IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.117 OF 2021

1. Anil Ragho Sali,
Age 60 years, Occu. Business,

2. Ujawala Anil Sali,
Age 54 years, Occu. Business,

Both R/o. Plot No. RM-30, MIDC,
Ahmednagar, Tq. and Dist. Ahmednagar .. Applicants

Versus

The State of Maharashtra
Through MIDC Police Station Ahmednagar,
Tq. and Dist. Ahmednagar. .. Respondent

Mr. Amol S. Sawant, Advocate for Applicants;
Ms. V. S. Choudhari, A.P.P. for Respondent/State;
Mr. A. P. Bhandari, Advocate for complainant

CORAM : S. G. MEHARE, J.

DATE : 22nd September, 2022

P.C.

1. Heard the learned counsel for the applicants, learned A.P.P. for the respondent/State and Mr. Bhandari, the learned counsel for the complainant.

2. Most of the facts, in this case, are not disputed. The applicants had applied to the Ahmednagar Merchant Co-op. Bank Ltd., Ahmednagar (for short, “complainant bank”), for taking over the loan account of M/s. Ujwal Electrical Stampings Private Limited Company with Small Industries Development Bank of India (for short, “SIDBI”). The first information report reveals that the complainant bank made

the due inquiry, and after due verification, a resolution was passed to sanction the loan of Rs.10,25,00,000/-. The complainant bank transferred Rs.7,00,00,000/- to SIDBI in two parts, i.e. Rs.4,50,00,000/- and Rs.2,50,00,000/-. However, the SIDBI, instead of clearing the loan account which was taken over by the complainant bank, adjusted the loan transferred by it to the other loan accounts of the applicants. The complainant bank was unaware of the said adjustment. However, the SIDBI issued a public auction notice for the same property against which the complainant bank had sanctioned the loan. Thereafter, various actions were put into motion. Firstly, the complainant issued a notice to SIDBI through Advocate on 12.01.2018, wherein it has been contended that it was obligatory on the part of the SIDBI to execute a re-conveyance deed in favour of the borrower in respect of the properties against which the loan was sanctioned. Instead of repeated follow-up from the bank, under one or another pretext, the SIDBI has protracted and prolonged the same. It has also been contended that the SIDBI, in collusion with the Directors of the borrower, did not credit the transferred amount in the loan accounts of the said borrower. The property, which the borrower mortgaged for the security of said loans, was not redeemed or re-conveyed by the officers of the bank. SIDBI also replied to the said notice alleging that before taking over the loan account, the complainant bank did not intimate it nor communicate with the bank. It has also been specifically contended in the reply notice that there were Joint Lender’s meetings twice. The representatives from the complainant bank attended the meeting. However, in both meetings, the complainant representatives failed to mention not to transfer the loan amount against M/s. Ujwal Electrical Stampings Private Limited Company. The proceeding was also opened before the NCLT. A recovery proceeding has also been filed against the applicant by the complainant bank.

3. The learned counsel for the applicants has vehemently argued that from these material documents, nowhere it appears that the applicants intended to cheat the complainant bank since inception. On the contrary, the applicants disclosed everything. By letter dated 24.07.2016, applicant No.1 requested the SIDBI to adjust the amount against the entire dues of M/s. Ujwal Electrical Stampings Private Limited Company, and then adjust the remaining amount against outstanding dues as of the date of his other loan accounts. However, SIDBI, instead of clearing the account that the complainant bank took over, has adjusted the amount to other loan accounts of the applicants. All bank accounts of the applicants have been seized, and all their units have been sealed. Therefore, though the applicants have *bona fides* to repay the loan, they can not repay as all their income sources have been closed. Apart from that, applicant No.1 has sustained a great setback due to Covid-19. The learned Sessions Court had imposed a condition while granting interim protection to deposit Rs.1,00,00,000/-. However, the applicants could not deposit it due to

Covid-19. Thereafter, the learned Additional Sessions Judge, Ahmednagar, rejected the anticipatory bail application of the applicants by the order dated 18.01.2021 in Cri.M. A. No.1382 of 2020. Even in their worst condition, the applicants have deposited Rs.75,00,000/- with the complainant bank to show their *bona fides*. The applicants have been made scapegoats in the fight between two bulls. No purpose would be served by sending the applicants behind bars.

