IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.911 OF 2016

Dinkar Krishnaji Gadhave,
Director of The Kurla Nagarik Sahakari
Bank Ltd; Kurla, Mumbai. Applicant

versus

1. The State of Maharashtra
2. Rajendra Krishnaji Gadgil,
CEO of The Kurla Nagarik Sahakari
Bank Ltd; Kurla, Mumbai. Respondents

Mr.Nitin Pradhan with Mr.P.D.Desai and Mr.Rupesh Mandhare for Applicant.
Smt.J.S.Lohokare, APP, for State.
Mr.Santosh Chari for informant.

CORAM : PRAKASH D. NAIK, J.

DATE : 21th June 2017

PC :

1. The Applicant is apprehending arrest in connection with CR No.10 of 2016 registered with Vinoba Bhave Nagar Police Station, Mumbai for offences under Sections 419, 420, 465, 467, 468, 471 and 120B of Indian Penal Code. The first information report (`FIR') was registered on 12th January 2016.

2. The investigation proceeded against the arrested accused and the charge sheet was submitted to the Court. While submitting the

charge sheet, it was stated that the Applicant is wanted in the said criminal case. The Applicant therefore apprehended arrest and preferred an application for anticipatory bail before the Court of Sessions. Initially the Sessions Court was pleased to grant interim order protecting the Applicant on 25th April 2016. Subsequently the said application was rejected on 16th May 2016. Hence, the present application was preferred before this Court.

3. The brief facts of the prosecution case are that the complainant Shri Rajendra Gadgil is the Chief Executive Officer of Kurla Nagarik Sahakari Bank Limited, Kurla. It is alleged that on 7th July 2015, loan amount totaling to Rs.3 crores was sanctioned by the said bank in favour of M/s.Blue Cross Networks belonging to Shri Naval Chandak. The said person while obtaining loan submitted certain documents pertaining to his properties to the bank. Shri Chandak allegedly defaulted in payment of installments and when the bank contacted him, he started avoiding the bank. The bank, therefore, started making inquiries regarding his activities and it was learnt that the documents submitted by him pertaining to his shops in Gaurav Valley, Mira Road were fabricated and that the said shop was locked since 9 to 10 months. So also the no objection certificate and the lien noted letter of Gaurav Vally Daffodil D Society submitted by him in respect to said shop was also fabricated. It is further alleged that on inquiry, it was revealed that the shop which was mortgaged by Shri Chandak with the bank, the transaction of the shop was cancelled by the owner Munavar Bhagat. It was also revealed that the account statement and letter of Bank of India as well as the certificate of chartered accountant regarding TDS submitted by Shri

Chandak were also fabricated. Shri Chandak had obtained loan facility from Vashi Branchhhhhh of the bank and had disbursed the said amount in favour of Shri Sachin Magar and Navin Kumar Awasthi who stood as guarantors for loan sanction to Naval Chandak. When the bank tried to contact the guarantors, it was found that the said guarantors were fictitious. It is further alleged that the accused Chandak had obtained loan from City Co-operative Bank and had defaulted in repayment of the same and that he was taken to Pawai Police Station. Hence, the complainant and another person also visited the said police station and it was noticed that he is the same person who had obtained loan from the Bank of the complainant by submitting false and fabricated documents. It was also revealed that the name of the said person was Manoj Kumar Pandey. The said accused was then brought to Vinoba Bhave Nagar Police Station and the FIR was registered with the said police station on 12th January 2016.

4. The learned advocate for Applicant Shri Pradhan submitted that the Applicant is being falsely implicated in the present crime. He was available during the course of investigation qua the arrested accused. He was never called by the investigating machinery for the purpose of interrogation in connection with the said crime. However, suddenly while filing the charge sheet against the arrested co-accused, it was stated that the Applicant is wanted in the said crime and, therefore, he apprehended arrest and preferred the application for anticipatory bail. It is submitted that the Applicant has been an elected director of the said bank and served the bank for more than 20 years without any blemish. He further submitted that

