IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.366 OF 2021

Manish s/o. Raghuttamrao Choudhari,
Age : 49 years,
Occ. Private Service, Branch Manager,
r/o. Gandewar Colony,
Near Bharat Gas Agency,
Bhokar, Dist. Nanded ..Applicant

Vs.

The State of Maharashtra and anr. ..Respondents

Mr.R.N.Dhorde, Senior Advocate i/b. Mr.V.R.Dhorde, Advocate for applicant

Mr.A.R.Kale, APP for respondent

Mr.R.S.Deshmukh, Senior Advocate i/b. Mr.D.R.Deshmukh, Advocate assisting the A.P.P.

CORAM : R.G. AVACHAT, J.
(Vacation Court)
RESERVED ON : MAY 28, 2021
PRONOUNCED ON : JUNE 03, 2021

PER COURT :-

This is an application for anticipatory bail. The applicant claims to have apprehension of arrest in connection with Crime No.0069 of 2021 registered with Bhokar Police Station, Dist. Nanded, for the offences punishable under Sections 420 and 409 of Indian Penal Code and under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014.

2. Heard. Perused the First Information Report ("FIR", for short) and the related papers.

3. The FIR is dated 20.02.2021. The informant trades in cotton and food grains. His is a proprietary concern by name, `Samiksha Trading". It is alleged that the informant was in need of money in 2012. He, therefore, obtained a cash credit facility of Rs.1.5 Lakhs from Shankar Nagari Sahakari Bank. The applicant was serving as a Manager of concerned branch of the said bank. Cash credit facility was increased by Rs.Two Lakhs. Due to the banking transactions, the informant got acquainted with the applicant.

4. Once, the informant had been to the bank for depositing some amount borrowed from someone. During interaction, the applicant told him that instead of

borrowing money from others, he himself (applicant) in his personal capacity, would lend money to the informant. Since then, monetary dealings/transactions started between them. The applicant would charge 3% interest per month. Once, the applicant gave Rs.30 Lakhs to the informant in 2017. Those were the days of demonetization. The applicant asked the informant to keep said money with him and give to a person to be named by the applicant. Since nobody came to take the money, the informant deposited said money in his own account on the applicant’s instructions. The informant used to withdraw said amount and give it to the applicant. The bank’s Peon namely, Ganesh Lakshatwar used to come to collect the money on behalf of the applicant.

5. Both the applicant and the informant have maintained diaries regarding their monetary transactions. All the dealings have been reflected therein. It is further alleged that the informant had paid the applicant little over Rs.Eighty One Lakhs

from time to time, for depositing in his loan account. The applicant, however, did not deposit the entire amount. He has misappropriated a sum of Rs.37 Lakhs. The informant, along with a few farmers, had been to the applicant to ask for return of money. The applicant admitted the informant to be indebted him and paid Rs.6 Lakhs to the informant with a promise to pay the balance amount. The applicant also deposited Rs.7,25,000/- in cash credit account of the informant. The applicant, by misusing his position as Bank manager, misappropriated the amount paid to him for depositing it in the loan account of the informant. The applicant, thus, committed offence of cheating and criminal breach of trust.

6. Mr.Dhorde, learned senior Counsel for the applicant, would submit that the informant is an unscrupulous debtor. He is trying to implicate the bank officials in a false crime with a view to avoid payment of what is due from him on loan accounts. Before lodging of the FIR, the bank has taken steps

for recovery of the amount due from the informant. The informant, on 15.10.2019, created a scene in the bank during working hours. The applicant had, therefore, to lodge FIR against him. Again on 20.12.2020, the informant threatened the applicant and bank employee – Ganesh Lakshetwar. A non-cognizable case has been registered against him. Thereafter, the informant entered the applicant's house and assaulted him. FIR has been registered against him in respect of said incident also. Steps have been taken under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SURFAESI Act", for short) against the informant for recovery of the amount. A notice has been issued in a daily newspaper. Notional possession has been taken of the hypothecated property. In response to the demand notice issued by the bank, the informant gave a reply through Advocate and admitted his liability. Since the applicant, in his official capacity as Branch

Manager, had been pursuing various remedies under law for securing repayment of the amount due on loan account of the informant, a false F.I.R. has been lodged against him.

