IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application/709/2020

Balmukund B.Gupta @ Billu … Applicant

V/s.

The State Of Maharashtra … Respondent

Mr. Dr. Samarth S.Karmarkar i/b.Karmarkar & Associates for the Applicant.

Ms. Subeena Mahadik a/w. Mr. Sunil Humbre with Mr. Sandeep Wasnik and Mr. Sagar Hate for the intervenor.

Mr. Ashwin Kapadnis- APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 23rd JULY, 2020.

P.C. : **(Through Video Conference)**

. Heard by video conferencing.

2. This is an application under section 438 of Cr.P.C. The applicant herein is apprehending his arrest in Crime No. 46 of 2020, registered with Charkop Police Station for the offences punishable under section 406 and 420 read with 34 of Indian Penal Code.

3. It is the case of the prosecution that the applicant is the proprietor of S.G. Motor. The applicant admits this position. It is further the case of the complainant that the applicant is working as a commission agent for Sahyadri Co-operative Bank Limited. The Manager of Sahyadri Co-operative Bank Limited had noticed that the

debts as against 10 or more customer had remained unpaid and that they had failed to make payment towards the loan which was borrowed for Auto-Rikshaw and therefore, they had issued notices to those 10 persons. On receipt of the said notice of recovery the said 10 persons had approached the Taxi-Rickshaw Union which in turn addressed a letter to Reserve Bank of India.

4. On 22nd October 2018 the co-operative Bank received a letter from Reserve Bank of India stating that the loan sanctioned to 10 customers towards purchases is fraudulent and hence the bank was directed to initiate appropriate proceedings against the said 10 persons. That one Mr. Mahadev Hule was working as a Manager in the year 2016. He was in contact with the present applicant who was working as a commission agent. That, the present applicant had introduced 10 customers and was seeking loan towards purchases of the Auto-Rickshaw. An amount of Rs. 1,55,000/- was sanctioned and disbursed to all the 10 borrowers in the form of pay order and the pay order was handed over to the applicant. The total amount of loan was Rs.15,50,000/- which was honored at Vasai Vikas Sahakari Bank Limited, Navghar Branch.

5. In the course of investigation, it was revealed that in fact an additional loan of Rs. 4,32,000/- was sanctioned for miscellaneous expenses and the same was honored into account of S.G. Motors owned by the present applicant and was operated through informant bank.

5. That the complainant was constrained to approach the police. The statement of account of the applicant is submitted, which shows that there is a consistent deposit of Rs.69,500/- on various dates. There is also the credit of Rs.63,500/- on four occasions and Rs.67,000/- on one occasion. The credit of Rs. 69,500/- is consistent for a long period.

6. The learned counsel for the applicant submits that it is true that the applicant was working as a commission agent and he was only introducing the borrowers to the bank. He had submitted the documents which were supposed to be verified by the bank authority. However, he had not received any commission towards the same. At this stage, the intervenor bank has placed on record several receipts issued in the favour of S.G. Motors i.e. proprietory firm of the present applicant, showing that the applicant had consistently received amount of Rs. 69,500/-. There are more than 10 receipts and 10 quotations of Rs. 69,500/-. The said receipts are signed by the applicant acknowledging the receipt of amount.

7. It is clear that the applicant was into the business of body building of Rickshaw. As the quotation of S.G. Motors shows the particulars such as hood fittings, registration of octroi, R.T.O passing, permit meter and extra permit in each case for Rs.69,500/-

8. It is therefore crystal clear that the applicant in connivance with Mr. Hule had played a fraud on the bank and both have misappropriated huge amount in the name of poor borrowers who had

rightly approached taxi union upon receipt of notice.

9. The papers of investigation amply establish that the loan documents were forged and fabricated by none other than the applicant and were accepted by Mr. Hule without any further verification. It is to be noted that the money which has been misappropriated is public money and that the bank has been defrauded. The *modus operandi* is clear, the applicant in connivance with the bank Manager has misappropriated huge amount.

10. This is white collar crime which was well planned in order to cheat several Rickshaw/Taxi drawers. An economic offence cannot be brushed aside lightly.

11. On considering the gravity of the offence, this Court is of the opinion that it would not be appropriate to exercise discretion under section 438 of Cr.P.C. in favour of the applicant. Hence, the application stands rejected.

12. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

(SMT. SADHANA S. JADHAV, J)