IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.462 OF 2021

(1) Jagannath Gorakshanath Dhasal,

(2) Harishchandra Vijay Deshpande,

(3) Sandip Kisan Tarte **...Applicants**

Versus

(1) The State of Maharashtra
Through PSO Tophkhana Police Station,
Tq. Ahmednagar, Dist. Ahmednagar

(2) The Superintendent of Police
Ahmednagar, Dist. Ahmednagar **...Respondents**

...

Advocate for the Applicants : Mr. Shashikiran N. Patil
APP for the Respondents – State : Mr.S. B. Narwade

...

WITH
ANTICIPATORY BAIL APPLICATION NO. 502 OF 2021

Ashok Madanlal Mawal **...Applicant**

Versus

(1) The State of Maharashtra
Through PSO Tophkhana Police Station,
Tq. and Dist. Ahmednagar

(2) The Superintendent of Police
Ahmednagar, Ta. & Dist. Ahmednagar **...Respondents**

...

Advocate for the Applicant : Mr. Amol S. Gandhi
APP for the Respondents – State : Mr. S. B. Narwade

...

AND

ANTICIPATORY BAIL APPLICATION NO. 1110 OF 2021

1) Bharat s/o Ashok Mawal

2) Mridul s/o Ashok Mawal **...Applicants**

Versus

(1) The State of Maharashtra
Through PSO Tophkhana Police Station,
Tq. and Dist. Ahmednagar

(2) The Superintendent of Police
Ahmednagar, Ta. & Dist. Ahmednagar **...Respondents**

...

Advocate for the Applicants : Mr. Amol S. Gandhi
APP for the Respondent – State : Mr. V. S. Badakh

...

CORAM : PRAKASH D. NAIK, J.

DATE : 14th DECEMBER, 2021

PER COURT :-

1. The applicants are seeking pre-arrest bail in Crime No. 0243/2021 registered with Topkhana Police Station, District Ahmednagar for the offences punishable under Sections 420, 465, 466, 468, 471 read with Section 34 of the Indian Penal Code. The First Information Report was lodged by Sagar Dubey, Branch Manager, Maharashtra Bank, Savedi Branch, Ahmednagar.

2. The case of the prosecution is as follows :-

(i) The partners of M/s.Mawal Infrastructures, Agro Organics, R & D Centre and Solutions are having their account with Maharashtra Bank. The complainant is working as a Branch Manager. The partners of Mawal Infrastructure made an application to the bank for cash credit loan to Mawal Infrastructure. The immovable properties of Mawal Family were mortgaged by executing equitable mortgage.

(ii) The partners of Mawal Infrastructure made an application to the bank for enhancement of cash credit loan. Amount of Rs. 40,00,000/- enhancement was sanctioned to them by the bank. For the enhancement of loan amount, N.A. Plot No. 11/6 Survey No. 11/6 at Bhistbag, Ahmednagar was mortgaged by Mawal Infrastructure to the bank.

(iii) On 23.09.2013 plot bearing Survey No. 311/1/1 at Sant-darshan Nagar, Savedi was mortgaged by Mawal Infrastructure with bank for enhancement of cash credit loan of Rs. 2,40,00,000/- and accordingly the said cash credit loan was sanctioned by bank. As per the requirement of Mawal Infrastructure, the bank sanctioned loan amount to them by mortgaging their immovable properties with the bank.

(iv) The entries regarding encumbrances of loan amount were made by the Talathi Office in respect to properties mortgaged with the bank. On 22.05.2014, the partners of Mawal Infrastructure again made an application to the bank enhancement of cash credit loan of Rs. 2,50,00,000/-. The bank granted total amount Rs. 4,90,00,000/- as cash credit loan to Mawal infrastructure by mortgaging their different properties.

(v) On 29.11.2017, there was N.P.A. of one of the loan account of Mawal Infrastructure. The bank executed demand notice on partners of Mawal Infrastructure regarding demand of their loan amount. In respect of Survey No.311/1/1 Sant-darshan Nagar, Savedi, there were encumbrances of loan amount with the bank and the said loan amount was not satisfied by the borrowers.

