IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 568 of 2018

Mr. Abhishek Shubhash Palshetkar and anr. ... Applicants

V/s.

1. The Senior Inspector of Police

2. The State of Maharashtra ... Respondents

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Mr. T. Sayed i/b Rizwan Merchant & Associates, for the Applicants.
Mrs. A.A. Takalkar, APP for the State.
Mr. R.N. Gaonkar i/b Mr. Ashk Kumar Singh, for Intervenor.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th FEBRUARY, 2019.

P.C.:

This is an application for Anticipatory Bail. The applicants are apprehending arrest in connection with C.R. No. 65 of 2017 investigated by Economic Offences Wing, Housing Unit for the offences punishable under Sections 420, 465, 467, 468, 471 and 120-B read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC' for short).

2. The applicant no. 2 was arrested on 2nd August, 2018, during the pendency of this application and hence, his application has become infructuous.

3. The First Information Report (hereinafter referred to as 'FIR' for short) lodged on 22nd August, 2018 with Dadar Police Station, Mumbai. It is alleged that the complainant is employed with M/s. India Bulls Housing Finance Limited company and presently working as Senior Vice-President in the said company. The company provides finance for housing and business. On 24th September, 2015, the accused have applied for loan with M/s. India Bulls Housing Finance Limited for the purpose of construction to be carried out on their plot of land situated at Mira Road. For obtaining loan, they mortgaged the property, viz. Saideep Bungalow, Plot No. 169, Shrikrushna Co-operative Housing Society, Borivali (East), Mumbai. The accused had represented that they had obtained loan from M/s. Diwan Housing Finance Corporation Limited in the sum of Rs.2,33,92,471/- and since, the rate of interest was high, they intend to close the said loan account after obtaining the loan from the complainant's company and would repay the said loan. They applied for loan on 24th September, 2015, with complainant's company and

mortgaged Flat No. 204, A Wing, Flat Nos. 203, 301, 502, 802, 902 and 904 B Wing and Flat Nos. 101, 401, 501, 701 and 901 C Wing at Sai Akruti Empire, Indralok, Phase VI, Mira Road (East), Thane. They also preferred an application for loan through Pravin Toshniwal for construction on plot at Mira Road and mortgaged the property viz. Shop Nos. G-1 to G-8, G-11 to G-15, G-18 to G-23 and Office bearing Nos. IF-1 to IF-3 and IF-6 to IF-23, Sai Akruti Empire, Indralok, Phase VI, Mira Road (East), Thane. The valuation was conducted by M/s. Mazumdar Associates Private Limited and M/s. Astute Valuers Private Limited. The documents were verified by M/s. Bilawala & Company and accordingly search report was submitted. On 14th October, 2015, loan was sanctioned in the sum of Rs.2,63,71,834/-, for a period of 60 months on mortgage of property viz. Saideep Bungalow, Plot No. 169, Shrikrushna Co-operative Housing Society, Borivali (East), Mumbai. Loan was also sanctioned on the same day for a period of 60 months in the sum of Rs.5,12,79,261/-. The said loan transaction was in respect of mortgage property viz. Flat No.204 A Wing and other flats premises at Sai Akruti Empire. Loan was also sanctioned on the mortgage of other property for a period of 60 months in the sum of

Rs.4,69,88,249/-. Loan agreement was also executed between the parties. Undertakings were executed that the mortgage property would not be sold or rented out by the accused. Loan accounts were opened. Mortgage Deed was executed. Some amount was repaid back to the complainant. However, subsequently, the accused did not pay the installments of the loan. It was also noticed that the shops bearing nos. G-1 to G-19 situated in Sai Akruti Empire already sold to M/s. Prasad Impex Private Limited and others. It was also noticed that loan of Rs.4,46,00,000/- was obtained by the accused from M/s. Dewan Housing Finance Corporation Limited, which was not repaid and action was initiated for taking possession of the said properties. The FIR was lodged alleging that the accused have connived with each other and obtained loan of Rs.10,36,39,544/-, from the complainant's company and after paying some amount, balance amount of Rs.8,82,45,438/- was not repaid. The shops, which were mortgaged have already sold and false documents were executed, those were prepared by accused.

4. The applicants preferred an application for Anticipatory Bail before the Sessions Court, Mumbai, which was rejected by order dated 14th February, 2018.

5. Learned Advocate for the applicants submitted that the custodial interrogation of the applicant no. 1 is not necessary. The applicant no. 2 is already arrested. The matter relates to documents. There was no intention to cheat. The dispute is of civil nature. The applicant no.1 is partner of M/s. Sai Ninad Enterprises. The complainant's company has implicated all the family members. There is inordinate delay in lodging the complaint. The applicant has not mortgaged Flat No. 204 A Wing, Flat Nos. 203, 301, 502, 802, 902 and 904 B Wing and Flat Nos. 101, 401, 501, 701 and 901 C Wing, Shop Nos. G-1 to G-8, G-11 to G-15 and G-18 to G23, Ground Floor and Office Nos. IF-1 to IF-3 and IF-6 to IF23, First Floor, as alleged by the complainant. On the contrary, the applicant has informed the complainant that they could not mortgage the units of Akruti Empire, as the same are sold. Only Saideep Bungalow was mortgaged and the same was worth Rs.17 Crores. It is submitted that the documents were scrutinized by the legal consultants. Search report was given. The proceedings relating to the same subject matter were initiated before the High Court and vide order dated 8th February, 2018, the applicants were directed to take recourse before the Debt Recovery Tribunal, as the secured

asset is the residential bungalow. The loan was secured, the documents are already in custody of the Police, interrogation of the applicants is not necessary.

6. Learned APP submitted that the accused have played a systematic fraud on the complainant. Huge amount was got sanctioned by the accused. The properties which were mortgaged were already sold. False documents were executed.

7. The applicant no.1 is the partner of M/s.Sai Ninad Enterprises. The investigation is required to be conducted with regards to the forged documents. Loan was granted for 5 years. Agreements, undertakings and declarations against the said loan, were executed. The applicant no. 1 has played prime role. Undertaking was given that the accused would not create any third party interest in the properties. The loan amount was not repaid fully. There is sufficient evidence to show involvement of the applicant. Investigation is conducted with Sub-Regustrar, Thane. Details of transaction/registration of documents were collected. Statement of Senior Clerk from office of Sub-Registrar was recorded. It was

revealed that 18 shops mortgaged with complainant's company were sold vide three different registered agreements on 31st March, 2015, to M/s. Prasad Impex Private Limited. Enquiry was conducted with ofice of Registrar of partnership and it was found that M/s. Sai Ninad Enterprises was not registered. The amount obtained by way of loan was credited into account of Ms. Sai Ninad Enterprises with Axis Bank, Borivali. The account was freezed but it was noticed that there was no balance in the said account. The flats and shops/offices were sold before and after mortgage. C.R. No. 285 of 2017 is registered against applicant no. 1 with Navghar Police Station, Mulund (E), Mumbai, for offences punishable under Sections 420 and 406, read with Section 34 of IPC and Maharashtra Ownership Flats Act. C.R. No. 157 of 2017, 5 of 2017 and 179 of 2018 were also registered against him. Hence, no case for Anticipatory Bail is made out and the application for Anticipatory Bail is required to be rejected.

8. Hence, I pass the following order:

ORDER

(i) The application of applicant no. 1 stands rejected;

(ii) The application preferred by applicant no. 2 is dismissed as infructuous, as the applicant no. 2 is arrested;

(iii) The application stands disposed of.

(PRAKASH D. NAIK, J.)