IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.256 OF 2022

Vilas Lalu Kute
...APPLICANT

VERSUS

The State of Maharashtra
...RESPONDENT

...
Mr.A.T. Kanawade Advocate for Applicant.
Mrs.Vaishali Patil-Jadhav, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 31st MARCH 2022

DATE OF PRONOUNCING ORDER : 5th MAY 2022

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.571 of 2021 registered with Sangamner City Police Station, District-Ahmednagar, for the offence punishable under Sections 406, 420, 465, 468, 471, 472, 199, 200, 193 of the Indian Penal Code.

2. Heard learned Advocate Mr. A.T. Kanawade for the applicant and learned APP Mrs. Vaishali Patil-Jadhav for the respondent – State.

3. It has been submitted that on the face of the First Information Report (for short "FIR") it can be seen that there is no *prima facie* case against the applicant and none of the ingredients of the offence under which the FIR has been registered, would be attracted. There is no direct evidence to show that the applicant had any knowledge about the alleged forgery. The applicant had taken loan from the bank of the informant i.e Corporation Bank, so also his family members had also sought loan. They had submitted necessary documents at the time of sanction of loan. Apart from his wife, his father, mother and brother have also sought loan. In fact due to these bank transactions the employees in Sangamner Branch of Corporation Bank were got acquainted with him and used to help each other in needful times. It is then stated that in the month of May 2012, accused No.2 Rupesh Dharwad told the applicant that his parents and sister were in need of money and therefore, he want to transfer money to their accounts by using bank account of the applicant. The applicant had no reason to doubt about Rupesh Dharwad's intention, therefore the applicant gave

bearer cheques, 2-3 in numbers, to Rupesh Dharwad. Applicant says that he has no knowledge as to what has been done with those bearer cheques. The applicant was also having saving bank account in Corporation Bank, at Sangamner Branch. He had not tried to get his passbook updated by getting it printed. It was the mistake on the part of the applicant but it cannot amount to a fraud in any way. Further, the bank authority / auditor / inspection committee could have revealed these irregularities of the bank officers and customers cannot be held responsible for the same. There is absolutely no misappropriation committed by the preset applicant. He is educated up-to 5th standard only and even has no knowledge about English language. The applicant is ready and willing to co-operate with the investigation and would also give his specimen handwriting and natural handwriting as and when directed. However, custodial interrogation of the applicant is not necessary.

4. As the hearing took place, alternatively the applicant has expressed that he would deposit the alleged misappropriated amount in the Court to show his *bona fides*. In the FIR it is stated that the Bank has been cheated by the present applicant to the tune of Rs.56,00,000/- (Rupees Fifty Six Lakh). However,

as per the different loan accounts, of which list is given on 29th March 2022, that amount comes to Rs.1,09,78,755/- (Rupees One Crore Nine Lakh Seventy Eight Thousand Seven Hundred Fifty Five). Therefore, valuation certificate issued by the Sub Registrar, Sangamner on 21st December 2021 in respect of the agricultural land of the applicant has been produced, which states that the value of his land is Rs.1,24,35,300/- and applicant submitted that by selling the said land he can deposit the amount. It was also then submitted that co-accused Nitin Kumar has been granted anticipatory bail by learned Additional Sessions Judge, Sangamner on 27th November 2021 and therefore, on the ground of parity also application deserves to be allowed.

5. Learned APP raised strong objection for allowing the applicant to deposit the amount. A list has been given by the learned APP and submitted that the applicant has not only cheated the Bank but he has also cheated his own relatives, may be near relative or distantly related to him, and that amount comes to Rs.70,11,713/-. The statements of these witnesses would show that on one or the other pretext the applicant has taken either their signatures or thumb marks on the documents