(vi) On 21.08.2020, the partners of Mawal Infrastructure made an application to remove the entry of encumbrances about the loan amount, and for that purpose, the partners of Mawal Infrastructure created false and forged documents on letter head. The application was given to Talathi Office on 27.08.2020. On receipt of the said application Shri Harishchandra Deshpande deleted the entry of encumbrances of loan amount of survey number on 04.09.2020 and new mutation entry was prepared. On 06.10.2020, Circle Officer Shri Jagannath Dhasal sanctioned the mutation entry. The

Talathi at Nagapur, Shri Sandip Tarate deleted the entry of encumbrances of bank from said survey number on 15.09.2020 and mutated the same. On 29.10.2020 Circle Officer Shri Jagannath Dhasal sanctioned the mutation entry of removal of encumbrances of property.

(vii) The loan amount obtained by Mawal Infrastructure from the bank was not fully satisfied by Mawal family and concerned Talathi and Circle Officer illegally and with intention to cheat the bank, the entries of encumbrances were removed on the properties by using false documents. Hence, the complaint was lodged with Tophkhana Police Station.

3. The applicants in all these applications preferred applications for anticipatory bail before the Court of Sessions at Ahmednagar. The applications were rejected by order dated 22.04.2021, 06.05.2021 and 19.07.2021 respectively.

4. Learned counsel representing applicants in Anticipatory Bail Application No. 462/2021 has submitted that the applicants are falsely implicated as accused in this case. They are Government servants. Their arrest would jeopardized their employment. They have followed procedure established by law. They have not acted in connivance with the co-accused.

Applicant No.1 is working as a Circle Officer and applicant Nos. 2 and 3 are working as Talathi with Savedi and Nagapur Sajja Ahmednagar respectively. Bharat Ashok Mawal is owner of M/s. Mawal Infrastructures. He filed an application for removal of charge with applicant Nos. 2 and 3. He filed an application for removal of charge alongwith letters dated 21.08.2020 purportedly issued by the complainant bank and requested that owners of M/s. Mawal Infrastructures, Agro Organics, R & D Centre and Solutions have provided another property for review / renewal of loan and the bank has requested to release the mortgage charge over the property bearing plot at survey No.311/1/1 admeasuring 2047.21 sq. mtrs. owned by Ashok Mawal, Pankaj Mawal, Bharat Mawal and Mridul Mawal. Separate letter bearing Outward No.AN38/ADV/CC/MAWAL/AUG -PROPERTY-1/2019-20 for property bearing plot No. 5, admeasuring 310.09 sq.mtrs. owned by Ashok Madanlal Mawal, Pankaj Ashok Mawal, Bharat Ashok Mawal and Mridul Ashok Mawal. Bharat Ashok Mawal also gave declaration along with affidavit clarifying that he is providing true information. The copies of application dated 27.08.2020 and 21.08.2020 are annexed to this application. It is further submitted that on receipt of the application for removal of mortgage charge along with the letters issued by the bank, the applicants issued notice to the bank of Maharashtra. Applicant No. 2 prepared panchanama as per procedure by affixing the notice, at Chavdi. On completing necessary procedure the applicant Nos. 2 and 3 forwarded the entries to applicant No.1 for sanction. Applicant No.1 sanctioned the mutation entry No. 60372 on 06.10.2020 in respect to property at Survey No. 311/1/1 admeasuring 2047.21 sq. mtrs., Savedi and mutation entry No. 16172 on 29.10.2020 in respect of property bearing plot No. 5 admeasuring 310.09 sq. mtrs. situated at Nagapur. The copies of notices issued by applicant Nos. 2 and 3 and mutation entries are annexed to the application. The Manager of the complainant bank approached applicant Nos. 2 and 3 and submitted application stating that mutation entry No. 60372 and 16172 were allowed by applicant No.1 and the same are required to be cancelled as M/s. Mawal Infrastructures Agro Organics, R & D Centre and Solutions have produced fake documents. The charge of the bank has been deleted on the basis of said documents. The letter was given by complainant bank for uploading fresh charge. As per letters dated 01.01.2021 and 05.01.2021 issued by the Manager of the bank applicant Nos. 2 and 3 had issued notices to the concerned persons regarding mutation entry No. 16318 in respect of property bearing plot No.5 admeasuring 310.09 sq.

mtrs. situated at new survey no. 30/12+13 at Nagapur Ahmednagar.