the Applicant has no role to play in sanctioning any loan to any borrower. When an application for loan is submitted to the bank by any borrower, the said loan application is accepted by the loan department of the respective branch of the bank for processing along with the necessary documents pertaining to the identity, properties of the borrower. The said loan documents are verified by the loan department. So also, the officers of the loan department visit the premises of which documents are submitted by the borrower. That on the loan department being satisfied about the creditworthiness and documents submitted by the borrower, a scrutiny report is prepared by the loan department. The said scrutiny report is prepared after taking into consideration the search report, legal opinion, valuation report as well as cibil report. Thereafter the loan proposal alongwith the scrutiny report is put up for approval in board meeting. After the loan proposal is approved by the board and before disbursement, the Directors of the bank along with the Chairman, branch manager and loan officer visit the properties of the borrower and thereafter the loan is disbursed to the borrower on the various terms and conditions. He submitted that in the present case also, the said procedure was followed. The Applicant is not the person who has sanctioned the loan on his own. He further submitted that pursuant to the submission of the loan application, the loan department of the bank verified the documents of Naval Chandak, scrutiny report was submitted to the board for approval/processing of loan application of Naval Chandak for amount of Rs.7 crores. The scrutiny report is prepared after considering the search report, legal opinion, valuation report, cibil report, NOC from various banks and housing/premises society, spot verification report and the loan proposal of Naval Chandak was approved by the board meeting. It is further submitted that the Directors along with the other officials of the bank visited the properties of Naval Chandak. The report was placed before the board by the loan department mentioning the risks as well as advantages and approval was sought for sanction of loan facilities to the tune of Rs.3 crores which was approved by all the board members along with other loan proposals and subsequently loan was disbursed to Shri Naval Chandak. He, therefore, submitted that the Applicant cannot be singled out for grant of loan to Shri Naval Chandak. It is further submitted that from the documents on record and the aforesaid facts, it is apparent that the loan was sanctioned after verification and submission of report by several persons concerned with the said process and with the unanimous approval of all the board members. The Applicant cannot be held liable alone for the default committed by Shri Naval Chandak. It is submitted that the loan application along with necessary documents was submitted by Shri Chandak to the loan department who conducted the preliminary inquiry into the documents and properties of Naval Chandak. Even assuming that the documents submitted by Shri Chandak were fabricated, the Applicant has no concern whatsoever with the same. The documents were subjected to verification by the concerned department.

5. The learned advocate for Applicant submitted that the valuation report was submitted to the bank by Delta Architects, Structural Engineers, Government approved engineers in respect of valuation of properties of Naval Chandak. So also the search report

of the properties of Shri Chandak was obtained by the concerned department. The Applicant has no concern with the said agencies who conducted valuation and search of properties of Naval Chandak and the same is conducted by the loan department. The loan was sanctioned on the basis of the reports submitted by the respective persons to the bank. The documents were prepared by officers who were experts in their respective field and it is not the prosecution's case that the Applicant has exercised undue influence over the said agencies. The loan is to be approved by the board of directors on the basis of scrutiny report and recommendations of the loan department. The scrutiny report based on preliminary inquiry by loan department, valuation report, search report, legal opinion, cibil report was placed before the board and unanimously approved by all the board members who were present in the meeting. The learned counsel placed reliance upon the scrutiny report which is annexed to the application. The Applicant has not signed any document in relation to loan application and/or sanction of loan to Naval Chandak except the unanimous decision of the board for approving the said loan. On perusal of the legal opinion obtained by the bank in connection with the loan to Shri Chandak, no suspicion is created against the borrower. He submitted that the required procedure was followed by the concerned department for sanction of loan to Naval Chandak. The Applicant has no say in the said procedures followed by the departments and authorities and there is no scope of any influence being exercised by the Applicant in the said procedure. He further submitted that the board meeting was held with a view to initiate action against the erring officers. The Applicant was also present in the said meeting. In pursuant to that, the FIR was registered. However, no action was initiated against the erring officers and the Applicant is being singled out while filing charge sheet against the arrested co-accused. It is further submitted that on perusal of the remand application filed against the arrested accused, it is apparent that there is no material to connect the Applicant with said crime. He submitted that the application was rejected by the Sessions Court by making observations that the Applicant is the person who exerted pressure upon the other officers of the bank and he was seen in the company of the borrower on several occasions. It is submitted that only on the basis of such statements, it cannot be inferred that the Applicant was acting in connivance with the borrower. He submitted from the documents on record it is apparent that the loan was sanctioned after following the procedure and with the approval of the board of directors and therefore the Applicant cannot be held responsible for sanctioning of the loan to the borrower. It is submitted that the persons who should have been arraigned as accused, has been cited as witnesses in the present case. The learned counsel referred to the statement of Mr.Undalkar, Mr,.Shintre, Advocate Smt.Gole and statement of Mr.Jain. He submitted that on perusal of the said statement, it cannot be said that the Applicant is responsible for sanctioning the loan to the borrower. The witnesses have alleged that the Applicant was accompanying the borrower on most of the occasions and was requesting the officials to approve the loan of borrower. Only on the basis of such statements, it cannot be said that the Applicant is party to the crime committed by the accused Naval Chandak.

