IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2411 OF 2019

Mrudul Ashok Joshi ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Taraq Sayed with Mr. Abhishek Yende and Mr. Brajendra Choudhary i/b Mr. Kamran Sheikh for the Applicant

Mr. A. R. Patil, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 26th FEBRUARY 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 125 of 2018 registered with the V. P. Marg Police Station, for the alleged offences punishable under Sections 406, 420, 467, 468, 471, 427 r/w 34 of the Indian Penal Code.

3 Learned counsel for the applicant submits that there is no material to connect the applicant with the alleged offence. He submits that

mere presence of the applicant at the time of the meeting, by itself, is not sufficient to show the complicity of the applicant in the alleged crime. He submits that the applicant has not signed a single document granting 12 home loans and 43 vehicle loans. Learned counsel for the applicant submits that the signature appearing on the minutes of the meeting is not of the applicant and the same is borne out by the handwriting expert's report.

4 Learned A.P.P opposes the bail application. Learned A.P.P has filed an affidavit of Sopan Haribhau Kakad, Police Inspector attached to V. P. Road Police Station, Mumbai, which is at page 528 of the application. He submits that during the pendency of this application, the police have arrested Vishwas Mhambrey, the Chairman of the Committee. He submits that although the applicant has not signed any loan document *per se*, the applicant is the proposer to several resolutions (12 resolutions), authorizing a clerk of the bank to execute mortgage documents and all legal documents. He submits that the applicant’s entire family is involved in the said case and that the applicant’s parents are absconding since 2018. He submits that the statements of witnesses will show that the applicant’s brother-Abhishek Joshi had disclosed to the witness-Shivaji Kole that he had taken full responsibility of the return of the loan and that he had made a remark to that effect and had also signed on the said document. He further

submits that there is another case registered as against the applicant with the Alvar Police Station, Rajasthan in February 2017 for the alleged offences punishable under Sections 420, 409, 467, 468, 471, 120B of the Indian Penal Code. He further submits that if the applicant is enlarged on bail, the possibility of the applicant tampering with the evidence as well as absconding, cannot be ruled out.

5 Perused the papers. It appears that on the direction of the District Deputy Registrar, Department of Cooperation under the Maharashtra Cooperative Societies Act, Manoj Suryakant Lakhe, Special Government Auditor, Class-II Cooperative Societies (Home-4), Mumbai, conducted a government audit of `Sanmitra Sahakari Bank Ltd.', Girgaon, Mumbai, for the period 2014-2015 and 2015-2016. After conducting the audit, the Special Auditor, Shri Lakhe submitted his audit report to the District Deputy Registrar on 11th September 2017. The Auditor's report revealed a number of illegalities committed by the earlier as well as the existing Board of Directors of the said Bank. Based on the said audit report dated 11th September 2017, Shri Lakhe filed a complaint with the V.P. Road Police Station as against the Directors of the bank. The said complaint/FIR was registered vide C.R. No. 125/2018, alleging the aforesaid offences. Investigation revealed that the present applicant was one of the Directors of

the said Bank, at the relevant time i.e. from 25th March 2015 onwards. Although learned counsel for the applicant submits that the applicant resigned from the Board of Directors on 20th May 2016, the said statement is seriously disputed by the learned A.P.P. It is the prosecution case, that several illegalities were committed by the Directors of the said Bank and that proper procedure was not followed and required documentation was not done. It was also revealed that the Directors of the Bank (including the applicant) along with the Chairman of the Bank had illegally sanctioned loan amounts to the tune of Rs. 1.80 crores. Infact, when the illegalities came to light on the complaint of one of the directors i.e. Shashikant Dalvi to the District Deputy Registrar, an amount of Rs. 1.80 crores was redeposited in the loan accounts of the bank and the said accounts were closed. According to the prosecution, bogus loans were granted by the Board of Directors i.e. 12 home loans and 43 vehicle loans. Investigation revealed that the Rent Agreements were bogus and that no such persons existed. The statement of one of the witness i.e. Viraj Hanchate reveals that he had not taken the premises on rent. Learned A.P.P has annexed the alleged bogus rent agreement which is at page 556 as well as the statement of Viraj Hanchate at page 559 to the affidavit in reply dated 6th October 2020. Investigation also reveals that the applicant as the Director of the Bank, had attended the Board meetings of the Board of Directors on 25th

