IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2008 OF 2017

Dipak Bhaskarrao Ghate ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. M. S. Mohite i/b Mr. Reddy Jagdish G. for the Applicant.
Mr. Ajay Patil, APP for the Respondent .
Mr. S. S. Pawar, API, EOW, Solapur City.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 12th December, 2017

P.C.:

. Heard. This is an application under section 439 of Cr.P.C. The Applicant herein is arrested on 5/5/2017 in Crime No.213/2017 registered at Sardar Bazaar Police Station, Solapur City, Solapur for the offences punishable under sections 403, 409, 417, 420, 467, 468, 471 read with 34 of the IPC.

2. It is the case of the prosecution that on 31/3/2017 Rahul Katkar working as Social Welfare Inspector in the Social Welfare Department lodged First Information Report at Sadar Bazaar Police Station alleging therein that one Pooja Magasvargiya Knitting & Garment Industrial Manufacturing Co-operative Society, Solapur was registered in the year 2007 more particularly on 30/3/2007 under the Maharashtra Co-operative Societies Act, 1960. The chairman of the Society was Venkatesh Ramchandra Asade The first informant has given the list of the members directors of the said society. The said Society had filed a proposal seeking loan for about 2.9 crores. That in the year 2007 Assistant Commissioner

Manisha Phule had scrutinized the proposal and forwarded the same to the Social Welfare Department. On 25/8/2009 the loan of Rs, 2.9 crs. was sanctioned out of which 1 crore 4 lakhs were disbursed in favour of the Society. On 22/3/2010 the Chairman of the Society had filed an application to transfer the said amount in the joint account which was being operated by the Society in the Bank of Maharashtra, Solapur Branch. As per clause 7 of the GR dated 22/5/2008 one member of Social Welfare Department was to be designated as ex-officio Director. The joint account was operated by the Chairman and Director of Social Welfare as per clause 7 and 14 of the GR dated 22/5/2008.

3. The amount was transferred to the joint account on 28/8/2010. By 2011 the chairman of the society had allegedly completed other formalities such as calling for tenders, sanctioning of the building proposal etc and therefore in the year 2011 the chairman had filed an application seeking disbursal of the amount of Rs.1.4 crs. from the joint account of the Bank of Maharashtra.

4. It is an admitted position that the Applicant herein had taken charge as Assistant Commissioner on 6/8/2012. After he had taken charge, an application seeking disbursal of the amount was placed before him for scrutiny. It is an admitted position that on 16/11/2012, the Applicant herein had forwarded the proposal for disbursal of the amount subject to removing objections and had recommended disbursal of the said amount.

5. It is the case of the prosecution that while scrutinizing the said documents the Applicant herein has not exercised due diligence and has forwarded the proposal for disbursal. It is the allegations of the prosecution that the chairman of the Society had submitted 7/12 extract along with the proposal which showed that the land was converted into non agricultural

land. The said compilation also include 7/12 extract in which the original owner of the said land was one Rameshwar Co-operative Housing Society and that while converting the land into non agricultural land there was a deficit of fees paid towards N.A. taxes to the tune of Rs.97,632 and Rs.18,825/-. It is pertinent to note that Pooja Society had purchased the land from Rameshwar Co-operative Housing Society by sale deed dated 20/7/2007. It is the contention of the learned APP that the Applicant deliberately forwarded the proposal without scrutinizing the registered 7/12 extract.

6. Learned counsel for the applicant submits that infact the entire proposal was sanctioned prior to the joining of the Applicant and what was presented before the Applicant was only an application seeking disbursal of the said amount from the joint account. In the course of argument learned APP submits that the Chairman has withdrawn cash of Rs.95 lakhs. On instructions from the Investigating officer, it is also submitted that the Director, Social Welfare has not signed the withdrawal form and therefore Director of Social Welfare is not the accused. In fact it was incumbent upon the Bank officials to verify that the withdrawal form is jointly signed by the Director, Social Welfare and the Chairman of the Society as it was a joint account. According to the learned APP it is in view of this, some of the Bank Officials of Bank of Maharashtra are also shown as accused but are not arrested.

7. Learned counsel for the Applicant has drawn attention of this Court to the GR dated 22/5/2008 clause 20 which makes it incumbent upon the Director of Social Welfare to scrutinize the documents which are forwarded to him including the 7/12 extract, the sale deed and other documents. Similarly, clause 25 also casts a duty upon the Director of Social Welfare Department to scrutinize all the documents. Learned counsel

submits that the possibility of negligence may not be ruled out however it cannot be an offence punishable under section 417, 420 etc. more particularly when there is no material on record to show that the Applicant has been beneficiary for sanctioning the application seeking disbursal of the amount. As against this the learned APP submits that since the officer of the lower rank has forwarded the proposal, the Director has presumed that all the documents has been scrutinized and therefore has consented the application seeking disbursal of amount. The chairman had directly approached the Director of Social Welfare who had allowed the application on the same day without verifying as to whether the objections are removed. It is pertinent to note that the Director of Social Welfare is not an accused in the present case. The records would show that the Chairman was called upon by the Office to remove objections but the Chairman has directly approached the Director of Social Welfare who at his own level has allowed the application seeking disbursal of amount.

8. Be that as it may taking into consideration the facts of the case more particularly the fact that the Applicant had taken charge only on 6/8/2012 and that all the formalities were completed prior to 6/8/212, the Applicant deserves to be enlarged on bail. It is apparent on face of record that the 7/12/ extract was submitted by the Chairman and was endorsed by the Sub-District Social Welfare Officer, Solapur who is accused No.13 in the present case. In view of this, the Applicant has made out a case for grant of bail.

9. The observations are prima facie in nature and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial as the observations made hereinabove are restricted only to the application under section 439 of the Code of Criminal Procedure. Hence, the order:

ORDER

1. The application is allowed.

2. Applicant-Dipak Bhaskarrao Ghate be enlarged on bail on furnishing P. R. bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.

3. Applicant shall co-operate with the Investigating Agency as and when called.

Application stands disposed of.

(SADHANA S. JADHAV, J.)