4. The learned A.P.P. has strongly opposed the application and would contend that the ill-intention of the applicants can be gathered from the letter dated 24.07.2016 requesting the SIDBI to adjust his bank accounts. The applicants have collusion with the officers of the SIDBI. Therefore, the other loan accounts have been cleared instead of clearing a loan account against which the loan was sanctioned. Such conduct of the applicants is sufficient to believe that they had the intention to cheat the complainant bank. She referred to the forensic audit report and pointed out that the applicants did not provide any details like financial statements, details of various transactions, bank statements, ledger confirmations of various parties, etc. Such non-cooperation restricted the scope to verify the transaction in detail. The SIDBI had taken symbolic possession of the mortgaged premises. The Auditor could not visit the said property. However, he learnt that the said premises had been shut down for the last three years, and the SIDBI has taken the said premises in its

custody. The prosecution has ample material against the applicants to believe that they have systematically cheated the complainant bank. Huge public money has been involved. Therefore, the custodial interrogation of the applicants is essential.

5. Mr. Bhandari, the learned counsel for the complainant bank, has vehemently argued that the applicants failed to comply with the terms of the loan. The applicants never pursued to get the property released and mortgage to the complainant bank. On the contrary, they have intelligently got their other loan accounts cleared from the money from the loan sanctioned by the complainant bank. The applicants have never shown any *bona fides*. At least, they should have shown some *bona fides*. Hence, it clears their intention to cheat the complainant bank.

6. Mr. Amol Sawant, the learned counsel for the applicants, replied that the terms of the agreement were clear. If the complainant bank had a grievance that the loan amount is not sanctioned for the purpose for which it was sanctioned, as per the agreement dated 18.07.2016 under clause (18), the complainant bank had reserved its rights not to grant a rebate and call back the amount. He has also argued that recovery proceedings have already been initiated against the applicants by both banks.

7. The facts discussed above reveal that the complainant bank has no case that at the time of applying for the loan, applicants have not specifically mentioned which account they wanted to take over and

clear the loan raised from SIDBI. The intention to raise the loan from the complainant bank was also made clear that the rate of interest of SIDBI was higher than the rate of interest charged by the complainant bank. The agreement in detail was written. However, the complainant has no document showing that at the time of transferring the loan amount to SIDBI, a covering letter was issued mentioning the amount was transferred to clear a particular loan account of the applicants/borrower. SIDBI has also cleared in its reply notice that in the Joint Lender's meet, the representative of the complainant bank never disclosed that such a loan had been sanctioned on the same property, and the bank took it over. SIDBI had a stand that before taking over the loan account, the communications as per the R.B.I. directions were not made to the transferee bank.

8. As far as the request of applicant No.1 to SIDBI to adjust the amount sent by the complainant is concerned, his request was to clear the entire loan of M/s. Ujwal Electrical Stampings Private Limited Company, for which he had raised the loan from the complainant bank and thereafter clear the other loan accounts if any balance remains. It appears that there was a communication gap between the two banks. The unanswered question is how SIDBI has transferred the money transferred by the complainant bank to the other loan accounts instead of the loan account, which the complainant bank took over. The entire units of the applicants have been sealed and taken over by SIDBI. The applicants' source of income has been

completely closed down. The recovery proceedings have been initiated against the applicants by both banks.

9. The Criminal Court can not insist the accused for showing bona fide in depositing the loan amount. Hence, the request of the learned counsel for the complainant to direct the applicant to deposit some amount and show bona fide cannot be considered. After going through the entire papers and incidents that happened, there appear no elements of cheating the complainant bank since its inception. The entire documents were lying with both the banks, and the proceedings for recovery have been initiated, which must be based upon the documents. The complainant bank has no explanation for the delay in lodging the report. Therefore, the Court is of the view that though the huge amount allegedly has been involved in this case, the custodial interrogation of the applicants would serve no purpose.

10. For the foregoing reasons, the application deserves to be allowed. Hence, the following order:-

i) The application is allowed.

ii) In the event of arrest, applicant Nos. (1) Anil Ragho Sali and (2) Ujawala Anil Sali, be released on bail, on furnishing PB and SB of Rs.2,00,000/- each, with one solvent surety of like amount, in C.R. No.0965 of 2020, registered with MIDC Police Station, Ahmednagar, Tq. and Dist. Ahmednagar, for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code.

(S. G. MEHARE, J.)

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