Learned senior counsel for the applicant has given chronology of events to indicate, as to how the informant has all along been after the applicant only with a view to avoid payment of money due to the bank. Learned senior counsel took me also through the relevant documents and ultimately, prayed for allowing the application.

7. Learned APP appearing for the respondent – State and Mr.Deshmukh, learned senior counsel appearing for the intervenor, took me through the order passed by learned Additional Sessions Judge rejecting the applicant's application for anticipatory bail.

8. Learned APP brought to the notice of this Court the statements of the farmers in whose

presence, the applicant, allegedly, admitted his liability and even paid some amount to the informant. I was also taken through the entries in the note book/diary maintain by the informant, indicating him to have had paid the applicant money, many a time. Both learned counsel would submit that the applicant has misused his official position and entered into illegal monetary transactions. His custodial interrogation is required. Both of them, therefore, urged for rejection of the application.

9. I have considered the submissions made by both the learned senior counsel and learned APP as well. Perused the FIR and the relevant papers relied upon. I find the conduct of the informant to be consistent with his case averred in the FIR. True, the informant has two loan accounts with the bank; one is cash credit facility and another is term loan. It is also true that the informant is defaulter of both the loan accounts and the bank has, therefore, initiated necessary steps for recovery of the amount

due. In the process, a public notice has also been given. Immovable property of the informant is said to have been attached. Symbolic possession has been taken. Further steps for sale of the property are also said to have been taken under the SARFAESI Act. I do not propose to deal at length with those steps taken by the bank towards recovery of the loan amount from the informant. During the relevant time, the applicant was the Bank Manager, is undisputed.

10. It further appears that the applicant and the informant had acquaintance interse for over 4-5 years. They had monetary transactions between them. The informant had all along been to the applicant no sooner he realised the amount paid to have not been deposited in his loan account.

11. There are on record communications dated 05.11.2019, 21.12.2019, 14.10.2019 and 17.01.2020 made by the informant to the Chairman of the bank and even to the Officer in-charge of the police station,

alleging the applicant to have duped him. One of the communications even precedes the steps taken by the bank for recovery of the loan account from the informant. The informant even went to the bank and to the house of the applicant and made chaos/scene there. This was all in connection with his allegations of having been duped by the applicant. There are statements of over 12 farmers to indicate that they had accompanied the informant to the applicant and during their presence, the applicant had paid the informant Rs.6 Lakhs and assured to pay the balance amount. There is also a diary maintained by the informant reflecting a number of entries on various days, indicating him to have paid the applicant various amounts.

12. So far as regards the informant's reply through Advocate to the demand notice is concerned, it may be stated that he cannot escape the liability of payment of money due on his loan accounts. What has been alleged in the FIR pertains to the personal

transactions between the applicant and the Bank Manager himself (applicant). The informant will have every opportunity to explain admissions made in notice reply dated 28.09.2020.

13. What has been observed from the material on record is that the applicant and the informant did have monetary transactions interse. The informant paid the applicant various amounts from time to time. The applicant did not deposit those amounts in the loan account of the informant. The informant had all along been agitating his claim. On occasions, he took law into his own hands. There are statements of farmers to suggest the applicant to have paid the informant a sum of Rs.6 Lakhs in their presence and acknowledged his liability towards the informant. The entries in the note book/diary are consistent with the case of the informant. It is nothing short of economic offence.

14. For further investigation, the applicant’s custodial interrogation is warranted. I am,

therefore, not inclined to grant anticipatory bail to the applicant. The application fails and rejected.

[**R.G. AVACHAT, J.**]

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.918 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.366 OF 2021

Mr.R.S.Deshmukh, Senior Advocate i/b. Mr.D.R.Deshmukh, Advocate for applicant

Mr.R.N.Dhorde, Senior Advocate i/b. Mr.V.R.Dhorde, Advocate for respondent no.1

Mr.A.R.Kale, APP for respondent no.2

CORAM : R.G. AVACHAT, J.
DATE : JUNE 03, 2021

PER COURT :-

The application is allowed. Learned counsel for the applicant is permitted to assist learned APP during hearing of Anticipatory Bail Application No.366 of 2021.

[**R.G. AVACHAT, J.**]

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