6. Learned APP opposed the application for anticipatory bail. She

submitted that there is cogent evidence against the Applicant which establishes his involvement in commission of the said crime. The documents on record and the statements of the witnesses clearly show that the Applicant had acted in connivance with accused Naval Chandak. Learned APP pointed out statement of Shrikant Undalkar which was recorded on 18th January 2016. In his statement it is stated that in January 2015, when the said witness was a branch officer (loan department) with Kurla Nagarik Bank, Head Office, the Applicant had introduced one person to him and who gave his name as Naval Chandak. The Applicant informed him that the said person is known to him and he intends to start a business of shopping mall and therefore needs to purchase the property. He further submitted that the said borrower intends to mortgage the property and obtain the loan to the tune of Rs.10 crores. The witness perused the documents brought by the said borrower. On perusal of the said documents, the witness intimated about the same to Chief Executive Officer Shri Girish Shintre. The witness was asked to visit the property. On 23rd January 2015, Shri Undalkar visited the property. Shri Undalkar and Shri Sawant, the other staff member, submitted a report that it is not viable to sanction loan to the borrower. He intimated about the same to the Applicant. Thereafter again the Applicant and Shri Chandak visited the bank and approached the Chief Executive Officer Shri Shintre. Shri Undalkar was called in the cabin by Shri Shintre. At that time Shri Shintre and the Applicant informed him that the borrower has changed his proposal and he intends to carry his business in APMC market and therefore seeks loan from the said bank by mortgaging the property situated at Meera Road. Shri Undlkar has further stated that the Applicant was insisting upon sanction of loan as early as possible and he was pursuing Shri Undalkar to complete the procedure as early as possible. Learned APP further pointed out the contents of statement of Shri Girish Shintre. The said witness has also referred to the visits of the Applicant along with Shri Chandak, the borrower of the loan. The Applicant insisted that the loan proposal may be placed in the meeting and thereafter the said proposal was put up before the meeting and the loan was sanctioned.

7. Learned APP submitted that the applicant is the director of the Kurla Nagrik Sahakari Bank Limited, Kurla. It is submitted that the co-accused Naval Chandak has submitted forged property documents and had availed of loan of Rs.3 crores. Thereafter, he intentionally defaulted in repayment of the said loan. During investigation it is revealed that the applicant had actively participated in the commission of the offence. Accused Manoj Pandey alias Naval Chandak was always accompanied by the applicant. In spite of not having proper documents the account of the accused Naval Chandak was opened at the instance of the applicant and loan was disbursed on his recommendation. It is further submitted that the applicant exerted undue and unjust pressure on the bank employees to overlook the norms for account opening and forgo proper verification and due diligence for loan disbursement. The loan was sought for setting up Mall, but, when it was found that proposal was not viable than the purpose of loan was changed to extending business in APMC Market by accused Naval Chandak and the applicant had acted in connivance with the said accused. The applicant has actively participated with the co-accused in deceiving and cheating the

complainant bank. The applicant had fade in his duty to safeguard the interest of the Bank. It is submitted that the custodial interrogation of the applicant is necessary to unearth the entire conspiracy. The bank has been deceived to the tune of Rs.3 crores which is a public money and needs to be recovered by interrogating the applicant. The trail of funds stipend by the accused in connivance with the applicant is to be traced. The applicant was aware and had a knowledge as to by whom, where and how the documents were forged. The investigation, as against the applicant is not completed and it was at the crucial stage. Applicant will cause impediment in the investigation and will tampered with the evidence. The applicant is being a director is likely to use his influence and pressurize the witnesses and, therefore, the application preferred by the applicant may be rejected.

8. Learned APP relied on statement of Shivaji Avghade recorded on 6th February, 2016. The said witness has stated that on 28th January, 2015, when he was in the branch the person namely Naval Chandak visited the bank for opening the bank account. The said person approached the branch manager Shri.Sopan Shinde. Since he had not complied with the requirements for opening the bank account, he was informed that it will not be possible to open the bank account. Thereafter, Shri.Sopan Shinde informed the said witness that one person intends to open the account with the said branch. However, he does not have the requisite documents for opening the bank account. Shri.Shinde also informed the witness that the person is referring to name of the director of the bank Shri.Gadhave. Subsequently, Shri.Shinde informed the witness that a

