IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3021 OF 2021

DEEPAK YASHWANT PATIL)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Niteen Pradhan a/w. Smt.Shubhada Khot, Advocate for the Applicant.
Smt.P.P.Shinde, APP for the Respondent – State.
Mr.H.S.Venegaonkar a/w. Mr.Tejas Dhotre, Advocate for the Intervenor.
Mr.Rajesh Malegave, Assistant Police Inspector, Chaturshrungi Police Station, present in the Court.

CORAM : V. G. BISHT, J.

RESERVED ON : 22nd DECEMBER 2021
PRONOUNCED ON : 23rd DECEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 438 of the Code of Criminal Procedure

apprehending arrest in Crime No.474 of 2021 registered with Police Station Chaturshringi, Pune, for offences punishable under Section 420, 465, 467, 471 read with 34 o4f the Indian Penal Code (IPC).

2 The prosecution case in nutshell is as under :

Informant claims to be in the business of construction in the name and style Amarnath Builders and Developers. There are other five partners. Similarly, in Pratham Yash Associates, informant, Balbhim Dashrath More and Jeevraj Himmatlal Vyas are partners. Somewhere in the month of March 2018 one Pravin Kirdat and and is friend Patole, who are brokers, approached the informant. They informed that at Balewadi Survey No.42/10 is available for joint venture and accordingly they showed the plot. At that time the construction work was done up to plinth level. There was also a board of Rajashri Shahu Maharaj Co-operative Bank, Dhanawadi Branch, reflecting that there was a loan of Rs.5 crores. Auction under Section 101 had already been initiated and the said property belonged to

Siddhant Infrastructure Pvt. Ltd. After site visit, said Pravin Kirdat and Patole arranged a meeting with Deepak Patil (applicant) of Siddhant Infrastructure Pvt. Ltd. and made an inquiry with respect to the bank loan on the said property. The applicant allegedly informed that after the execution of joint venture from the amount received, Rs.2.5 crores would be paid to the bank and the bank would give appropriate no objection. He also told that in the Siddhant Height Scheme the applicant would give them 12 flats for sale.

3 According to prosecution, after showing papers of the said property, business terms and conditions were reduced into writing as given in the First Information Report (FIR). On 21st March 2018 a Memorandum of Understanding came to be executed between Siddhanth Infrastructure Pvt. Ltd. and Amarnath Builders and Developers on terms and conditions as stated hereinabove. Thereafter, public notice was issued in newspaper about the said project. However, various persons including the purchasers of flats in Siddhant Heights, original

land owners and others raised objection. They alleged cheating at the instance of applicant. After few days, in April 2018, applicant came to be arrested by Chatushrungi Police Station.

4 It is further case of prosecution that thereafter Sachin Chavan and Kiran Rathod who were partners in Siddhanth Infrastructure Pvt. Ltd., and in order to save the property called a special meeting and passed a resolution to make the informant and Balbhim Dashrath More as Directors. At that time, applicant was also a Director in the said company.

5 Later on, the informant also came to know from the Sale Deed in respect of Survey No.42/10 executed in the year 2013 between the original owner Shivaji Balwadkar and others that he was given Rs.2.88 crores and constructed area of 10,000 sq.feet. They further realized that the Commencement Certificate and Sanctioned Plan by Pune Municipal Corporation were fabricated and that the first Commencement Certificate was received from Pune Municipal Corporation in February 2016.

Even the loan amount of Rs.5 crores was not repaid by the applicant. The said amount of Rs.5 crores was utilized and transferred by the applicant to the account of his relatives. Realizing the illegalities both the above said Directors by passing a resolution removed the applicant from the Directorship. Even the bank was so informed and the abovesaid Directors showed their willingness to clear the loan amount with a view to stop the auction proceedings. Later on, after taking no objection from the said bank, they approached the Pune Municipal Corporation with revised development plan.

6 The prosecution then alleges that in the month of February 2020, applicant came out of jail. In the month of August 2020 an application was made to the office of Talathi, Balewadi, to remove the name of the applicant from 7/12 extract of Survey No.42/10. The application was processed and Mutation Entry No.9266 was noted on the 7/12 extract. However, on 18th January 2021, the informant realized that the applicant had obtained a loan of Rs.9 crores from Raje Shivaji

Gramin Bigarsheti Co-operative Path Sanstha, Kanhur Pathar, District Ahmednagar, by mortgaging the company's property at Balewadi. It was further revealed from the Mortgage Deed that the applicant, who had earlier under Registered Deed sold 30 flats, the same flats were mortgaged to Raje Shivaji Gramin Bigarsheti Sahakari Path Sanstha, Kanhur Pathar, District Ahmednagar. Thus, the said mortgage was done by the applicant in connivance by said bank officials. It was further found that out of Rs.9 crores loan taken, Rs.3.25 crores were transferred to Rajashri Shahu Bank and Rs.88 lacs were kept by the applicant. Accordingly, a loss of Rs.4.13 crores was caused to the Company. Hence, the FIR came to be filed.

