IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1181 OF 2020

Vishal s/o. Rangrao Maske .. Applicant
Age. 42 years, Occ. Business [original
R/o. Palvan, Tal. & Dist. Beed accused]
Now R/o. Malives, Subhash Road, Beed,
Tal. & Dist. Beed.

VERSUS

The State of Maharashtra .. Respondent
Through Police Inspector,
Shivajinagar Police Station, Beed,
Tal. & Dist. Beed.

Mr.Shashikant E. Shekade, Advocate for the applicant.
Mr.V.S. Badakh, APP for the respondent/State.

CORAM : V.L.ACHLIYA,J.
DATED : 03.11.2020

P.C. :-

01. The applicant arrested in Crime No.313 of 2020, registered with Shivajinagar Police Station, Beed, Tal. & Dist. Beed, for the offences punishable under sections 420, 463, 465, 467, 468, 471, 474, 120(B) read with section 34 of the Indian Penal Code, has preferred this application under section 439 of the Criminal Procedure Code, for release on bail for the reasons set out in

detail in the application.

02. Heard learned Counsel for the applicant and learned APP representing the respondent/State. Perused the papers of investigation.

03. In brief, it is the contention of the learned Counsel for the applicant that the applicant is innocent and falsely implicated in the case. The allegations made in the complaint that the applicant has cheated the bank by creating false documents are *per se* false, baseless and without iota of truth in it. The filing of the complaint of such nature is nothing but an abuse of process of law and attempt to pressurize the applicant to settle the civil dispute by setting the criminal law in motion.

04. It is submitted that in the year 2011 the loan of Rs.15 lakhs was sanctioned to the wife of the applicant. By way of collateral security, the applicant

has offerred the house property situated at Malives, Subhash Road, Beed having city survey No.4052 bearing Municipal House No.2-8-93 (old), which is renumbered as 2-8-96 (new). Before accepting the said property as collateral security, the bank has obtained search report from their panel advocate and also obtained valuation report from the valuer of the bank. Due to certain reason, the wife of the applicant could not repay the loan and the account became NPA on 20.06.2012. It is submitted that the value of the property mortgaged with the bank is about Rs. 1.5 crores as per the ready reckoner rate. The amount due and payable is around Rs.39 lakhs. Without any cause and enquiry being conducted, the officer of the bank has lodged the complaint that the applicant and his wife have cheated the bank by tendering copy of extract of property tax register (PTR) of house No. 2-8-93 (old) which is renumbered as 2-8-96 (new), showing the same as property owned by the applicant, though the same found to be recorded in the name of Ashruba Tulshiram Maske – the uncle of the applicant.

05. It is submitted that Ashruba Maske and father of the applicant – Rangrao Maske had joint family. The house property bearing PTR No.2-8-93 (old), 2-8-96 (new) (hereinafter referred to as “said property”) is part and parcel of Survey No.79, situated at Taraf Deshmumkh Beed, Tal. & Dist. Beed. Said house property was earlier registered as Nagar Palika House No.324. The father of the applicant – Rangrao Maske and Ashruba Maske possessed and owned the house and landed property at Beed and village Palwan. The uncle of the applicant (Ashruba Maske) purchased one house situated at Survey No.79 of Taraf Deshmukh Beed, Tal. & Dist. Beed, bearing Nagar Palika House No.324 by sale deed No.1707/1971 dated 19.05.1971 from Kachru Madhavrao Savai. On 30.08.1972 his uncle Ashruba Maske purchased another house, which was part of Sruvey No.79 situated at Taraf Deshmukh Beed, Tal. & Dist. Beed, bearing Nagar Palika House No.324 from Macharu Madhavrao Savai. In support of the case of the

