IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1285 OF 2017

Jayram Yashwant Wagh .. Applicant
Vs.
The State of Maharashtra .. Respondent

WITH
BAIL APPLICATION NO. 1286 OF 2017

Mahadev Amruta Chaudhari .. Applicant
Vs.
The State of Maharashtra .. Respondent

WITH
BAIL APPLICATION NO. 1353 OF 2017

Smt.Hemanti Pandu Bhoye & Ors. .. Applicants
Vs.
The State of Maharashtra .. Respondent

WITH
BAIL APPLICATION NO. 1362 OF 2017

Mosin Shafik Shaikh .. Applicant
Vs.
The State of Maharashtra .. Respondent

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Mr.Amey Deshpande, Advocate for the Applicants in BA 1353/2017, 1295/2017 & 1286/2017.

Mrs.Poonam Bhosale, Advocate for the Applicant in BA 1362/2017.

Mr.R.M. Pethe, APP in BA.1353/2017.

Mr.A.R. Kapadnis, APP in BA. 1285/2017 & 1286/2017.

Ms.A.A. Takolkar, APP in BA 1362/2017.

P.C. Bhaskar M. Warghade, Mokhada Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 25, 2017.

P.C. :

These are the applications for regular bail preferred by the applicants in connection with C.R. No.I-21 of 2016 registered with Mokhada Police Station, District–Palghar, for the offences punishable under Sections 420, 467, 468, 406, 409 and 120-B read with 34 of IPC. The applicants were arrested on 5th October, 2016. On completing investigation, charge-sheet has been filed against the applicants.

2 The prosecution case is that the loan was obtained by the applicants from Thane District Co-operative Bank and for that gold was given as a security. It is subsequently found that gold entrusted as security was fake. It is also alleged that the loan amount disbursed by the bank was credited into the account of the applicants, which was subsequently withdrawn and also utilized by them. FIR was lodged against the accused on 28th April, 2016.

3 The applicant accused were arrested and subsequently they have been charge-sheeted. The learned advocate for the applicant submitted that one Mr.Hemant Udavant has approached the applicants and represented that he needs to obtain loan from bank by keeping gold as a security with the bank. It was also presented that he had obtained loan from the bank earlier and, therefore, the applicants should help in getting loan for him. Since he had availed of loan earlier, bank would not sanction loan again for him. It is further submitted that the loan was disbursed and the said amount was credited in the account of the applicant and on the same day the said amount was transferred to the account of Mr.Udavant or cash withdrawn was given to him which clearly shows that the applicants are not beneficiary and they have been mislead. It is submitted that the gold which was given as a security which also arranged by the said Udavant. It is further submitted that Udavant has also given an affidavit to the applicants specifically accepting that the said gold belonging to him and the applicants are not concerned with the gold or loan and he has also accepted the liability to pay the loan obtained from the bank in the name of the applicants. It was further submitted that the loan was sanctioned, disbursed and it was reported that the gold security was fake. It is further

submitted that as far as the applicant in bail application no.1285 of 2017 is concerned, he had transferred the amount in the account of Udavant by issuing chaque after receipt of the loan amount on the same day. It is also submitted that in fact the amount disbursed into the account of applicants, was withdrawn by the applicants-accused and it was be handed over to Mr.Udavant which is recorded in the C.C.T.V. footage. However, police did not collect the said evidence. It is further submitted that after learning about the fraud committed by Mr.Udavant, the applicant had lodged police complaint. However, no cognizance was taken. It is submitted that the main accused Udavant has disappeared and absconded. It is submitted that the applicant Shyam Padekar, the applicant in B.A.1353 of 2017 is blind person. It is submitted that all the applicants were mislead by Mr.Udavant. They are poor people and residing in a tribal area. It is submitted that they are in custody since the date of arrest and charge-sheet has been filed. It is submitted that the procedure for obtaining loan is spelt out in the statement of Sampat Deshmukh, recorded on 5th May, 2016. In the said statement, it is stated that before sanctioning the loan, the security was verified and thereafter the loan was sanctioned and disbursed. It is further submitted that there is no evidence to establish that the applicant after receipt of the money has utilized the same for their personal use.

4 Learned APP strongly opposed the application for bail. He submitted that huge amount was disbursed in favour of the accused persons. It is submitted that this is a public money and the accused who had acted in connivance of each other has caused wrongful loss to the bank. It is submitted that the documents in the form of the affidavit which is being relied upon by the applicant–accused cannot be considered at this stage, as it is a matter of defence which can be agitated at the time of trial. The main accused Udavant is absconding. It is also submitted that the amount was credited into the account of the applicants–accused which has been withdrawn by them and they should be directed to deposit the said amount. One of the accused has been released on bail by the Sessions Court on depositing the amount. Learned APP relied upon the decision of the Apex Curt in the case of ***Nimmagadda Prasad Vs. Central Bureau of Investigation***[1]. In the said decision it was observed by the trial Court that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The

1 2013(7)SCC 466

economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

5 It is, therefore, submitted that the application preferred by the applicant may be rejected.

6 I have gone through the voluminous documents which is part of charge-sheet annexed to the application. Applicants are in custody since the date of arrest. Investigation is completed and charge-sheet has been filed. It is pertinent to note that several people from the tribal area have been involved in the alleged crime. The principal accused Udavant is absconding. It appears that Udavant had earlier entered into the loan transactions with the present bank which is evident from the documents on record. The fact that he is absconding corroborates that he was instrumental in utilizing the services of the other applicant–accused. It is pertinent to note that most of the applicants are illiterate and does not even know how to read and write. Although, it is a fact that the applicant had obtained loan and the

same was credited into the account of the applicants. There is nothing to show that the applicants have utilized the said amount in any manner. The principal accused who is the master mind is absconding which support the statements of the applicants that he had executed an affidavit accepting the liability. It is also evident that he was instrumental in obtaining loan from the same bank at the earlier point of time. The gold security was earlier tested by the goldsmith and the report was positive. On the basis of it, the loan was sanctioned against the said gold security. It is pertinent to note that the person who had issued certificate is impleaded as accused in the present case. He is involved in the similar case, alongwith Mr.Udavant. It appears that accused has Udavant in utilized the services of poor persons. The applicants are in custody for long period of time and no purpose would be served by detaining them in the custody. In the circumstances, I am inclined to grant bail to the applicants.

5 Hence, I pass the following order:

:: ORDER ::

(i) Bail Application Nos.1285 of 2017, 1286 of 2017, 1353 of 2017 and 1362 of 2017 are allowed;

(ii) The applicants are directed to be released on bail in connection with C.R. No.I-21 of 2016 registered with Mokhada Police Station, District–Palghar, on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) each with one or more sureties in the like amount;

(iii) The applicants are directed to report Mokhada Police Station, District–Palghar, once in a month on first Saturday between 11:00 a.m. to 1:00 p.m., till the conclusion of the trial;

(iv) The applicants are directed to attend the trial Court on the date of hearing;

(v) The applicants are directed to furnish details of their residence to the investigating officer;

(vi) The applicants shall not tamper with the prosecution witnesses;

(vii) Bail Applications stand disposed of accordingly.

(**PRAKASH D. NAIK, J.)**