Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2307 OF 2016

1. Kiran Ambadas Dhayafule
2. Nagesh Devidas Dhayafule ... Applicants

Vs.

The State of Maharashtra ... Respondent

Mr. A.A. Kumbhakoni, Senior Advocate i/b. Mr. V.V. Purwant for the applicants.
Mr. Y.M. Nakhwa, APP for the State.
Mr. Sachin Sadashiv Pawar, A.P.I., EOW, Solapur present.
Mr. Mahadev K. Hajeri, Police Constable, EOW Solapur present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **19th January, 2017.**

P.C.:

This Application is moved for bail by the applicants/accused, who are partners of M/s. Gouri Cotton Ginning and Pressing Mill, M/s. Dhayaphule Spinning Mill Pvt. Ltd. and M/s. Gauri Spinning Mill Pvt. Ltd. These applicants have obtained loan of Rs.13,20,00,000/- from consortium of 4 banks, mainly under, Solapur Janta Sahakari Bank Ltd., Solapur in 2010. Against that loan, a land situated at Vijapur was mortgaged. However, the applicants did not repay the said loan and they being defaulters, the account was declared NPA(Non Performing Asset) and therefore, the bank proceeded to auction the said mortgaged property. Therefore, the applicants/accused moved to DRT under SARFAESSI Act and after getting the parties, the Tribunal ordered the applicants to deposit total Rs.5 crores in the Tribunal and also gave opportunity to the defendant-bank to conduct the sale but they shall not open the bid and confirm the sale. The said order was challenged by the applicants/accused before this Court. The Division Bench of this Court by order dated 16th January, 2015 in Writ Petition No. 543 of 2015 gave the applicants/accused partial relief and directed them to deposit Rs.1.5 crores immediately and stay was granted to deposit additional amount Rs.3.5 crores till the next date and time was extended. During the pending of the Writ Petition and the proceedings before the DRT, the applicants/accused ventured to enter into Agreement of sale dated 20th April, 2015 with one party namely, Sohanlal Lalchandji Jain, Kishor Hanjarimalji Jain and Shantilal Sogalal Oswal. Thus, as the applicants/accused by keeping the banks in dark, had tried to dispose of the mortgaged property and have committed offence of cheating and criminal breach of trust. As huge amount was due, Sharad Manohar Pandit, Bank Manager of Solapur Janta Sahakari Bank Ltd. lodged complaint with the police on 10th October, 2016, pursuant to which the offence was registered at C.R. No. 376 of 2016 for the offences punishable under sections 406, 420, 379, 467, 468, 471 r/w. 34 of Indian Penal Code. In the course of investigation, the police arrested both the applicants on the same day, i.e., 10th October, 2016. Thereafter the applicants/accused moved an application for bail before the learned Sessions Judge, however, by order dated 14th November, 2016 the learned Sessions Judge, Solapur rejected the Application for bail. Hence, this Bail Application is preferred.

2. The learned senior counsel for the applicants/accused has submitted that at the time of hearing of this Bail Application, subsequent developments which took place after rejection of the Bail Application by the Additional Sessions Judge are to be taken into account. The learned Senior counsel submitted that the applicants/accused thereafter having negotiations with the banks and some purchasers, have decided to sell the same land to the same purchasers for a consideration of Rs.28 crores. The said MOU was to be registered on 30th December, 2016 at Vijapur, as the mortgaged land situated at Vijapur. The learned senior counsel has pointed out the order passed by the learned Additional Sessions Judge, Solapur dated 26th December, 2016 by which the applicants/accused were given permission to visit to Sub-Registrar office at Vijapur on 29th December, 2016 and 30th December, 2016 under escort to register the MOU. He further pointed out that the MOU dated 30th December, 2016 was registered between consortium three banks, i.e., Solapur Janta Sahakari Bank, Solapur, Janseva Sahakari Bank, Pune and Laxmi Cooperative Bank, Solapur, partnership firms of applicants/accused, i.e., Gouri Cotton Ginning & Pressing Mill and other companies and the purchasers Sohanlal Lalchandji Jain, Kishor Hanjerimalji Jain and Shantilal Sogalal Oswal for Rs.28 crores wherein the due debt of Rs.17,68,41,000/- is acknowledged by the applicants/accused and it is specifically mentioned. He further submitted that at the time of registration of MOU, amount of Rs.4,50,00,000/- was paid to Solapur Janta Bank

(Multi State Scheduled Cooperative Bank) as an advance money. He further submitted that after satisfying the entire loan, only the remaining money will come to the applicants/accused. The learned senior counsel submitted that as per the MOU, the entire transaction was to be completed and sale deed is to be executed and registered on or before 5th February, 2017. For that purpose, the presence of applicants/accused is necessary to complete number of other formalities. He submitted that considering this, both the applicants/accused are to be bailed out.

3. Learned APP while opposing the Bail Application submitted that it is necessary for the prosecution to confirm these developments by getting information from Solapur Janta Sahakari Bank, Solapur. On verification, the learned APP confirms that the subsequent developments after rejection of bail application of the applicants-accused by the learned Sessions Judge and also confirms that MOU of tri-parte dated 30th December 2016 was taken place and an amount of Rs. 4,50,00,000/- was paid to the bank.

4. In view of the above, I am inclined to allow the Bail Application on the following terms and conditions:

ORDER

(i) Application is allowed.

(ii) The applicants-accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs. 30,000/- each with one or two sureties in the like amount.

(ii) The applicants-accused shall attend all the Court dates, as the charge sheet is filed. If the transaction in respect of the land is not complete on or before 5th February 2017, then the prosecution will be at liberty to move the Court for cancellation of bail.

(iv) The applicants shall not abscond or leave India without prior permission of the Court and furnish their permanent address to the Investigating Officer alongwith documentary proof of their address.

(v) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

5. The Application for bail stands disposed of on above terms.

(MRIDULA BHATKAR, J.)