applicant, the applicant has annexed copy of sale-deed at Exh. “D” (collectively) to the application. It is further submitted that the father of the applicant Rangrao purchased one open plot which was part of survey No.79 situated at Taraf Deshmukh Beed, Tal & Dist. Beed from one Ganpat Bhivrao Deshmukh, who was practicing advocate at Beed by registered sale deed dated 11.06.1982, copy of which is produced with the application at Exh. “E”. The property purchased by his father Rangrao is situated back side of the house purchased by his uncle Ashruba. His father and Ashruba were living in joint family. The joint property of Rangrao and Ashruba was also numbered by city survey office as CTS No.4052. After death of father of the applicant, family partition took place between the applicant and his uncle Ashruba on 04.11.2004. The document titled as “Watnipatri” executed was duly notarized in notary register No.5057/2004 on 04.11.2004. In the said partition, the said property which was purchased in the name of Ashruba as joint family property was given in the share of applicant. Subsequently, the family partition took place between the applicant and his brother Rahul on 01.01.2008. In the said partition also said property came to the share of the applicant. In support of the submission, the applicant has annexed copy of partition deed at Exh."H". It is submitted that after partition in between the applicant and his brother, the applicant made application to the City Survey Office, Beed for mutating his name in the place of his uncle Ashruba Maske. The application was made on 26.03.2008. The City Survey Office made mutation entry and issued property card of CTS No.4052 by recording name of the applicant.

06. It is submitted that in the year 2011, when the property was given as security towards loan, name of the applicant was duly recorded in the PR card. It is submitted that after mutating name in the PR Card, the applicant made application to the Municipal Council for mutating his name in place of Ashruba in respect of said

property. After the application, the official of the Municipal Council issued copy of extract of property tax register of said property i.e. PTR No.2-8-93 (old) – 2-8-96 (new), showing the name of present applicant as an assessee, uncle of applicant- Ashruba, in-fact died in the year 2007.

07. The copy of extract along with copy of PR card issued by City Survey Office in respect of said property was submitted to the informant bank, before accepting the same as security. After due scrutiny of the documents and verification of title of the applicant through their Advocate, the bank has accepted the property as collateral security towards loan of Rs. 15 lakhs sanctioned to his wife i.e. accused No.2 by creating registered mortgage in favoaur of informant-bank. In that view, there is absolutely no act of cheating, forgery and fabrication of documents committed on the part of the applicant. The allegations made in the complaint are false, frivolous and without conducting any

enquiry. The complaint has been filed with oblique motive to force the applicant to settle the claim of the bank. As per ready reckoner rate applicable for year 2020-2021, the valuation of the property mortgaged with informant-bank is Rs.64,000/- per sq. mtr. and same is commercial property and its valuation is about Rs.80 lakhs to Rs.1 crore as per ready reckoner rules. The outstanding dues of the bank shown to be Rs.39,51,471/-. By following the due process of law the bank can recover its dues by selling the said property. Instead of adopting the legal means, to recover its dues the bank has filed false complaint against the applicant and his wife. It is submitted that the applicant is a respectable person. He has no criminal antecedents. His family is depending upon him. He is illegally arrested and detained in jail for no offence committed on his part. It is further submitted that the applicant is ready to abide any conditions that may be imposed in the event of his release on bail.

08. On the other hand, learned APP opposed the application with contention that there is prima facie case to connect the applicant with the offences registered. The applicant and his wife have secured loan from informant bank by creating false document of ownership. The amount of Rs.39,51,471/- to be recovered from the applicant. If the applicant is released on bail, there is likelihood that he may abscond.

09. I have carefully considered the submissions advanced in the light of overall facts of the case and further perused the FIR lodged by the informant and the papers of investigation. Also perused the report dated 29.10.2020 filed by the Investigating Officer along with copy of statement of Arun Ashruba Maske and Milan Ashruba Maske – sons of deceased Ashruba Maske, the persons in whose name, said property is alleged to be shown in the property tax assessment register maintained by the Municipal Council. In the statement made before the Investigating Officer, the sons of the deceased Ashruba

have categorically stated that said property i.e. Municipal House No. 2-8-93 (old), 2-8-96 (new) bearing CTS No.4052 was given to the applicant in partition by their deceased father Ashruba, who died in the year 2007. They have stated in their statement that said property is owned by the applicant and their family have no right, title and interest in the said property. The statement of two witnesses, who are the sons of deceased Ashruba were recorded pursuant to the observations made by the Court in its order dated 20.10.2020 during the course of hearing. From the statement recorded, it is prima facie established that the allegations made by the informant against the applicant are totally false and baseless and the complaint has been filed without making enquiry.

