

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

18 CRIMINAL WRIT PETITION NO.1305 OF 2018

MILIND VIDYASAGAR GHATE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA

..RESPONDENT

...

Advocate for Petitioner : Mrs. Rashmi S. Kulkarni

APP for Respondent No.1 : Mr. S. P. Sonpawale

Advocate for Respondent No.2 : Mr. P. S. Gaikwad

...

CORAM : N.R. BORKAR, J.

DATE : 22.11.2021

PER COURT :-

This petition takes an exception to the order dated 27th April 2018, passed by the learned Additional Sessions Judge, Jalgaon in Criminal Revision No. 57 of 2016.

2. By the order impugned, the learned Additional Sessions Judge has confirmed the order passed by the learned Judicial Magistrate, First Class, Chalisgaon dated 30.10.2015 passed below Exh 178 in Regular Criminal Case No. 401 of 2010.

3. The petitioner, who is an accused in aforesaid Regular Criminal Case No. 401 of 2010 and is facing trial for the offence punishable under Sections 406, 408, 409, 420, 468,

471, 120(B) read with Section 34 of the Indian Penal code, with other co-accused has filed, application for discharge at Exh. 178. The learned Magistrate rejected the said application by order dated 30.10.2015. The revision filed against the said order came to be dismissed by the order impugned.

4. I have heard the learned counsel for the petitioner and the learned A.P.P for the respondent/State.

5. It is the case of the prosecution that the accused misappropriated a sum of Rs. 3,64,90,000/- of the Chalisgaon People's Co-operative Bank Ltd. According to the prosecution the petitioner was the partner of partnership firm Aditya Ice Factory. The brother of the petitioner namely Ajit Ghate, who died after filing of the charge sheet, was another partner of the said firm. It is alleged that the present petitioner along with his brother Ajit Ghate in connivance with Directors and Manager of the Bank got sanctioned the loan of Rs. 33,00,000/- on the basis of false documents.

6. The learned counsel for the petitioner *inter-alia* submits that documents would show that the loan was obtained by the brother of the petitioner and not as a partner of Aditya Ice Factory. It is submitted that Bank resolution sanctioning

loan also mentions the name of the brother of the petitioner and not the name of partnership firm.

7. During the course of hearing the learned A.P.P has brought to my notice certain documents to show that the loan was advanced to the partnership firm. The learned counsel for the petitioner submits that said documents are not part of the charge sheet. The learned APP was thus called upon to file the affidavit as to whether the documents on which he is relying to show that loan was advanced to partnership firm are part of the charge sheet or not and whether they were supplied to the petitioner. Pursuant to the said order, concerned officer has filed the affidavit.

Paragraph Nos. 2 and 3 of the said affidavit read thus :

" I say and submit that, in the present crime the then Investigation Officer prepared (Japti) seizure Panchanama on 07.12.2008. I say that, in the said seizure Japti Panchanama in clause No.12/13 the documents are shown to be seized. As the documents are bulky in nature and therefore, all those documents are deposited with the Muddemal Karkun of investigation agency on the same day and a receipt to that effect is obtained from Muddemal Karkun. All seized original muddemal files are in the

custody of Investigating Officer, as and when court will call that will be produced at the time of evidence.

8. It would appear from the contents of the affidavit that the documents, which the prosecution is relying upon against the petitioner to show that loan was advanced to the partnership firm are lying with Muddemal Clerk. If the prosecution wants to rely upon the said documents, against the petitioner, then it was incumbent upon the prosecution to provide the copies of the said documents to the petitioner. However, the same is not done.

9. Considering these facts and circumstances following order is passed :

O R D E R

The orders impugned are quashed and set aside.

2. The prosecution shall supply all the incriminating documents to the petitioners. After the documents are supplied to the petitioner, the learned Magistrate shall decide the application filed by the petitioner for discharge afresh.
3. The learned Magistrate shall not insist the presence of the petitioner till the decision of application for discharge.

(N. R. BORKAR)
JUDGE

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