IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1091 OF 2022

DNYANDEO @ DNAYNESHWAR ANNASAHEB PAWAR
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicants : Mr. V. B. Jadhav h/f. Mr. A. D. Shinde
APP for Respondent/State: Mr. V. M. Kagne
...
WITH
ANTICIPATORY BAIL APPLICATION NO. 1102 OF 2022

SUSHILATAI VITHALRAO NAVALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicants: Mr. V. D. Sapkal, Senior Advocate i/b. Mr. S. R. Sapkal
APP for Respondent/State: Mr. V. M. Kagne
...
WITH
CRIMINAL APPLICATION NO. 2696 OF 2022
IN ABA/1102/2022

RAMESH RAMLAL MUTHA
VERSUS
SMT. SUSHILATAI VITHALRAO NAVALE AND OTHERS
...
Advocate for Applicant: Mr. Abhaykumar Dilip Ostwal
Advocate for Respondents No.1 to 14: Mr. V. D. Sapkal, Senior Advocate i/b. Mr. S. R. Sapkal
APP for Respondent No.15/State : Mr. V. M. Kagne
...

CORAM : S. G. MEHARE, J.
DATE : 06-09-2022

PER COURT :-

1. Heard Mr. Sapkal, the learned senior counsel for the applicants in ABA No.1102 of 2022, Mr. V. B. Jadhav h/f Mr. A. D. Shinde, learned counsel for the applicant in ABA No.1091 of 2022,

and the learned A.P.P. for the respondent/State with the learned counsel assisting him at length.

2. Applicants Nos. 1 to 12 are the Directors, whereas applicant No. 14 was the Manager of the *Ambika Mahila Nagari Sahkari Patsanstha*, *Shrirampur, Taluka Shrirampur, District Ahmednagar*. The complainant is the borrower. He borrowed the loan of Rs.25 Lakh from Patsanstha. He had pledged the food grains. The pledge agreement was also executed. There were certain terms and conditions about the loan obtained on the pledge. The complainant had executed an authority letter to Patsanstha that if he did not repay the amount within the time agreed, the Patsantha would have the right to sell the goods pledged and deduct the loan amount with interest.

3. The complainant alleged against the applicants that the pledge agreement was for the period till 15.10.2021. However, before the said date, the applicants sold pledged goods on 02.03.2021. Not only this, the applicants had sold the pledged food grain at a low price when the market price of Soyabean was Rs.10,000/- per quintal. He had pledged 3793 bags. Instead of selling all bags, the applicants have auctioned only 2661 bags and misappropriated Rs.65,11,117/-. Nobody knows about 1132 bags which were not auctioned. In short, it has been alleged that the applicants have committed fraud and breached the trust. They

have misappropriated the goods by deliberate auction in breach of the terms of the agreement. The Patsanstha had a remedy under the Maharashtra Co-operative Societies Act to recover the loan. In similarly situated cases of defaulters, the Patsanstha sought the remedy under the Maharashtra Co-operative Societies Act and discriminated against the complainant by auctioning the goods illegally and unauthorizedly. Due to the acts of the applicants, the complainant has suffered a huge loss of more than Rs.1 Crore. Patsantha did not serve the notice upon the complainant before selling the pledged goods in the auction. He did not come across an auction notice published in the newspaper. He even could not reply to the notice sent by the applicants as he was out of town.

4. Mr. Sapkal, the learned senior counsel for the applicants, would submit that though the term of the loan was up to 15.10.2021, it was not binding as it was the maximum limit. The Patsantha had powers to auction the pledged goods before the said date. The complainant was a nominal member of the society; hence, the loan was disbursed to him. He would refer to a report lodged against the complainant by Patsantha, making allegations that he had scratched the number of the bags on the pass and lifted more bags from the warehouse, and thereby he has played a fraud with Patsantha. The police did not take action against him. Therefore, one of the Police Inspectors was suspended. Before the auction, a legal notice was served upon the complainant, but he

fled out of the town as he did not pay the huge amount to the agriculturists. A crime has been registered against the complainant for playing fraud with the various agriculturists, and he is behind the bar. That apart, after the auction notice, three months were available to the complainant to challenge the auction under Section Section 107 of the Maharashtra Cooperative Societies Act. He has referred to clause 16 on page 142 and would argue that Patsanstha has every power to recover the loan before the expiry of the term of the contract. There were awards against the complainant and his family for a huge amount in favour of the applicants. The applicants have acted as per the law. Before the auction, they had verified the rates from the A.P.M.C. and the goods of the applicants were not sold at low prices than the current rate on the said day declared by A.P.M.C. Mostly, the applicants are women; they run Patsanstha to protect the interest of the agriculturists. It was their duty to secure and recover the loan. Since the complainant fled away and played fraud with many other agriculturists and he was not responding the Patsanstha, they have acted according to the law. It was the habit of the complainant to lift more bags than allowed in terms of clause 12 of the Rules of the pledge. That apart, everything was done openly, and all the documents are available if the Investigating Officer requires them. Therefore, the custodial interrogation of the applicants is not essential.