10. Perusal of the complaint spell out that the complaint has been filed in most casual and irresponsible manner. It was expected on the part of the respondent bank official to have conducted property enquiry before filing the complaint and setting the law in motion. The

filing of criminal complaint has serious consequence and affects the life and liberty of a person. Only for the reason that in the property tax register the property continued to be shown in the name of Ashruba Maske, who died in the year 2007 and the name of the applicant not reflected, in itself not sufficient to infer that the applicant has created false document of property owned by Ashruba Maske – uncle of the applicant to secure loan from informant-bank. In-fact, property tax register is not a document of title. It is maintained only for the purpose of assessment of the tax levied on the property. Before lodging complaint the informant – official of the bank should have taken legal advice in that respect. It is pertinent to note that the papers of investigation spell out that before accepting the said property as a collateral security and registered the mortgage, the bank has referred the documents of title, which include the copy of the PR card issued by the City Survey Office showing name of the applicant, to Shri D.B.Kulkarni, Advocate. He has issued report on 03.10.2011 after conducting necessary scrutiny and enquiry in respect of the documents referred for opinion. The documents referred and relied in support of the application appears to be provided to the advocate for the purpose of scrutiny of title and issuance of report. After making scrutiny of the documents and taking search, the panel advocate of the informant bank issued certificate recording therein that said property holds clear and marketable title and can be accepted as security towards the loan. Similarly, the informant bank has obtained valuation report of the property from their valuer - Sawant & Associates. The valuer of the bank has valued the property as Rs.1,19,00,000/- as market value and distress sale value of the property is shown as Rs.97,00,000/- and thereafter disbursed the loan.

11. If we consider the overall facts of the case of prosecution and particularly the complaint lodged, it nowhere reflects that the informant bank has proceeded to auction the property towards recovery of its dues by

adopting procedure prescribed under the Securitization Act. So also, there are no allegations that someone else raised objection as to the title of the applicant after the property put to sell in action proceeding. Only for the reason that name of deceased Ashruba, who died in the year 2007, continued to be in the property register as owner of the property, was not sufficient to infer that the applicant has cheated the informant bank and created false and fabricated documents to secure loan. It appears that the informant has even not taken pains to enquire from the persons named in the PTR register or his family about ownership and title of said property.

12. In that view, there is no prima facie case exists against the applicant inviting registration of aforesaid offences. The filing of such complaint is nothing but gross abuse of process of law. Instead of adopting civil remedy to recover loan amount, the criminal law has been set in motion. The applicant has been arrested on 04.09.2020. The allegations made in the

complaint are in respect of property tax register tendered at the time of securing loan. The document in question was given to bank and is in custody of informant – bank. No recovery to be made from the applicant. No incriminating evidence found against the applicant during his interrogation. The investigation is practically over. The say of the Investigating Officer that release of the applicant would make it difficult to recover the amount due and payable to the bank itself reflects that the complaint has been filed with intention to recover dues of the bank. The dues of the bank have no connection with the offence registered. The informant has to take appropriate action for recovery of their dues by enforcing the charge against the mortgaged property.

13. In view of the overall facts of the case and discussion made above, the applicant deserves to be enlarged on bail. I am, therefore, inclined to allow the application and pass the following order :-

O R D E R

(i) The application is allowed.

(ii) The applicant arrested in Crime No.313 of 2020, registered with Shivajinagar Police Station, Beed, Tal. & Dist. Beed, for the offences punishable under sections 420, 463, 465, 467, 468, 471, 474, 120(B) read with section 34 of the Indian Penal Code, be released on his furnishing bail in the sum of Rs.10,000/- (Rupees Ten Thousand) with one solvent surety in like amount on following conditions :-

(a) The applicant shall attend the police station as and when directed by the Investigating Officer for the purpose of investigation.

(b) The applicant shall not indulge into any act pressurizing or threatening the prosecution witnesses.

[V.L.ACHLIYA,J.]