7 Mr.Niteen Pradhan, learned counsel for the applicant, at the very outset, submits that a civil transaction is being given a criminal flavour where it does not exist. According to the learned counsel, as on 24th July 2018, the applicant was sole Director of Siddhant Infrastructure Pvt. Ltd. and taking undue advantage of the fact that the applicant was behind bars, the

informant and others by acting illegally and without following the procedure as established under the Companies Act, 2013, got himself and others inducted as Directors of the said Company and thereafter passed a resolution removing the applicant as the Director of the said company. The applicant, therefore, approached the Registrar of Companies on 4th June 2020 with a complaint praying for action against the informant and others. Even after being released from jail, he made a complaint to Chatushrungi Police Station on 25th June 2020 wherein his statement was recorded. However, so far no action is taken by the concerned police station.

8 According to the learned counsel, the applicant has even preferred RTS Appeal against the Mutation Entry dated 15th July 2021 which has been stayed vide order dated 22nd July 2021 by the concerned authority. Necessary complaints with the Registrar of Companies, National Company Law Tribunal, Police authorities are also filed against the informant and others and as a counterblast to the said complaints, the present FIR has been

filed to pressurize and harass the applicant with a view to grab the property belonging to the applicant.

9 The learned counsel lastly submits that the alleged offence is based on documentary evidence. The applicant is ready to render co-operation and abide by whatever conditions this Court may impose on him. There is no other male member to look after his family members. Thus, for all these reasons, the protection needs to be granted in favour of the applicant, urged learned counsel.

10 Smt.P.P.Shinde, learned APP, on the other hand, opposed the submissions by contending that despite removal of the applicant from the Directorship, he mortgaged the land in question and took Rs.9 crores by suppressing the material facts. Even earlier construction on the property in question was done by obtaining forged Commencement Certificates. Having regard to the nature of offence, the applicant does not deserve to be given the benefit of pre-arrest bail.

11 Mr.H.S.Venegaonkar, learned counsel for the intervenor, has submitted written notes of arguments. Perused. Besides, according to the learned counsel, there are antecedents in as much as two forged Commencement Certificates were used in order to carry out the illegal construction activities. Even after releasing from jail, he suppressed material facts from the concerned bank and took Rs.9 crore loan. All these material facts certainly disentitle the applicant from claiming any protection at the hands of this Court. The application, therefore, needs to be rejected, argued learned counsel.

12 After going through the FIR, written notes of arguments submitted by the learned counsel for the intervenor and as also taking into consideration his submissions advanced before me, what emerges from the record is that after the informant and others entered into a Memorandum of Understanding with the applicant on terms and conditions as stated in the FIR, certain amounts were given to the applicant

and Shivaji Balwadkar i.e. the owner of the property in question. It seems that, thereafter, a public notice was published calling objections in respect of the proposed project and it is then some purchasers raised objections and even filed a complaint against the applicant pursuant to which in the month of April 2018, the applicant was arrested by Chatushrungi Police Station. Before that, it may be noted that before entering into Memorandum of Understanding, the informant was aware of the loan of Rs.5 crores taken by the applicant from Rajashri Shahu Maharaj Co-operative Bank, Dhanawadi Branch.

13 It is only after arrest of the applicant, it revealed to the informant that even while sanctioning the said loan of Rs.5 crores, the bank had also not followed the legal procedure and inspite of no Commencement Certificate issued for the housing project and non-issuance of non-agricultural order, the loan was sanctioned. Realizing all these illegalities, the informant and other Directors decided to remove the applicant from the post of Director and accordingly, they passed a resolution on 24th July

2017. Thus, the applicant was removed from the post of Director of the Company.

14 It further appears that in the month of February 2020, the applicant came out of jail and then he initiated proceedings. First of all, he made complaint to the Registrar of Companies vide complaint dated 4th June 2020 and requested to take necessary steps as he was removed without following the provisions of the Companies Act. It is further seen that he also made a complaint dated 25th June 2020 to Senior Police Inspector, Chatushrungi Police Station in respect of forged documents prepared by informant and other partners. It seems that, however, no action till date is taken by the concerned police station despite reminder dated 22nd January 2020 .

