IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1090 OF 2019

Vijay Govindrao Ghule ...Applicant

V/s.

State of Maharashtra and anr. ....Respondents

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Mr. Nilesh C. Ojha, i/by. Ms. Mansi Jain, Advocate for the applicant.

Mrs. P.P. Shinde, APP for State-respondent no.1.

Mr. Prasanna Bhangale a/w. Mr. Bharatkumar Nukte i/by. Mr. Veerdhaval Deshmukh, Advocate for the Intervenor-respondent no.2.

API, Mr. S.B. Sahane, Economic Offences Wing-1, Navi Mumbai present.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 19th December, 2019.

P.C. :

1. Heard. The applicant is seeking his enlargement on bail in Crime No. I-280/2018 (RCC No. 196/2019) registered with Rabale Police

Station, MIDC, New Mumbai for the offences punishable udner Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code.

2. Complainant is a Director of Masart Finance Company Limited, a Non-Banking Financial Company. It is alleged on 7th July, 2015 the applicant had applied for loan of Rs.2 crores and alongwith it submitted documents. The documents relevant for the purpose of deciding this application are the (i) Income Tax Returns of the applicant for the Assessment Year 2014-15, (ii)Income Tax Return for the Assessment Year 2015-16 and (iii) a Certificate issued by a Chartered Accountant, Ramesh Chaudhary & Co. who purportedly certified the Balance Sheet for the Years 2014-15 and 2015-16.

3. The Complainant-company upon relying on aforesaid and other documents, sanctioned loan and disbursed Rs.2 crores to the applicant. This fact is not in dispute.

4. The cheques issued by the applicant, towards repayment of the loan, were not honoured. Company thus filed a complaint being 1041/2017 under Section 138 of the Negotiable Instruments Act, in the 6th Court, JMFC, CBD, Belapur.

5. It appears, the complainant had also lodged a complaint for cheating with police; however, the complaint was returned, stating that it was of 'civil' in nature. It also appears from the file notings, that again request was made by the complainant to register the offence against the applicant, which was acceded to, and accordingly crime came to be registered on 14th September 2018, under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code.

6. The applicant came to be apprehended on 3rd November, 2018.

7. It is prosecution's case that, Income Tax

Returns for the Assessment Years 2014-15 and 2015-16 and the Balance Sheets for the said period certified by the Chartered Accountant were forged by the applicant dishonestly and fraudulently to cause wrongful loss to the complainant. Prosecution relied on a confirmation received from Income-Tax Department, inter-alia stating that, the tax returns for the Years 2014-15 and 2015-16 of which acknowledgments allegedly produced by the applicants were not found in the system. Prosecution has recorded the statement of Mr. Chaudhary, Chartered Accountant who disowned the seal of his firm on the Balance Sheet and authentication of the tax acknowledgments produced by the applicant, for availing loan. It is therefore prosecution's case that, these documents were forged for the purpose of cheating.

8. The learned Counsel for the applicant, at the outset would submit that the applicant had neither submitted the tax returns nor the Balance Sheet. Applicant disowned his signatures on the

Balance Sheet/tax returns. However, evidence is otherwise. I have perused the Loan Application Form signed by the applicant. In Column no.7 of the said Form, the applicant had disclosed his taxable income for the Year 2013-14 and Permanent Account Number. Since this document itself was disowned, the prosecution has sent the Loan Application form bearing signature of the applicant, to the Handwriting Expert. Handwriting Expert certified that the signature on the Loan Application Form correspond with the, specimen signature of the applicant. Therefore, prima-facie, it is to be held that Loan Application Form was submitted by the applicant, alongwith Income tax returns acknowledgments, Balance Sheet and certificate issued by Chartered Accountant.

9. The learned Counsel for the applicant, vehemently submits that, applicant had not submitted the Balance Sheets to the complainant nor it bears his signature. To counter this submission, prosecution has relied on statement of

complainants' employee, who then stated that on 7th July, 2015, the applicant had submitted the tax returns and the Certificate of Chartered Accountant and, audited Balance Sheet for the Year 2014-15 certified by the Chartered Accountant. Therefore, the evidence on record, prima-facie, suggests that the applicant had submitted the tax returns for two Assessment Years, Balance Sheet bearing endorsement by the Chartered Accountant and his pancard. It therefore appears the complainant, upon relying on these documents assessed applicant's creditworthiness and sanctioned the loan of Rs.2 crores to him. Prima-facie evidence shows, these three documents were forged by the applicant with intention to induce the complainant to sanction loan.

10. The learned APP submits, after the loan amount was credited in the Account of the applicant. he inturn transferred the amount in the Account of his son and applicant's son is not available for interrogation.

11. The learned Counsel for the applicant submitted that, investigation is over and applicant is in jail since last thirteen months. He further submitted that, trial is not likely to commence in the near future and applicant's presence in the trial can be secured by imposing conditions.

12. Mr. Ojha, learned Counsel for the applicant submitted that facts of the case do not constitute offence under Section 467 of the Indian Penal Code, except which other offences are punishable with imprisonment lesser than seven years. He submitted that, application for 'discharge', is filed by the applicant and it is pending before the learned Magistrate. The learned Counsel has relied on the order of this Court in the case of **Amritlal Gulabchand Jain V/s. Superintendent of Police, reported in (2018) SCC Online Bom.989**, to submit facts alleged do not constitute offence of forging valuable security.

13. Learned APP countered the arguments and relied on the judgment of the Hon'ble Apex Court in the case of **Ishwarlal Girdharilal Parekh v. State of Maharashtra and Others, reported in AIR 1969 Supreme Court 40** has held :

> *"An offence under S. 420, IPC, will also be made out, if it is established that the accused have cheated and, thereby, dishonestly induced the Income-tax Officer to make a 'valuable security'. This takes us to the question : "Is the assessment order a 'valuable security' ?" We have already referred to s. 30, IPC, defining, valuable security'. The assessment order is certainly a 'document', under s. 29, IPC. The order of assessment does create a right, in the assessee, in the sense that he has a right to pay tax only on the total amount assessed therein and his liability to pay tax is also restricted to that extent.*

Learned APP, thus submitted, the tax acknowledgments are the 'deemed assessment orders' in absence of a notice under Section 143(3) of the

Income Tax Act. That since the applicant has applied for discharge, the court of competent jurisdiction may decide this issue on its own merits as per law.

14. Thus, taking into consideration the facts of the case, though investigation is over, a fact cannot be overlooked that the applicant has forged the, income tax returns and signature of the Chartered Accountant with sole intention to cause wrongful loss to the complainant. The Application is therefore rejected.

15. The learned Counsel for the applicant, at this stage, submits that, this Court cannot take a contrary view that being taken by the Coordinate Bench in *Amrutlal Gulabchand* (supra). He further submitted, the co-accused, who is a Guarantor, faced with the similar allegations has been granted anticipatory bail by this, Court and therefore bail is sought on 'parity'. I do not agree with the submissions of the learned Counsel for the

applicant. The role attributed to the guarantor is quite different, then attributed to applicant who is "Borrower".

16. It is made clear that these observations are prima-facie in nature and the trial Court shall not be influenced by the observations made in this order.

17. The Bail Application is disposed off.

(SANDEEP K. SHINDE, J.)