IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1694 OF 2017

Arun Hambirrao Nikam …Applicant

Versus

The State of Maharashtra …Respondent

Mr. S. P. Kadam for the applicant.
Mr. A. R. Kapadnis, APP for the respondent - State.

CORAM : PRAKASH D. NAIK, J.
DATE : 27 JULY, 2017

P.C. :

1. The applicant is seeking regular bail. The applicant is arrested in connection with C.R. No.I-380 of 2016 registered with Narpoli Police Station, Bhiwandi, Thane for the offences punishable under sections 406, 417, 420, 467, 468, 470 read with 34 of IPC. The applicant was arrested on 24th February, 2017. The investigation is completed and the chargesheet has been filed.

2. The case of the prosecution is that the applicant was working as Branch Manager in Sahebrao Deshmukh Cooperative Bank at Thane. It is alleged by the complainant that he had purchased the property / godown bearing Gala No.10 from one of the co-accused. This Gala is situated at plot of land at Bhiwandi. The possession of

the said Gala was handed over to the complainant. The complainant thereafter had given the said Gala to M/s. Ciba Toys Pvt. Ltd. on rent. It was learnt that the aforesaid bank had affixed the demand notice for recovery of Rs.2,91,48,212 on complainant's Gala. When the enquiries were made, it was learnt that Gala has been sold to Rajat and Suresh Agarwal on 22nd May, 2012. It is also learnt that the property was mortgaged with the bank by Rajat and Suresh Agarwal. They had obtained loan. On the basis of the complaint, FIR was registered for the aforesaid offences. It was revealed during the course of investigation that the land was taken for development by the co-accused who have developed the same and sold Galas to the purchaser. It was revealed that the said accused had again sold the property to another person. The co-accused Suresh Agarwal and Ranjit Agarwal had mortgaged the property i.e. total 8 Galas and obtained loan of Rs.5, 55, 00, 000/-. The FIR was registered as stated hereinabove against the applicant alongwith others. The role assigned to the applicant is that the applicant was branch manager of the said bank. He did not follow the procedure like visiting the property or verifying the property. There was complete dereliction of duty. On account of the non performance of duty, the other accused were benefited. They were acting connivance with each other. It is alleged that the loan was sanctioned by the board of directors based on the documents which were earlier prepared. The loan manager and the applicant with the branch manager had played vital role. It appears that loan manager had expired after the loan was sanctioned.

3. Learned advocate for the applicant submitted that the applicant is in custody since the date of arrest and the investigation is completed. The chargesheet has been filed. Further detention of the applicant is not necessary. He pointed the statement of Ankush Mane which was recorded on 17th February, 2017. In the said statement, it is stated that proposal of loan is forwarded by the branch manager after file in respect of loan is received in the head office. The loan officer is required to scrutinize the said file and he is required to seek the legal opinion, search report, title clearance certificate from the legal advisor. If the loan amount is more than 20 lakhs then the loan officer has to visit the property which has been mortgaged for obtaining loan and he is required to prepare a report and submit the same. On the basis of remarks and the recommendation of the loan officer, the proposal is placed before the board of directors and thereafter the directions are given for disbursement of the loan after the same is sanctioned. Relying upon the said statement, it is

submitted that duty of visiting property and obtaining search as well as title clearance is attributed to the loan manager. It is submitted that in the present case, the loan manager was one Rudolph Denis Sequeira who was also implicated as accused in this case. He further relied upon the statement of legal advisor. He has stated that in the said statement dated 10th February, 2012, that the sale deed was placed before him wherein it was noticed that the stamp duty was paid and it was registered. In view of the aforesaid, legal officer did not feel it necessary to take the search of the property. It is also stated that the builder had also given no objection certificate which was one of the reason not to take search of the property. In this circumstances, he issued the legal opinion and title certificate to the bank. Learned advocate submits that in view of the aforesaid circumstances, no fault can be found with the applicant. It is further submitted that the developer and the chief executive officer of the said bank had preferred an application before this Court which has been allowed vide order dated 11th July, 2017. He pointed that in the said order which has been annexed to this application, the developer had made a statement that he is willing to deposit an amount of Rs.1 crore. He further pointed out that in the said order, it has been observed that amount of Rs.2,56,33,129/- was repaid by the borrower to the bank and the properties have been seized by the investigating officer. It is submitted that considering the fact that the applicant is in custody since date of arrest, he may be granted bail

4. Learned APP vehemently opposed the application for bail. He submitted that there is deliberate inaction on the part of the applicant. He had not discharged his duties and thereby the loan was sanctioned to the co-accused. It is submitted that the applicant was supposed to take the search of the property and verify the title of the same and also required to visit the property. This duty was not performed by him thereby inference can be drawn that he was acting in connivance with the other accused. Learned APP relied upon the statement of Ankush Mane which is recorded on 17th February, 2017 and also the statement of the legal advisor which have been referred to hereinabove. It is submitted that the huge loan was advanced on account of the acts committed by applicant and other accused. This is an economic offence. Therefore, the applicant is not entitled to be released on bail.

5. I have gone through the documents on record. On perusal of the statement of Ankush Mane, it appears from the said statement that after loan file was received from the Branch Manager, the loan

manager is required to take legal opinion, search report, title clearance certificate from the legal advisor of the bank and also supposed to visit the property and submit a report if the loan amount is more than 20 lakhs and thereafter submit it to the Board of Directors for sanctioning the loan. The said statement also mentioned that there is dereliction on the part of the applicant. I have perused the statement of legal advisor, wherein it is stated that he did not feel it necessary to take search of the property and on the basis of the documents which were registered and in respect to the same duty was paid, he had issued legal opinion and certificate. It is pertinent to note that for not taking the search of title of the property, the applicant cannot be held responsible.

6. It is further noted that the applicant is a Branch Manager and he is in custody from 24th February, 2017. The developer who had entered into double transactions as well as Chief Executive Officer has been granted bail by this Court. The investigation is completed and chargesheet has been filed. No purpose will be served by detaining the applicant in further custody. In these circumstances, I am inclined to grant bail to the applicant. Hence, I pass following order;

:: ORDER ::

(i) Bail Application No.1694 of 2017 is allowed.

(ii) The applicant is directed to be released on bail in connection with C.R. No.I-380 of 2016 registered with Narpoli Police Station, Bhiwandi, Thane on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only.) with one or more sureties in the like amount.

(iii) The applicant is directed to report the concerned police station once in a month on the first Saturday of the month between 11.00 am to 1.00 pm till further orders.

(iv) The applicant shall not tamper with the evidence in any manner

(v) The applicant shall attend the trial Court during the hearing of case.

(vi) Application stands disposed of.

[PRAKASH D. NAIK, J.]