telephone call was received from Shri.Gadhave and it was informed to him that the current account may be opened for the benefit of Shri.Naval Chandak. It was also submitted that Shri.Chandak would submit all the required documents. Thereafter, Shri.Chandak visited the bank and approached Shri.Shinde and on completing the formalities the account was opened. On perusal of documents the said witness has stated that Shri.Shinde had allowed the opening of the bank account with his signature, but, at the same time he had made an endorsement stating that the account is being opened on the instructions of Shri.Gadhave. Learned APP also placed for consideration the said account opening form which bears the endorsement made by Shri.Sopan Shinde. Learned APP pointed out the statement of Shri.Sopan Narayan Shinde. It is stated in the statement that on 28th January, 2015, accused Naval Chandak had visited the bank along with his friend and submitted certain documents for opening of the bank account. He was not satisfied with the requirement of the documents and, therefore, he refused to open the bank account. It is further stated that Shri.Chandak again came back and at that time Shri.Dinkar Gadhave gave a call to the said witness. Shri.Gadhave informed him that although there is no compliance of the requirements of opening the account *visa-vis* KYC norms, the account of the said person may be opened. Shri.Shinde thereafter spoke to Shri.Shintre and informed him about the instructions given by Shri.Gadhave and, subsequently, the account of the said accused was opened.

9. The applicant is a director of Kurla Nagrik Sahakari Bank. On perusal of the documents annexed to the application as well as the

documents collected by the investigating agency and the statements of the witnesses recorded during the course of investigation, *prima facie* the connivance of the applicant is established. The loan was sanctioned to M/s.Blue Cross Networks belonging to Naval Chandak. He had submitted certain documents pertaining to his properties to the bank. He defaulted in payment of installments which was an deliberated act to deceive the bank. It is apparent that he had no intentions to clear the dues of the Bank. Naval Chandak defaulted in payment of installments and when the bank tried to contact him, he started avoiding the bank. The bank thereafter started inquiries about the whereabouts of the said person. It was learnt that the documents submitted by the said accused pertaining to his shop Gourav Vally at Mira Road were fabricated. The shop was locked since 9 to 10 months. No objection certificate and lien noted. Letter of Gourav Vally Daffodil submitted by the said accused in respect of the said shop were fabricated. It was revealed that the shop which was mortgaged by Shri.Chandak with the bank, the transaction of the said shop was cancelled by Munvar Bhagat. The accounts statement and letter of bank as well as the certificate of Chartered Accountant regarding TDS submitted by Naval Chandak were also fabricated. It was further revealed that Shri.Chandak had obtained loan facility from Vashi branch of the bank and had disbursed the said amount in favour of Sachin Magar and Navinkumar Awasthi, who stood as guarantors for loan sanctioned to Shri.Naval Chandak. The guarantors were fictitious. Naval Chandak had obtained loan from City bank by submitting forged documents. It is also revealed from the statements of witnesses, that the applicant is the person who introduced Naval Chandak to the staff of Bank. The statements of witnesses make it clear that accused Manoj Pandey alias Naval Chandak was always accompanied by the applicant. It is also revealed that in spite of not having proper documents, the account of Naval Chandak was opened at the instance and/or instructions of the applicant. The statements of witnesses are recorded by the investigating agency which shows the complicity of the applicant. No doubt, the loans were sanctioned by the Board of Directors. However, it is pertinent to note that accused Naval Chandak was known to the applicant and he had introduced him to the bank and had insisted upon that the account may be opened although there was no requisite documents to open such an account. From the conduct of the applicant, it was apparent that he was acting in connivance with accused Naval Chandak. He definitely had a knowledge that he is relying upon the forged documents and he had no intention to clear the dues of the bank. The applicant misused his position as a Director of the Bank and had influenced the other persons to open the bank account of the said person. The loan sought for setting up Mall was not viable and, therefore, the purpose of loan was changed to extending business in APMC Market by accused Manoj Pandey alias Naval Chandak in connivance with the applicant and the other accused. The name of the applicant was disclosed during the course of the investigation and after recording of the statements of witnesses. Hence, at the earlier point of time his name was not mentioned in the First Information Report. While completing the investigation against the arrested accused from the statements of the witnesses, the involvement of the applicant was reflected and, therefore, while filing charge-sheet against the co-accused it was noted that the applicant is wanted in the said prosecution. Although, the charge-sheet is filed against the co-accused, the investigation is being conducted *visa-vis* the role played by the applicant in the said crime. Another offence was registered against the applicant wherein it was stated that he had cheated the bank to the tune of Rs.36,00,000/-. The offence was registered vide C.R. No.63 of 2015 under Sections 409, 420, 467, 468, 471, 477-A read with Section 34 of IPC. The said crime was investigated by EOW Crime Branch. Taking into consideration the aforesaid material on record, the custodial interrogation of the applicant is necessary and the relief under Section 438 of Cr.P.C. cannot be granted to the applicant. In view of the above, I am not inclined to allow this application.

10. Hence, I pass the following order:

ORDER

(i) Anticipatory Bail Application No.911 of 2016 is rejected.

(PRAKASH D. NAIK, J.)

MST