IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.44 OF 2022

NITIN AMBADAS PISE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. R.R. Karpe, Advocate for the applicant

Mr. A.M. Phule, APP for respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 06th APRIL, 2022

ORDER :

1 Present application has been filed under Section 439(2) of the Code of Criminal Procedure, 1973 challenging the bail granted to respondent Nos.2 and 3 by learned Additional Sessions Judge, Sangamner, Dist. Ahmednagar in Criminal Bail Application No.238/2021 on 15.02.2022. The said bail application was under Section 438 of the Code of Criminal Procedure as the present respondent Nos.2 and 3 were apprehending their arrest in connection with Crime No.393/2021 registered with Sangamner City Police Station, Dist. Ahmednagar, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860.

2 The learned Advocate appearing for the applicant-original informant submits that the learned Additional Sessions Judge, Sangamner has not considered the vital points. In fact, the respondent Nos.2 and 3 are the Bank officials, who had induced the applicant to purchase a property. The entire process that was adopted by the respondent Nos.2 and 3 since inception was of deception and fraudulent. The applicant has been cheated for Rs.65,00,000/-. Taking into consideration the economic offence the application ought not to have been granted liberally. The illegal act of the respondent Nos.2 and 3 was a continuous cause, though it had started since 2016. The entire process of sanctioning loan to the applicant and non disclosure of specific status of the agricultural land as NA property would indicate the fraudulent intention of the respondent Nos.2 and 3. In fact, the respondent Nos.2 and 3, who are the office bearers of Mahanagar Co-operative Bank Limited, entered into the said *modus operandi* in connection with other people also in Crime No.260/2020 registered with Sarkarwada Police Station and Crime No.437/2019 and 90/2019 registered with Aurangabad Police Station are on the same line. According to the applicant, the informant in Crime No.260/2020 Dr. Swati Tapkire has committed suicide due to such fraud and false representation by the same Bank. Near about 11 First Information Reports have been filed against respondent Nos.2 and 3 and all these facts were not considered by the learned Additional Sessions Judge,

Sangamner. Therefore, the said order deserves to be set aside.

3 It is not even necessary to issue notice to the respondent Nos.2 and 3, taking into consideration the detailed order that has been passed by the learned Additional Sessions Judge, Sangamner and the facts involved.

4 At the outset, from the contents of the First Information Report it is to be noted that there was no compulsion on the part of the applicant-informant to enter into any kind of transaction. The contents of the First Information Report says that an offer was given to him. Now, as regards the offer is concerned, unless it is accepted, it cannot take the shape of a contract. Before acceptance the applicant-informant was at liberty to make any inquiry of whatsoever nature with any authority. If he has not made that basic inquiry and inspite of that if he enters into any contract, then he would be responsible for the same. The contents of the First Information Report would show that the twice the loan was applied by him and it was even sanctioned. But according to the informant, he could not withdraw that amount. Due to certain reasons those were set up by the Bank and this was the third transaction. The learned Additional Sessions Judge, Sangamner has considered the inordinate delay in lodging the report, ingredients of the offence whether attracted on the face of the facts of the case. Accused No.2,

who is now respondent No.3 is the Manager and respondent No.2 is the officer of Mahanagar Co-operative Bank Limited, Mumbai. The disputed property was mortgaged to the Bank by one Shital Industry. However, the loan had become NPA and then the Bank had taken that property in custody under the provisions of Securitization Act. The Bank had then put the property for sale by inviting tenders. According to the informant, informant had taken loan of Rs.12,000/- from the Bank and thereafter Bank had offered to purchase the disputed property. Thereafter, it appears that the Bank sold the said property for Rs.65,00,000/- to the informant. The Bank has also issued the sale certificate on 09.03.2016. The applicant-informant has objection for saying that the Bank had not disclosed him that the land was non agriculture. But it is to be noted that the mortgage deed index to which it was before the learned Additional Sessions Judge had the noting that land was non agriculture. That document itself was then sufficient for the informant to get an indication what is the nature of the land. At the cost of repetition, it can be said that nobody had estopped him from making an inquiry before entering into the sale transaction. Whether the ingredients of offence under Section 420 of the Indian Penal Code are attracted, itself is a question. Under such circumstance, the discretion has been properly used by the learned Additional Sessions Judge, Sangamner while granting bail under Section 438 of the Code of Criminal Procedure to the Bank officials. No reasonable ground has been shown for setting aside the impugned order. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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