August, 2011 in this Court, wherein, he has given description of the property exclusively owned by him in sub-clauses (i) and (ii) of clause – 1, of the said undertaking. The relevant part reads thus:-

1) I say that without prejudice to my rights and contentions in the matter, following described properties which are owned by me shall be disposed of expeditiously by fetching the maximum price and in the process the properties could be sold, either by private treaty/auction and/or by public notice/auction so as to fetch the best possible price.

Description of the properties exclusively owned by me are as under:-

i) Flat No.12, Fourth Floor, "Vishnu Vihar", Building No.A-1, S no.571/1 + 572 / B, Plot No.B-9, Bibwewadi Kondhawa Road, Bibwewadi, Dist : Pune (1068 sq.ft)

ii) Semi irrigable land Gut No.252, Jalochi, Tal – Baramati, Dist – Pune. (emphasis supplied)

7. In para 2, he has undertaken to hand over all the original papers of the aforesaid properties to the Manager, Pune District Central Co-operative Bank Limited, Hadapsar Branch, Pune. As far as property in clause 1(ii) is concerned, the original papers were handed over by respondent no.1 to the applicant – Bank. As far as property mentioned in clause 1(i) is concerned, till date, the original documents have not been handed over to the applicant- Bank. What is pertinent to note, is that although it is mentioned in the undertaking, that the properties are exclusively owned by him, the respondent no.1 had obtained a housing loan from Standard Chartered Bank, way back in 2003. In fact, while enlarging the respondent no.1 on bail, it was observed by this Court, that on such an undertaking being given and after ensuring that these properties are owned exclusively by the applicant and there are no third party interests or charges created on these properties, the applicant is ordered to be released on bail.

In the affidavit filed yesterday by the respondent no.1, the fact that a housing loan was taken by the respondent no.1, on the property mentioned in clause 1 (i) of the undertaking from the Standard Chartered Bank in the year 2003 is suppressed. Till date i.e. from 2011 onwards, no application was made either for modification or relaxation of the condition of relieving him of the said undertaking. It is only when the applicant – Bank filed the aforesaid application seeking cancellation of the respondent No.1's bail, that the said fact of respondent no.1 having taken a housing loan in the year 2003, has come to light. It also appears from the order dated 18^{th} August, 2011 that essentially in view of the offer and undertaking agreed to be given by the respondent no.1, respondent no.1 was enlarged on bail, on certain conditions. It is pertinent to note, that the respondent no.1 has suppressed the said fact i.e. of taking housing loan from the Standard Chartered Bank in 2003, in the undertaking and before this Court whilst enlarging him on bail. The Respondent No.1 has also breached the order dated 18^{th} August, 2011 as well as the undertaking dated 19^{th} August, 2011. As noted earlier, despite the fact, that the respondent no.1 was aware that a housing loan was taken from the Standard Chartered Bank, in 2003, with respect to Flat

No.12, mentioned in clause 1(i) of the undertaking, the same was suppressed, and instead it was mentioned in clause 1(i) of the undertaking, that the said property was exclusively owned by him.

8. Considering the aforesaid, the application is allowed and the respondent no.1's bail is cancelled. The respondent no.1, shall be taken into custody forthwith. The respondent no.1 is at liberty to file a fresh application, in case he complies with the order/undertaking given by him.

9. The Application is accordingly disposed of.

10. Learned Counsel for the respondent no.1 seeks stay of the order. The same is declined.

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

(REVATI MOHITE DERE, J.)