and raised loan. They have not received a single farthing from the Bank nor they themselves had gone to the Bank to complete the transaction of loan. Entire amount has been utilized by the applicant. Under such circumstance, when there is forgery of the documents, in a way that either the applicant has got those documents forged with the help of his relatives or he himself had, by cheating them, prepared false documents, it will have to be investigated and in view of the statements recorded up till now, it appears that the applicant had prepared false documents. Learned APP further submitted that now the Bank has come with the case that in 15 loan transactions the applicant accused has not followed any of the rules and definitely it is in conspiration with the Bank employees. In the sanctioned loan files there is no signature or stamp of the passing officer, especially on the cheque by which the amount was disbursed to the borrower. Further, it appears from the evidence that has been collected up till now that by applying such method, amounts were withdrawn from the loan account. In some cases only a portion of that amount has been given to the relatives and rest of the amount has been utilized by the applicant and the employees who had conspired with the applicant. Therefore, thorough investigation is necessary, for which the custodial interrogation is required.

6. The FIR has been lodged on 21^{st} October 2021 by one Samadhan Sitaram Pawar, who was branch manager of the Union Bank of India, Sangamner Branch, however the occurrence of the offence is stated to be between 1^{st} November 2011 to 31^{st} December 2013. Definitely there appears to be an inordinate delay. Now, the said delay will have to be explained by the prosecution. One of the explanation could be that erstwhile Corporation Bank had a branch at Sangamner and the said Bank was amalgamated in the Union Bank of India on 4^{th} March 2020 as per Gazette of Finance Department of the Central Government. Therefore, naturally after the amalgamation only the employees of the Union Bank of India, which had taken over the Corporation Bank, would have noticed any misappropriation. But then the branch managers of erstwhile Corporation Bank, how they could not have noticed such fraud, is a question and that will have to be answered by the prosecution at the time of trial. However, this fact cannot give advantage to the applicant because those loans have not yet been mitigated. It appears that some preliminary inquiry was made by the Union Bank. One Nitin Kumar was the branch manager and one Rupesh Dharwad was single window operator with the erstwhile Corporation Bank.

It is then stated that because of the present applicant many loans were sanctioned. However, in order to get those loans sanctioned, forged and fabricated documents have been produced. Statements of those persons in whose name loan has been taken, have been recorded and almost all of them have stated that they had approached the said Bank through the applicant. Some of them have stated that the applicant represented them that if the loan is to be got sanctioned then some amount will have to be paid to the branch manager and some of them though desirous of getting crop loan had not applied, but still the loan of Lakhs of rupees was taken in their name. Some of them *bonafidely* given their 7 X 12 extracts and it is the prosecution story that the same have been misused by the applicant.

7. Now, the applicant himself has given separate list on 29th March 2022 stating that loan of Rs.1,09,78,755/- is outstanding in respect of either him, his wife, father, mother and brother, and therefore, he says that he can pay the said amount by selling his land. It has not been made clear by the applicant, as to whether the said land has been mortgaged with anybody. But then, if we consider the 7 X 12 extract, it is mortgaged with some

Corporation Bank and therefore its sale cannot be allowed. It would be at the wish of the applicant to take certain steps. No judicial order can be passed in respect of the same nor benefit of such deposit can be given to the applicant by way of relief under Section 438 of the Code of Criminal Procedure. The applicant has also produced certain notices given by the Union Bank of India for getting the matter settled in Maha Lok Adalat. The applicant could have remained present there and settled the matters if he had really intention.

8. As per the prosecution story, the amount of misappropriation is likely to rise as those persons are also coming forward who had not taken loan but the loan amount disbursed in their name is stated to have been utilized or withdrawn by the present applicant and co-accused. The role of said co-accused Nitin Kumar appears to be different than the role of the present applicant, because the role of the present applicant can be said to have been started from his village since the talks with those persons in whose name loan is to be obtained and therefore, ground of parity is not available to the applicant. Taking into consideration the magnitude of the offence, the social point involved in the same, and so also since

it is an economic offence, in view of the decision in **Y.S. Jagan Mohan Reddy vs. CBI (2013) 7 SCC 439** and decision in ***P. Chidambaram vs. Directorate of Enforcement, (2019) 9 S.C.C. 24***, the applicant does not deserve any discretionary relief.

9. The Application, therefore, stands rejected.

[SMT. VIBHA KANKANWADI , J.]

asb/APR22