15 Meanwhile, it also came to the knowledge of informant on reading the Mutation Entry No.9377 in respect of the property in question that the applicant had again obtained loan of Rs.9 crores from Raje Shivaji Gramin Bigarsheti Co-

operative Path Sanstha, Kanhur Pathar, District Ahmednagar, by mortgaging the Companies property. Necessary steps were taken and complaint was made to the Talathi and the concerned Talathi on his part said that it was his mistake and he would stop the Mutation Entry and for the said purpose required an application. It then appears that the application, at the instance of informant, was processed and Mutation Entry No.9266 was noted on the 7/12 extract. However, I may note here that a RTS Appeal against the Mutation Entry No.9266 was preferred on 15th July 2021 by the applicant before the Sub-Divisional Officer, Taluka Haveli, and the said authority was pleased to stay the said Mutation Entry till 13th September 2021 which is apparent from Exh.N. However, it is not clear what happened thereafter. According to the informant, it was also seen from the Mortgage Deed on the basis of which fresh loan of Rs.9 crore was taken by the applicant, that the applicant had earlier under Registered Deed sold 30 flats and the same were mortgaged to Raje Shivaji Gramin Bigarsheti Co-operative Path Sanstha, Kanhur Pathar, District Ahmednagar. Similarly, in the said Mortgage Deed, Siddhanth Infrastructure Pvt. Ltd. was shown as co-borrower and Ex-Director applicant had signed as the Director. Even there was no objection given by Rajashri Shahu Maharaj Co-operative Bank, Dhanawadi Branch. However, it was realized that the said mortgage was done by the applicant in connivance with Rajashri Shahu Maharaj Co-operative Bank, Dhanawadi Branch and Raje Shivaji Gramin Bigarsheti Co-operative Path Sanstha.

16 I have also gone through the various documents filed on record by the learned counsel for the intervenor. As far as the FIR in which the applicant was arrested is concerned, that is over, in the sense that, applicant was arrested and was enlarged on bail.

17 Now the only incident which happened thereafter is that the applicant allegedly represented him to Rajashri Shahu Maharaj Co-operative Bank, Dhanawadi Branch and Raje Shivaji Gramin Bigarsheti Co-operative Path Sanstha, Kanhur Pathar, District Ahmednagar, as Director of the Sidhhanth Infrastructure

Pvt. Ltd., whereas, infact, he was not the Director, in as much as, he was removed from the Directorship by the informant and other partners and thus by misrepresentation, he obtained Rs.9 crore loan. Similarly, 30 flats were mortgaged which he had already sold and thereby in collusion with officials of Rajashri Shahu Maharaj Co-operative Bank, Dhanawadi Branch, had secured Rs.9 crores loan.

18 I am in agreement with submission of learned counsel for the applicant that the complaint in respect of the applicant's illegal removal from the Directorship of the Company has already been made to the Registrar of Companies and not even that, it is pending with the National Company Law Tribunal also and if the decision of the National Company Law Tribunal goes in favour of the applicant, then it could not be said that he had made a false representation of his being a Director of the Siddhanth Infrastructure Pvt. Ltd. As far as mortgaging of 30 already sold flats is concerned, in my view the aggrieved parties would be those flat owners to whom the applicant had sold the flats.

Similarly, the Mutation Entry No.9266 dated 20th May 2021 has already been stayed.

19 Even assuming for the sake of argument that alleged illegalities are indeed committed by the applicant, then it is quite clear that the alleged illegalities are based on documentary evidence. Moreover, it seem to be a dispute of civil nature.

20 Not to be missed, the alleged offences are triable by Magistrate and are not punishable with death or life imprisonment.

21 Having regard to above, in my considered view, physical custody of the applicant is not necessary. However, stringent conditions can be imposed upon him, by allowing the application.

22 In view of above, I am inclined to allow the application. Hence, I pass the following order :

ORDER

1 The application is allowed.

2 In the event of his arrest in Crime No.474 of 2021 registered with Police Station Chaturshringi, Pune, for the offences punishable under Sections Section 420, 465, 467, 471 read with 34 of the Indian Penal Code (IPC), applicant Deepak Yashwant Patil be released on bail on executing P.R.Bond in sum of Rs.50,000/- and 1 or 2 surety/s in like amount.

3 The applicants shall attend the concerned police station thrice a week on every Monday, Wednesday and Friday, in between 11.00 a.m. to 1.00 p.m., till the filing of charge-sheet.

4 The applicant shall not tamper the prosecution evidence.

5 The application stands disposed off accordingly.

(V. G. BISHT, J.)