March 2015 and 28th March 2015. As per the audit report as well as the complaint lodged by Shri Lakhe between the said period i.e. 25th March 2015 and 21st July 2015, an amount of Rs. 3,71,37,349/- was disbursed to 43 persons by way of vehicle loans. The audit report as well as investigation reveals that those 43 members to whom vehicle loans were given, were not in existence and that the said persons were bogus persons. Investigation also revealed that the documentation which was created was fabricated i.e. proof of income, proof of residence and PAN card, all were found to be bogus and fabricated. It is the prosecution case that all the aforesaid acts were done at the instance of the Directors including the applicant. The attendance sheet reflects the names and signatures of the Board of Directors present in the meeting. The minutes of the meetings held on 29th May 2015, 26th June 2015, 30th July 2015, 28th August 2015, 30th September 2015, 30th October 2015, 27th November 2015, 30th December 2015, 29th January 2016, 30th January 2016, 21st February 2016 and 29th March 2016 reveal that the applicant along with other co-accused had attended the said meetings. The minutes of all the meetings of the aforesaid dates are part of the supplementary charge-sheet. It also appears that in the meeting dated 30th April 2016, the applicant and other Directors made 12 bogus persons members and disbursed home loans to the tune of Rs. 2.16 crores i.e. Rs. 18 lakhs to each member. Investigation reveals that the said persons were bogus persons and the documentation in support of the said loans were also bogus and fabricated. Investigation reveals that all the 12 persons to whom loans were given were not in existence and the documents furnished in support of the said loans were not genuine. It appears that the applicant was present in the said meeting dated 30th April 2016 i.e. when the loans were sanctioned and disbursement of loans were done and was part of the decision-making process. Although, learned counsel for the applicant submits that the handwriting expert’s report does not support the prosecution case i.e. the signatures appearing on the minutes of the meeting is not of the applicant, a perusal of the handwriting expert's opinion dated 2nd December 2020 shows that in the absence of sufficient identifying characteristics/data for comparison, it is not possible for the handwriting expert to express definite opinion regarding authorship of the encircled writings i.e. signatures of the applicant.

6 Apart from the aforesaid, it also appears that employees were appointed illegally without obtaining sanction from the Cooperative Department, thereby causing loss of Rs. 17,64,874/-; that illegal ATM machines were purchased without sanction from the department of cooperation as well as from RBI, causing loss of Rs. 4,35,100/- etc. According to the prosecution, due to the illegalities caused by the Board of

Directors, there was a loss of Rs. 6,50,98,421/- to the bank as well as to its members, customers and investors.

7 Learned A.P.P has today pointed out one of the resolutions amongst various resolutions passed by Sanmitra Sahakari Bank, Maryadit. A perusal of the resolution shows the applicant as a proposer, one Varun Anand as a seconder and applicant's brother-Abhishek Joshi as the Chairman. All have signed the said Resolution. The said resolution shows that it was resolved that `Mr. Samir Machh, Clerk of the bank is authorized to sign, execute, all the relevant documents necessary to register mortgage and any other legal documents to be signed or executed on behalf of the bank'.

8 During the pendency of this application, co-accused Mhambrey was arrested and presently investigation is in progress. Action is also now taken under Sections 82 and 83 of the Criminal Procedure Code as against absconding accused i.e. applicant's parents and other co-accused i.e. Directors of the Bank. The applicant's parents are absconding after their anticipatory bail applications were rejected in 2018, till date.

9 *Prima facie*, there is material to show the complicity of the

applicant. Even otherwise, investigation is still in progress, inasmuch as, the Chairman of the Bank – Mhambrey was arrested only recently, during the pendency of this application i.e. on 4th February 2021.

10 Considering the aforesaid material, this is not a fit case to enlarge the applicant on bail, at this stage. Accordingly, the application is rejected.

11 However, the applicant is at liberty to apply afresh, after supplementary charge-sheet is filed as against the co-accused-Mhambrey, before the trial Court. If an application is filed before the trial Court, the learned Judge shall decide the same on its own merits, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.