IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.739 OF 2016

Amol Jaiprakash Sonkavade .... Applicant

versus

State of Maharashtra ... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.847 OF 2016

Deepak Narayan Sonkavade .... Applicant

versus

State of Maharashtra ... Respondent

Mr.Priyal G. Sarda, Advocate for the Applicant.
Mr.Anand S. Kulkarni, Advocate for Respondent No.2.
Mr.Vinod Chate, APP for the State/Respondent.

CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 23rd JANUARY, 2017.

P.C. :

1. In these two applications pre-arrest bail is preferred by the applicant/accused. The applicants/accused are prosecuted for the offences punishable under section 420 and 406 of the Indian Penal Code in C.R.No.244/16 of Fauzdar Chawdi Police Station.

2. One Sunil Vitthal Ekbote, the Manager of Laxmi Cooperative Bank at Jule Solapur, has stated that the applicants/accused are the builder, developer and running business in the name and style as Swapnil Associate. They wanted to develop a plot admeasuring 23200 Sq.Mtrs. at Soregaon, District – Solapur and so they mortgaged the said land with bank and obtained loan of Rs.1,60,00,000/- in the year 2011. On 28/03/2011 the amount of Rs.1,60,00,000/- was disbursed by the bank and the said amount was accepted by both the accused for Swapnil Associates. After accepting the deed of mortgage dated 28/03/2011 as per the deed of mortgage it was binding on the applicants/accused to obtain no objection in respect of the sale of the land or portion of the land mortgaged. In the year 2013 bank noticed that the applicants/accused have sold the plots out of said mortgage land total 64 plots were sold and the names of some other persons were mutated in 7/12 extract. As per the case of bank, no permission or NOC was obtained of the bank. Moreover, the

applicants/accused did not deposit 30% of the amount which they have received out of sale proceeds and thus they have violated the terms and conditions of the contract and so also by not informing the bank in respect of sale of mortgage property, have cheated bank and committed criminal breach of trust and therefore offence was registered.

3. The learned counsel for the applicants/accused has submitted that the applicants/accused have deposited Rs.1,60,00,000/- till today and now only Rs.60,32,000/- is remained to be paid. The learned counsel for the applicants/accused submitted that the applicants/accused are ready to pay the amount, but they want the payment by installments. He further submitted that they have not committed any criminal breach of trust.

4. The learned counsel for the respondent No.2 Bank and the learned prosecutor opposed the application and submitted that till today Rs.60,32,000/- are due. He submitted that the

applicants/accused have deposited only Rs.50,000/-. My attention is drawn to the order of this Court dated 05/10/2016, wherein my predecessor after accepting statement made by the counsel of the applicant in respect of repayment, has mentioned that the cheques were issued by the applicants/accused after 30/10/2013 were dishonoured and thereafter has as per the said order the applicant was supposed to give the demand draft of Rs.15,00,000/- to the bank and undertaking of depositing the amount of Rs.60,00,000/- thereafter within six months. However, except Rs.1,50,000/- no amount is paid. The learned counsel for the respondent No.2 bank has submitted that the demand draft of Rs.3,00,000/- was given on the next date i.e. on 15/10/2016, wherein the number was wrongly mentioned by the bank and the four cheques of Rs.3,00,000/- were given. However, all the cheques were dishonoured and there is no payment since then.

5. Perused the order passed by my predecessor dated 05/10/2016. In the said order it is mentioned that the applicant

had submitted that the applicant would file an undertaking before the Court that he would repay the amount as stated in the affidavit-in-reply and thereafter specific order was passed by this Court. As per the order of this Court four cheques of Rs.3,00,000/- were given, however they were dishonoured and thereafter no payment was made. I am of the view that, as a particular statement is made before the Court, it is necessary for the applicants/accused to abide by the said statement, especially when the protection is granted or extended on that ground. Today also the applicants/accused could have given cheque or demand draft, which could have been accepted. However, no such inclination is shown from the applicant/accused. Hence I reject the application.

6. The learned counsel submits that the applicant/accused want to challenge this order in the Sessions Court hence it be stayed and interim bail be continued. In view of the statements, this order is stayed till 14/02/2017 and till then interim bail, if any, be continued.

(MRIDULA BHATKAR, J.)

Nesarikar