5. Per contra, the learned A.P.P. has vehemently argued that there is apparent misappropriation of the number of bags. The applicants had no power to sell the pledged goods in the auction before the contract expired. The due procedure of law as laid down in the Maharashtra Co-operative Societies Act and Rules has not been followed. The contract was in force till 15.10.2021. Therefore, the applicants had no power to auction the goods before the said date. However, it was deliberately auctioned before the said date. He also referred to Clause 8 of the Rules of Pledge and vehemently argued that the time to repay the loan was for twelve months. The promissory note was also executed wherein it was promised by the complainant that he would pay interest @ 13 % p.a. Having regard to the overt act of the applicants, it *prima facie* proves the intention to cheat. The valuer was also not appointed. The applicants used to discriminate between the borrowers. The complainant was out of town. Hence he could not reply to the notice and raise objections against the auction notice. Due to the overt act of the applicants, the complainant has suffered a huge loss of more than Rs.1 Crore. The act committed by the applicants is nothing but to put the complainant in heavy loss; therefore, the learned Magistrate has correctly passed the order under Section 156(3) of the Code of Criminal Procedure, and the crime has been registered. To know about 1132 bags, the custodial interrogation of the applicants is essential. All the applicants have plotted the

conspiracy. Hence, the applications deserve to be dismissed.

6. In addition to the above arguments, Mr. Ostwal, the learned counsel assisting the learned A.P.P. has argued that the Patsantha had no warehouse licence where the goods were stored. *Prima facie,* the case is made out against the applicants. No gender bias would be done, and the women applicants would not be given a different treatment. The custodial interrogation is essential to find out the truth. Hence, the application may be dismissed.

7. The facts have been discussed in detail in above paras. It is not in dispute that there was an agreement of pledge and its term was up to 15.12.2021. However, clause No. 8 is very clear that the maximum limit for the loan would be for a period of twelve months. That means the period of the agreement is immaterial. The report has been lodged against the complainant that he was playing fraud by scratching the number of bags to be lifted and had lifted around 340 bags unauthorizedly and in breach of the terms of Clause 12 of the pledge Rules. The record also reveals that before the auction, a notice through a lawyer was issued on the address of the complainant. The record further reveals that he had fled from the town as many complaints were lodged against him. Not only this but before the auction of goods pledged by the complainant, a tender notice was also published in the newspaper. The applicants had taken care to confirm the market price of the

goods pledged before the auction from the A.P.M.C., the authorized agency. When the notice was issued to the complainant to get the pledged goods released, it was his duty to respond. Clause 14 of the Pledge Rules is very specific: if on failing to repay the loan in a given time, Patsanstha had the right to sell the pledged goods by public auction and recover the money. Clause 16 of the said Rules empowers Patsanstha to recover the loan, where the loan is used for the purpose for which it was given. However, clause 14 specifically empowers to recover the loan if the borrower fails to repay the loan after demand. The Patsantha had lodged the report long before the report against them, against the complainant for taking away the extra bags by playing fraud. There was a hue and cry in the market that the complainant failed to pay the money to the agriculturists. The Patsanstha has also obtained two awards against him and his family members. All the circumstances were sufficient for the Board of Directors to take a decision that there was the least possibility of repaying the loan; therefore, the Board of Directors has exercised power under clause 14. Though the last date of the contract was 15.12.2021, there were circumstances available before the Directors to assess the intention of the complainant to avoid the repayment of the loan. Hence, it cannot be said that Patsantha acted illegally. The sole purpose of the auction of the pledge goods was to recover the loan and interest. The first information report was registered belatedly. There appears a substance in the arguments of Mr. Sapkal, the learned senior counsel for the applicants, that the report is lodged against the applicants to pressure them. A civil remedy is available to him if the complainant has any grievance. But, instead of a civil remedy, he has obtained an order under Section 156 (3) of the Code of Criminal Procedure on incomplete information. It also appears from the arguments advanced by the learned counsel Mr.Ostwal that the complainant knew everything happening against him, and he has the complete documents he can supply to the Investigating Officer for appropriate investigation. Considering the facts, the Court is of the view that the prosecution has absolutely no case for custodial interrogation. There appears to be no illegality committed by the applicants. They have acted under the powers lying with them under the contract. Therefore, the applications deserve to be allowed. Hence, the following order:-

i) Both applications are allowed.

ii) The interim protection granted to the applicants by order dated 12.08.2022 and 22.08.2022 are confirmed on the same terms and conditions.

iii) Criminal application No. 2696 of 2022 in A.B.A.No.1102 of 2022 is allowed.

(S. G. MEHARE)
JUDGE

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