IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1723 OF 2021

Ashok Ganpat Gholap … Applicant

Versus

Union Of India And Anr. … Respondents

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Mr. Prakash Dhopatekar, Santosh Vhatkar & Mahesh Makwana i/by i/by Santosh Vhatkar And Associates, Advocate for the Applicant.

Mr. Ameeta Kuttikrishnan Special P. P. for U.O.I.

Mr. Y. Y. Dabake, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 1st OCTOBER, 2021

PER COURT:

1. The applicant is apprehending arrest in First Information Report (for short 'FIR') No. RC.0682019E007 investigated by CBI/EOB Mumbai. The FIR was registered on 4th November, 2019 for offences punishable under Sections 420, 120(B) of Indian Penal Code (for short "IPC") and Sections 13(2) 13(1)(d) of Prevention of Corruption Act.

SAJAKALI LIYAKAT JAMADAR Digitally signed by SAJAKALI LIYAKAT JAMADAR Date: 2021.10.01 19:21:01 +0530

2. The case of the prosecution is that during the period from 2011-2014 the accused entered into the criminal conspiracy with intent to cheat Bank of Baroda in the matter of availing credit limits in the name of Hareram Cotton Industries Pvt. Ltd. The

accused approached Bank of Baroda, Thakurdwar Branch, Mumbai and requested to take over the loan availed from IDBI Bank based on final data provided by the accused. The limits were enhanced from time to time and in March-2013 it was enhanced to Rs.45 Crores. The accused submitted false and inflated stock statements inducing the lender bank to deliver loan proceeds. The loan was not utilized for the purpose, which it was sanctioned. The loan proceeds were diverted for their personal use. The directors sold the machinery and the collateral properties without knowledge of the lender bank and without obtaining NOC from the lender bank and thereby caused revenue loss to the tune of of Rs.45.54 Crores from Bank of Baroda.

3. The applicant preferred an application for anticipatory bail before the Court of Sessions. The said application was rejected by the Sessions Court by order dated 17th July, 2021.

4. The applicant was granted interim protection by this Court vide order dated 5th August, 2021. He was directed to appear before Investigating Agency as and when called.

5. Learned Advocate for the applicant submitted that there is no evidence showing the involvement of the applicant in the alleged offences. The cash credit facility have granted to the

borrowers in February-2011. The applicant had joined Bank of Baroda, Thakurdwar Branch on 13th June, 2011. The applicant has not played any role for sanctioning loan. The transactions is of 2013 and the FIR was lodged in 2019. Custodial interrogation of the applicant is not necessary. Departmental action was initiated against the applicant by the complainant bank and closure letter was issued for closing the inquiry against the applicant. The applicant joined Bank of Baroda as clerk on 19th July, 1976 and retired in the position of Assistant General Manager on 30th September, 2016. During his service he received several awards and appreciations from the bank management. The CBI/EOB, Mumbai conducted surprise search at his premises situated at Gorai-I, Borivali, Mumbai and seized certain property details which are reflected in the search list. He also seized the locker key of the bank locker of the applicant. The applicant is not named in the FIR. It is alleged that some public servants has acted in connivance with the borrower company. The applicant has no role in the alleged transactions. When the borrowers loan was taken over from IDBI bank and credit facility was sanction on 17th February, 2011, the applicant was not working in Thakurdwar Branch. He was posted and transferred in the said branch as Branch Manager on 13th June, 2011. While granting cash credit limit for Rs.45 Crores to the borrowers in and around 29th March, 2013, the banking norms were in respect thereof were adhered to by obtaining requisite security and other documents and compliance report of the credit audit from Senior Officer of the bank. There is nothing to show that the applicant had conspired with the borrowers in causing loss to the banks. The applicant has retired from the bank in 2016. He need not be subjected to arrest. During search documents are collected by the Investigating Agency. While granting interim protection by this Court it was directed that the applicant shall appear before the Investigating Agency as and when called. However, he was never called by the Investigating Agency.

6. The respondents had filed affidavit-in-reply opposing the application. Learned counsel for the respondent submitted that there is evidence to show the involvement of the applicant. He was part of criminal conspiracy. He was the head of Thakurdwar Branch, Mumbai. The applicant and Boriwala N. Kanaiayalal, the then manager of the branch had knowingly accepted false balance sheet submitted by the borrower without certificate of Chartered Account and cash credit limit of Rs.45 Crores was sanctioned without complying the conditions. The amount was disbursed without transferring assets and liabilities of the firm. The borrower

was allowed to create FD as additional collateral security from the cash credit limit. The procedure with regards to safeguards were violated. The directors of borrower company opened current account with non lender bank. He also opened current account with the lender bank. Search was conducted at the house of the complainant on 10th June, 2021 at the residential premises of the applicant by following legal procedure. Incriminating documents were seized. The documents related to 14 bank account and FD. Locker key was seized. Gold/diamond ornaments were found in the locker. The applicant had violated role of disbursing the cash credit limit of Rs.45 Crores. Investigation is in progress. Hence, application be rejected.

7. In view of the contents of affidavit-in-reply the applicant has submitted additional affidavit/rejoinder dated 25th September, 2021 primary explanation the conditions of paragraph 10 of the affidavit in reply filed by the respondents. The said affidavit provides explanation towards the documents and other articles seized during the search by the respondents.

8. On perusal of the documents it is apparent that the applicant has joined Bank of Baroda Branch as Branch Manager on 13th June, 2011. The contention of the applicant is that cash credit

facility was granted to the borrower prior to that. In the FIR it has been stated that bank had initiated action against public servant including departmental proceedings. Column No.13 of the FIR indicate that as regards the case against the applicant and another person the matter was placed before the Executive Director, who has advised closer of the matter against the applicant and another person on 5th June, 2017. Internal investigation was carried out by the bank and report dated 29th September, 2016 was submitted and in respect to the action taken on the said report is mentioned in the column 13. The FIR also mentioned that all the original documents available with the Bank of Baroda, Asset Recovery Management Branch.

9. The principal accused had borrowed the loan and got sanctioned the credit facility. It appears that so far none of the accused has been arrested. The applicant has retired from the bank. The transactions are of 2013. The applicant was exonerated from departmental inquiry in 2017 and the present FIR was registered in 2019. The affidavit-in-reply filed by the respondents primarily refers to various documents seized during investigation properties of applicant and the ornaments found in the bank locker. It is pertinent to note that the case does not relate to disproportionate

assets and the allegations are that the accused had in connivance with each other sanctioned facilities to borrower in causing loss to bank.

10. The applicant has filed detailed affidavit and placed on record explanation relating to the documents in respect to the properties seized by the respondents during search. Pursuant to interim protection granted by this Court, the applicant was never called for interrogation by the respondents. Considering these circumstances, the applicant can be directed to appear before Investigating Officer and cooperate with investigation. Hence, custodial interrogation of the applicant is not necessary, case for grant of anticipatory bail is made out.

11. Hence, I pass the following order :-

ORDER

(i) Anticipatory Bail Application No. 1723 of 2021 is allowed;

(ii) In the event of arrest of the applicant in connection with in RC. 0682019E007 investigated by CBI/EOB Mumbai, the applicant be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall attend the investigating officer on 11th, 12th & 13th October, 2021 between 11.00 a.m. to 1.00 noon and thereafter as and when called for till further order.

(iv) The applicant shall not tamper with the evidence.

(v) Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)