5. Learned counsel for the applicants in Anticipatory Bail Application No. 462/2021 further submitted that on 12.01.2021 the applicant Nos. 2 and 3 received the objection application by the Registered Speed Post in pending Mutation Entry Nos. 61510 and 16318 from the owners of M/s. Mawal Infrastructures, Agro Organics. The objection application was accompanied with ‘No dues certificate’ issued by the Bank of Maharashtra. However, on receiving objection in pending mutation entries the applicant Nos. 2 and 3 forwarded the objection to Tahsildar and the applicant No.1 was appointed for hearing the complaint of mutation entries. As per order of Tahsildar, applicant No.1 issued notices to the all concerned parties and the procedure is pending. On 25.03.2021 First Information Report was registered by the complainant i.e. Manager of Bank of Maharashtra against applicants and others. It is submitted that there has been delay in lodging the FIR. The mutation entry has been mutated by the applicants in their official capacity by following rules and regulations. It is mutated as per the provisions of Maharashtra Land Revenue Code, 1966. The applicants have performed their work as per the guidelines of Maharashtra Land Revenue Code. Sections

247, 257 and 258 of Maharashtra Land Revenue Code, 1966 permits the parties to challenge the mutation entry before the appellate authority. Custodial interrogation of the applicants is not necessary.

6. Learned counsel for the applicants in Anticipatory Bail Application Nos. 502/2021 and 1110/2021 submitted that the entire case is based on documents. The dispute is of civil nature. The complainant has suppressed vital facts. The applicants need not be subjected to custodial interrogation. The applicant Ashok Madanlal Mawal is 73 years old person. The applicant Mridul Ashok Mawal has not played any role in transaction. On 05.03.2013 the firm had applied for a C.C. limit with the complainant bank. The application for cash credit limit was sanctioned by the complainant. The limit was enhanced on 23.4.2013. Property was given as security. Cash credit was further enhanced by Rs.240.00 Lakhs. Property was provided by way of security. The account became NPA on 2.12.2017 due to loss in business. Notice under Section 13(2) of SARFAESI Act was issued for Rs. 5,05,31,822 by the complainant bank. On 22.02.2018 intimation for possession of primary and collateral security was issued by the complainant. On 05.03.2018 the applicants' firm has deposited Rs. 10.00

Lakhs in the loan account and expressed desire to repay the loan in instalments. Accordingly, the possession was kept in abeyance. The applicants deposited Rs. 2.45 Lakhs towards the processing fees in Sundry account and Rs. 38.75 Lakhs towards the loan account. On 29.09.2018 they deposited Rs. 31.25 Lakhs towards the loan account. They have deposited Rs. 215.40 Lakhs between 05.03.2018 to 30.08.2019. Properties were released by the bank. On 21.08.2020 as per agreement dated 23.05.2014 remaining properties were released by the bank. A letter to the Talathi were issued by complainant bank. The primary properties were retained by the bank. On 07.09.2020 the applicants' firm after depositing the amount of Rs. 215.40 Lakhs made an application for settlement of loan account No. 60129071026. The complainant bank accepted the offer of Rs. 10,000/- towards full and final settlement. Reliance is placed on letter dated 26.11.2020. On 01.12.2020 the final amount of Rs. 10,000/- was deposited. On 01.12.2020 the complainant issued 'No Dues Certificate' and closed the loan account by returning original documents with executing two original title deeds of property. On 10.12.2020 the accused sent the E-mail to the bank seeking closer of ledger statement of loan account. On 18.12.2020 E-mail was sent by the firm to the bank seeking closer of ledger statement of loan account of return of original title deeds which was misplaced by the bank. On 06.01.2021 the applicants submitted complaint to the Manager for not returning the original title deeds of property. False complaint was registered against the applicants. Hence custodial interrogation of the applicants is not necessary.

7. The applicant Ashok Mawal is a senior citizen. He is suffering from various ailments. The medical case papers regarding illness of the applicant are produced. It is submitted that he is suffering from " Mild prostatomegaly with significant postvoid residue, Cystitis, Mild hapatomegaly with fatty liver". There is sickening of urinary bladder wall. C.T. Scan of the Thorax reveals Peripheral consolation with central patchy cavitations with surrounding ground glass densities representing fungal pneumonitis".

