IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1518 OF 2018

Priti Jagdamkumar Gupta … Applicant
Vs.
State of Maharashtra … Respondent
…
Mr. Dharmapal Dave a/w Mr. Akshay Naik & Mr. Hemant Salvi I/by Naik Patil Salvi & Associates for the applicant.
Mr. R.M. Pethe, APP for the Respondent-State.
…

CORAM : PRAKASH D. NAIK, J.
DATE : 6th SEPTEMBER, 2018.

P.C.

1. Applicant is arrested on 5th March, 2018 in C.R. No. 631 of 2016 registered with Borivali Police Station for the offences punishable under sections 420, 465, 468 and 471 read with Section 34 of the Indian Penal Code.

2. The applicant preferred this application for bail before the Sessions Court which was rejected on 4th June, 2018.

3. The brief allegations are as follows :-

The applicant is the partner of M/s Parekh Apparels. On behalf of the said firm, the application for loan was preferred with Ahmedabad Merchantile Co-operative Bank Limited on 8th

December, 2014. It is alleged that applicant had produced document with respect to partnership alongwith her loan application. She had also filed the other documents in support of loan as a guarantor KYC document, Income Tax return etc. She also produced balancesheet and partnership deed of the firm showing herself and others as a partner. In the deed, it was stated that share of the co accused Tej Parekh as 45%, Balkrishna Anchan as 25%, Yasmin Mirza as 20% and applicant herself as 10%. Projection report was produced before the bank. Thereafter, the bank verified the documents and sanctioned loan of Rs.2,40,00,000/- to the firm. Thereafter, the firm applied for loan for purchasing sewing machine to the tune of Rs.80 Lakhs alongwith projection report. She also produced proforma invoice of Rs.1,12,38,570/- of Mehile Machines India Ltd dated 9th January, 2015 as well as receipts for advanced payment to said company. The accused also produced Leave and License agreement pertaining to the place where the machines would be installed. The bank officers inspected the premises and after verification of documents, the proposal for loan was forwarded to the main branch of the bank at Ahmedabad on 16th February, 2015. The bank officer inspected the premises mortgage by the firm and prepared extension of Mortgage Deed and demand promissory note and guarantee bond from the guarantor of the firm. The firm paid monthly interest till August, 2015 and thereafter stopped payment of installment. Again an application was preferred for temporary over draft of Rs.40,00,000/- for two months and the receipt of Rs.1,29,80,000/- dated 6th April, 2015 of other shops was also produced. The documents were forwarded to the main branch Ahmedabad and loan was sanctioned vide letter dated 6th May, 2017. The Bank accordingly prepared demand promissory note and letter of continuing, guarantee bonds for the period of two months. The repayment was due in July, 2015 but the same was not made. Hence, the bank suspected foul play. Inquiries were made with the partner-cum-loan applicant for the firm. Notice was issued to the partners cum guarantor but the same was not replied. Inquiries were made to Mehile Machines as well as other supplier and it was found that they have not placed any such order with accused. Thus, the accused had relied upon forged and fabricated documents while obtaining loan as stated herein above. Several persons were arrested and on completing the investigation, the chargesheet has been filed.

4. The applicant and others had initially preferred an

application for anticipatory bail which was rejected by this Court on 19th January, 2018. The co accused had preferred application for bail before the Court and all the other co accused are presently on bail. Learned advocate for the applicant submitted that investigation is completed and chargesheet has been filed. Further custody of the applicant is not required and all other accused except applicant are on bail. Reliance is placed of order granting bail to the co accused. It is further submitted that the bank had also initiated proceeding under the SARFAESI Act for attachment of property. The amount was transferred to the account of Parekh Apparels I.e firm and not personal account of the applicant. The co-accused who were partners of the firm namely Balkrishna Anchan, Yasmin Mirza and Yasin Mirza were signatories to the bank account. The other accused who were attributed over act namely Tej Parekh and Dilip Parekh were granted regular bail by the Court. Applicant is having minor daughter. She has been in custody for a long period of time. She has to look after her minor child.

5. Learned APP submitted that applicant has played a primary role in the transaction. The role of furnishing all the documents making application and transacting with the bank official is

attributed to the applicant. The other accused who are granted bail had taken a stand that applicant is a prime accused and is being assigned the main role in the alleged transactions. It is submitted that the bank was put to be huge loss by making false representation on the basis of forged and fabricated documents. The applicant is not entitled for bail on parity. It is submitted that the case of the prosecution is that the applicant had produced the balancesheet, partnership deed, receipts and various other documents in support of the request for credit facilities which were found to be false and fabricated. It is further submitted that the amount is yet to be recovered and the offence is of serious nature.

