IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1567 OF 2018
WITH
CCRIMINAL APPLICATION NO.1448 OF 2018

Jagdish Shivanand Wagh .. Applicant
Vs.
State of Maharashtra .. Respondent

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Mr.R.B. Raghuvanshi i/b. Mr.Ratnesh Dube, Advocate for the Applicant.

Mr.Prasanna A. Bhangale, Advocate for the Intervener in APPP 1448 of 2018.

Mr.S.R. Agarkar, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 13, 2018.

P.C. :

This is an application for anticipatory bail in C.R.No.I-148 of 2018, registered with Vishnunagar Police Station, District – Thane, ofr the offences punishable under Sections 420, 465, 467, 468 and 471 read with 34 of Indian Penal Code (“IPC”, for short).

2 Applicant had preferred an application for anticipatory bail before the Sessions Court, which has been rejected vide order dated 20th July, 2018.

3 The case of the prosecution is that complainant is the bank manager of NKGSB Cooperative Bank Ltd. At Dombivali. First Information Report ("FIR", for short) was lodged against M/s.Sadguru Brick Works. It is alleged that on 24th February, 2012, M/s.Sadguru Bricks Work had made an application with the complainant Bank for grant of loan. After completing all the formalities like conducting search, inspection of various documents and executing mortgage deed, complainant bank had granted mortgage loan of Rs.3.10 crores on 2nd November, 2012, which was utilized by disbursement on 1st December, 2012. Credit facilities of Rs.40,00,000/- was also granted by the complainant bank on 24th December, 2012. It is further alleged that the complainant had offered various properties as collateral securities and mortgage being Flat Nos.101, 102, Guru Krupa Darshan, Nandivali Road, Dombivali and Flat Nos.101, 201, 301 and 401 of Sadguru Deep, Village Chole, Dombivali. It is further alleged that after disbursement of loan as described above, the debtor firm was regularly repaying the loan amount, however, repayment stopped since March 2015. It is further alleged that after repayment of aforesaid loan, the said loan accounted was declared as "Non Performing asset", as per the norms of Reserve Bank. The complainant issued notice to the applicant and other

partners. In May 2013, complainant received a notice from CKP Bank, Dombivali Branch, stating that M/s.Gurukrupa construction had already mortgage Flat Nos.101, 201, 301 and 401 of Sadguru Deep Building with them. After having received the notice from the CKP Bank in May 2015, the complainant has lodged the FIR.

4 Learned advocate for the applicant submitted that there is no intention to deceive the complainant. FIR had been lodged belatedly. It is submitted that the repayment of installments of the loan was doing for substantial period and it is only after the applicant could not repay the installments of loan, FIR was registered. It is submitted that the submissions of documents was not intentional and it was a bonafide which is evident from the facts that the applicant had initially made payment to the Bank. It is further submitted that the applicant is ready to furnish additional flat at collateral security with the complainant Bank in relation to subject loan of the said Bank. It is submitted that the applicant undertakes to provide the collateral security. It is submitted that the properties were sold by CKB Bank and not by the applicant in pursuant to the transactions executed with the said Bank. It is further submitted that arbitration award was passed by the arbitrator appointed under

the power delegated to Central Registrar, New Delhi and the arbitrator has passed the order dated 29th November, 2017. He, therefore, submitted that custodial interrogation of the applicant is not necessary. Applicant would comply the directions issued by the arbitrator. It is, therefore, submitted that the applicant be granted anticipatory bail. Learned counsel for the applicant submits that it was also submitted that at the time of sanction of loan, the documents were verified by the bank and their legal representatives and, thereafter, the loan was sanctioned.

5 Learned APP submitted that some of the properties which were tendered as collateral security were also sold by the applicant. The properties were given as collateral security with two banks. It is further submitted that the applicant is involved in two other cases registered with Dombivali Police Station, vide C.R.No.I-158 of 2016 for the offences punishable under Sections 420, 467, 471, 474 read with 34 of IPC and C.R. No. I–254 of 2015, registered under Section 420 read with 34 of IPC. He, therefore, submitted that the anticipatory bail may not be granted to the applicant. Learned counsel for the intervener also reiterated the objections raised by the prosecution. It is submitted that the conduct of the applicant is implicit in the FIR.

He had obtained loan on the basis of the collateral security furnished by him and which were found to be mortgaged with another bank prior to execution of the loan transaction with the complainant bank. It is further submitted that the applicant had knowledge which is implicit from the factual aspects that the property was already mortgaged with another bank and inspite of that he had submitted the said property as collateral security to the complainant bank. Learned counsel for the applicant, however, submitted that the applicant has been granted anticipatory bail in other cases.

6 I have perused the documents. On perusal of the FIR, it is apparent that the firm of the applicant obtained loan from the complainant bank vide tendering the title documents relating to the property which was given as collateral security. It is also noted that same documents were also mortgaged with another bank. It also appears that two of the premises, which were mortgaged were sold by the applicant. It is also apparent that even the arbitration award which relied upon by the applicant was not complied by the applicant. The submission that he is willing to furnish fresh collateral security, cannot be accepted at this stage, as his credentials are under doubt of suspicion due to

his past conduct. It is also stated that two cases are already registered and pending against the applicant, as stated hereinabove. The applicant firm took loan from the informant bank by mortgaging six rooms as reflected in the FIR and the installments were paid up to March 2015 and, thereafter, he had stopped paying the installments. Thereafter, it came to light that room nos. 101 and 102 of Gurukripa Darshan which were mortgaged towards the said loan were sold by the applicant to two other persons. It was also disclosed that room no.101, 201, 301 and 401of Sadguru Deep, which were mortgaged for the same loan were mortgaged with another bank. *Prima facie* it appears that false representations were made by the applicant accused. Taking into consideration the factual matrix of the present case, no case for grant of anticipatory bail is made out and hence, this Anticipatory Bail Application is rejected. Intervention Application also stands disposed of.

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