8. Learned APP submitted that all the accused have connived with each other. The applicants in Anticipatory Bail Application Nos. 502/2021 and 1110/2021 had forged and fabricated documents to delete the entries about encumbrances. The accused intended to avoid huge liability. The letters allegedly issued by the bank and the "No dues

certificate” relied by the accused are fabricated the documents. The applicants in ABA No. 462/2021 were acting in connivance with the other accused and instrumental in deleting encumbrances. According to the complainant the loan amount availed by the applicants firm is not fully satisfied. False documents were prepared on the letter head of the bank. The documents are in respect of mortgage and loan transaction of property of the firm of the accused. The applicants firm is beneficiary a forged documents. Custodial interrogation of the applicants is necessary. M/s. Mawal Infrastructures Agro Organics was holding loan account with complainant bank. The documents of mortgage executed against the loan facility and manipulated revenue records.

9. I have perused the documents on record. I have also scrutinized the investigation papers. Prima-facie the accused in ABA Nos. 502/2021 and 1110/2021 were involved in fabricating documents and submitting it to the Office of Talathi. The applicants who are the partners of Mawal Infrastructures have obtained huge amount of loan from the complainant bank on certain terms and conditions but defaulted the repayment of it and played fraud with the bank by manipulating the revenue records of mortgage property.

The case relates the huge amount. Investigation is in progress. The applicant accused has relied upon the documents including the 'No dues certificate'. The certificate indicates that on payment of Rs. 10,000/- the dispute is resolved. The account was declared as NPA and it is the contention of the applicants in ABA Nos. 502/2021 and 1110/2021 that repayment of the amount was made to the complainant bank. The documents relied by accused purportedly issued by the complainant bank are false and fabricated. The bank has denied issuing 'No dues certificate'.

10. As far as the applicants in ABA No. 462/2021 are concerned, they are Circle Officer and Talathi on the basis of the documents relied upon them. It can be inferred that they have acted in persuance to the document submitted by the accused procedure has been followed by them by issuing notices. Prima-facie there is nothing to infer that they were in hand gloves with the co-accused and their custodial interrogation is not required. Prima-facie there is material to show the involvement of the accused in ABA Nos. 502 and 1110 of 2021. However, by way of sympathy considering the age of the applicant Ashok Mawal and due to ailments suffered by him, he need not be subjected to custodial interrogation. He

is aged about 73 years. The applicants in ABA No.1110/2021 are the partners of M/s. Mawal Infrastructures. They cannot feign ignorance to the crime. The documents in question are false and fabricated which points out the complicity of the said applicants. Hence the applicants in ABA No. 1110/2021 are not entitled for relief under Section 438 of Cr.P.C. and their application deserve to be rejected.

11. Hence, I pass the following order :

ORDER

(i) Anticipatory Bail Applications No.462 and 502 of 2021 are allowed.

(ii) Anticipatory Bail Application No.1110 of 2021 is rejected.

(iii) In the event of arrest of the applicants in ABA No. 462 of 2021 in connection with Crime No. 0243 of 2021 registered with Topkhana Police Station, District Ahmednagar, the applicants be released on bail on executing P.R. bond in the sum of Rs.25,000/- each, with one or two sureties in the like amount.

(iv) In the event of arrest of the applicant in ABA No. 502 of 2021 in connection with CR No. 0243 of 2021 registered with Topkhana Police Station, District Ahmednagar, the applicant be released on bail on executing P.R. bond in the sum of Rs.20,000/- with one or two sureties in the like amount.

(v) Applications stand disposed of.

(vi) At this stage, learned counsel for applicant in ABA No. 1110 of 2021 submitted that interim protection was in force since six (6) months and to enable applicant therein to approach the Apex Court, the interim relief may be extended for four (4) weeks. Learned APP opposes the submissions of learned Counsel for applicant. However, considering that interim order is in operation from six (6) months and the submissions of learned counsel for applicant, interim relief is extended for four (4) weeks.

(PRAKASH D. NAIK)
JUDGE

shp/-