6. Learned Sessions Judge while rejecting the application for bail vide order dated 4th June, 2018 has observed that the applicant alongwith co accused by preparing false and fabricated documents obtained loan from the bank and did not repay the loan amount. The accused had relied upon the false documents, the applicant was conducting the business of the firm. She has played major role in the crime to cheat the complainant bank. The possibility of applicant tampering prosecution witness cannot be ruled out.

7. Having heard both sides and scrutinizing the documents on

record, it is apparent that applicant has been arrested on 5th March, 2018. M/s Parekh Apparels is the firm which has applied for various credit facilities. Alongwith the applicant there were other partners in the said firm. The prosecution case is that applicant was instrumental in transacting the loan proposal and had furnished several documents. She has produced several documents which were allegedly found to be false. However, it can be seen that all the other accused are granted bail and only the applicant has continued to be in custody from the date of arrest. Credit facilities were obtained on behalf of the said firm.

8. It is not the prosecution case that the applicant has misappropriated the amount personally and the amount is being transferred to her account. It is true that credit facilities to the tune of crore was availed of and the applicant had played vital role in the said crime. However the question which arise for consideration as to how long the applicant can be incarcerated in the custody, in the light of the fact that all other accused are released on bail. The co-accused Tej parekh had been granted bail vide order dated 20th July, 2018 by this Court. While granting bail to the said accused it was observed that main role is attributed to the other accused and at the time the loan was sanctioned the said

accused was aged about 18 years. The other accused namely Yasmin Mirza and Yasin Mirza who were also partners of the said firm were granted anticipatory bail by the Sessions Court vide ABA No. 93 of 2017 by order dated 21st April, 2017. While granting anticipatory bail the Court has observed that Ms Yasmin Mirza is a partner of Parekh Apparels and Yasin Mirza is guarantor and their liability is of civil in nature i.e repayment of loan of their share in the partnership business and to the extent of guarantee. It was also observed that civil suit is pending and criminal liability is different. It was also observed that first information report does not disclose that said accused had approached the bank for transacting the loan proposal. The other accused namely Dilip Parekh who was arrested was granted bail by the Sessions Court Dindoshi vide order dated 7th July, 2018. While granting bail to the said accused it was observed by the Sessions Judge that investigation has been completed and the chargesheet has been filed. The applicant is in jail since 5th March, 2018. Sufficient period has elapsed after the arrest of the said applicant. There are no criminal antecedents against him and the Court do not find any material to keep him in custody. It was observed that co accused Balkrishna Anchan, Yasmin Mirza and Yasin Mirza were granted pre-arrest bail by this Court on 21st April, 2017 while subsequently co accused Tej Parekh had been granted bail on 26th April, 2018. Thus, all partners of M/s Parekh Apparels are on bail, except the accused Priti Gupta. It was also observed that there is no prima-facia material in the chargesheet to show the involvement of the said accused in the commission of the offence. Accused Dilip Parekh had initially applied anticipatory bail before this Court which was rejected vide order dated 19th January, 2018. While rejecting his application, this Court had observed that Dilip Parekh though is not a partner of the said firm, as per the record, it appears that he was the person who was transacting on behalf of the said firm with the said bank and it appears that he is the mastermind behind the present crime. It further appears that Dilip Parekh in concert with applicant and Tej Parekh has maneuvered all transactions. The trial court had also rejected his application on the basis of role played by him. Thus, it is apparent that the prosecution case is that Dilip Parekh is also involved in the alleged crime. He has been granted bail by the Sessions Court. So also, Bank Manager, Amish Bharat Mehta was granted Anticipatory Bail by the Hon'ble Supreme Court.

9. Considering the aforesaid circumstance, the applicant is also

entitled for bail. She is in custody from 5th March, 2018. The investigation is completed and the chargesheet has been filed. Further detention is not required. In view of above, I pass the following order.

ORDER

i) Criminal Bail Application No. 1518 of 2018 is allowed;

ii) The applicant is directed to be released on bail in connection with C.R. No. 631 of 2016 registered with Borivali Police Station on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or more sureties in the like amount;

iii) The applicant shall attend Borivali Police Station once in a month on first Saturday between 10 a.m. to 12 noon till further order;

iv) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of four weeks;

v) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

vi) The application stands disposed off.

Sachidanand Kuttan Nair

Digitally signed by Sachidanand Kuttan Nair
Date: 2018.09.11 20:03:58 +0530

(PRAKASH D. NAIK, J.)