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

916 ANTICIPATORY BAIL APPLICATION NO. 1483 OF 2019

DNYANENDU PRAKASH WARMA
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. S.S. Jadhav.
APP for Respondent : Mr. V.M. Kagne.

**CORAM : MANGESH S. PATIL, J.**
**DATED : 22.01.2021**

**PER COURT :**

The applicant who happens to be the accused No. 2 in Crime No. 231/2019, registered with Navapur Police Station, District Nandurbar, for the offences punishable under Sections 406, 408, 409, 420, 468, 469, 470 read with Section 34 of the Indian Penal Code, is seeking bail in the event of his arrest.

2. Briefly stated the allegations as can be appreciated from the charge sheet are to the effect the applicant was a Branch Manager with the Bank of Maharashtra, Branch Navapur. The informant and two other persons had applied for term loan for erecting poly house in their respective lands. It is averred that the main accused had taken all of them to the concerned bank. The term loans were sanctioned. Those were to be disbursed depending upon the stage of

erection of the poly houses. The EMIs were to start from a specified date. In spite of the fact that the work of the poly houses was not completed by the main accused, the applicant allowed disbursement of the loan amount to him causing wrongful loss to the informant and the other two borrowers. It is alleged that in respect of the informant though the work was completed to the extent of 90 % the applicant certified it to be complete and allowed the entire loan except the paltry sum of Rs. 50,000/- to be disbursed.

3. It is also alleged in respect of the other two borrowers the work was completed only to the extent of 17% and 65% and still major portion of the loan amount was disbursed. It is thus alleged that the applicant hand in gloves with the main accused has committed the offence mentioned above.

4. The learned Advocate for the applicant would submit that the applicant is only a Manager of the Bank. It was his first posting. Though there is certain amount of negligence attributable, it does not go to the extent of attributing him with culpability. Being a Manager he was not supposed to look after the entire affairs. There is a hierarchy of employees to help him in discharging the duties. It is not that the works were not at all carried out. As far as the informant is concerned it was a little margin of 10%. It could be an error of

judgment. So far as the other two borrowers are concerned, it is not that the whole amount was disbursed to the main accused. Learned Advocate, on instructions, also submits that even the applicant was proceeded against departmentlly but has been exonerated. It would, therefore, be farfetched to hold the applicant guilty of the crime being charged against him.

5. Lastly the learned Advocate would also point out that in fact the grievance of the informant and the other borrowers is against the main accused who failed to complete the work of erection of the poly houses. Even the FIR recites about he having undertaken to complete the work and they were satisfied with such an undertaking. It is in view of such state of affairs, when the applicant has already been protected by way of ad interim relief for last more than a year and since he is in the employment as a the Branch Manager of the bank and unlikely to jump the bail, the ad interim protection may be confirmed.

6. Learned APP opposes the application. He submits that it is a serious offence. There is every reason to believe and suspect involvement of the applicant in commission of the crime in collusion with the main accused. Being a Branch manager it was his responsibility to disburse the loan amount proportionate to the work

that was completed. Giving a complete go-by to such a procedure, he has readily disbursed the loan. There is material to reveal that the work of erection of poly house was only completed partly in respect of all the three borrowers still huge amount was disbursed. Considering the *modus operandi* custodial interrogation of the applicant is necessary. The application be rejected.

7. Learned APP would also point out that as regards the informant, the certificate issued by the applicant regarding completion of the work is patently false when the work was completed only to the extent of 90 %. In respect of the other two borrowers, he even did not bother to visit the spot and to personally verify the work before approving such disbursement to the main accused. This smacks of sharing of common intention by the two. The application be rejected.

8. I have carefully gone through the papers and considered the rival submissions.

9. Obviously, it is the main accused who even without completing the work of erection of the poly houses could manage to derive a wrongful gain.

10. The question is as to if even the applicant can be roped in and

whether there is enough material to reveal his complicity. As can be understood, he was the Manager of the bank. Term loans were sanctioned to the informant and other two borrowers. Repayment was to start from a specific date. The work was admittedly not complete and still the loan amounts were disbursed to the main accused. As can be seen from the report of the valuer, the work in respect of the informant and other two borrowers was completed to the extent of 90%, 17% and 65%. According to the valuation report, Rs. 95,50,000/- were disbursed in total when percentage wise the work was completed only to the extent of worth Rs. 73,63,800/- and thus in aggregate the work to the tune of Rs. 21,86,200/- was still incomplete. Without indulging into any further calculations suffice to observe that the loan amount was disbursed not in proportion to the work that was completed.

11. However, whether simply on the basis of these facts and circumstances it would be sufficient to draw an inference as to the complicity of the applicant is indeed a matter which deserves consideration.

12. Obviously, it does appear to be a matter of negligence on the part of the applicant in discharging his duties. However, there has to be something to demonstrate which would enable us to travel beyond

such suspicion. At this juncture, though the charge sheet has been filed, except these aforementioned circumstances there is no material to indicate even *prima facie* that the applicant was having some motive and had conspired with the main accused in disbursing the loans. Mere negligence would not be sufficient to implicate a person for committing an offence of the kind being charged against the applicant. The material requisite to take the case further is conspicuously missing.

13. Considering all these aspects, the ad interim bail granted to the applicant deserves to be confirmed. The application is allowed. The ad interim relief granted by the order dated 25.11.2019 stands confirmed with the same terms and conditions.

**( MANGESH S. PATIL, J. )**

S.P.C.