IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1614 OF 2021

1. Sachin Shankarlal Bhattad
2. Omprakash Dadappa @ Kaka Koyate … Applicants

Versus

The State of Maharashtra … Respondent

…

WITH
CRIMINAL APPLICATION NO.15 OF 2022
IN ABA/1614/2022

Shripad Vinayak Thombare … Applicant

Versus

1. The State of Maharashtra
2. Sachin Shankarlal Bhattad
3. Omprakash Dadappa @ Kaka Koyate … Respondents

…

Mr. R. N. Dhorde, Senior Counsel i/b Mr. V. R. Dhorde, Advocate for applicants in ABA/1614/2021.
Mr. R. S. Deshmukh, Senior Counsel i/b Mr. C. V. Thombre, Advocate for applicant – original complainant in APPLN/15/2022.
Mr. D. R. Kale, Public Prosecutor for the respondents – State in both the cases.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 24.01.2022
Pronounced on : 10.03.2022

ORDER :-

. Criminal Application No.15 of 2022 filed by the original informant/complainant seeking permission to assist learned public prosecutor stands allowed and disposed of.

2. Present application has been filed by the applicants, who have been posed as accused Nos.2 and 3 in Crime No.694 of 2020 registered with Shirdi Police Station, Tq. Rahata, Dist. Ahmednagar for the offences punishable under Sections 420, 406, 467, 468, 471, 472, 120-B of Indian Penal Code.

3. The applicant No.1 is the Chief Officer, whereas applicant No.2 is the Chairman of Samata Nagari Sahakari Patsanstha Ltd., Kopargaon.

4. It has been submitted by learned Senior Counsel Mr. R. N. Dhorde appearing for the applicants that the said offence has been registered against the applicants on the basis of the order passed by the learned Judicial Magistrate First Class, Rahata under Section 156(3) of the Code of Criminal Procedure. The said complaint before the learned Magistrate was filed by one Shripad Vinayak Thombare, who is the applicant in Criminal Application No.15 of 2022 against accused No.1 - Prashant Dakle. The credit society of which applicant No.1 is the Chief Officer and applicant No.2 is Chairman had granted loan on three occasions to Shripad Thombare. Certificate under Section 101 of Maharashtra Cooperative Societies Act also came to be issued against said Shripad Thombare – original complainant on three occasions. The documents in respect of transactions between Shripad Thombre and the credit society

have been produced on record. The 7/12 extract of accused No.1 Prashant Dakle would show that he has land at Rui, Tq. Rahata admeasuring 1 H 17 R + 0.01 barren. It is Gut No.401. Said Prashant Dakle had some transaction with one Kailash Ostwal and Amit Ostwal and there was also transaction between said Ostwal with the credit society. The Ostwal had taken loan of Rs.1,00,00,000/- from the credit society and had mortgaged Gut No.401 by registered deed dated 30.06.2011. Thereafter, a registered release deed came to be executed between Prashant Dakle and Ostwal as well as the credit society in respect of the said land. This shows that Prashant Dakle had offered his land to be mortgaged and loan to be raised against that mortgage from the society. Thereafter, Shripad Thombare, who is Architect and in the construction business, had applied for grant of loan of Rs.1,00,00,000/- on 01.10.2013 to the credit society. There was also document of working capital hypothication loan executed. Again, Prashant Dakle, stood as guarantor for the loan amount demanded by Shripad Thombare. Documents to that effect have also been produced. Accordingly, amount was disbursed. Further, another registered document came to be executed between Shripad Thombare and Prashant Dakle in respect of offering Dakle's property towards mortgage. Further, it appears that Deepali Shripad Thomabre, who is the wife of Shripad Thombare had also then prayed for grant of loan of Rs.1,00,000,00/- and again Prashant Dakle stood as guarantor. Same property was mortgaged. It is to be noted that the value of the property i.e. land owned by Prashant Dakle, was more than 1 crore and, therefore, it has been offered twice. Document Exhibit-A-9 would show that the value of the said land was Rs.3,07,000,00/- on 02.11.2015. When it was found that the loan was outstanding, time and again certificates under Section 101 of Maharashtra Cooperative Societies Act have been issued against Shripad Thombare. It also appears that thereafter again amount of Rs.50,00,000/- was also taken in addition as loan by Shripad Thombare from the credit society.

5. It has been further submitted on behalf of the applicants that now Shripad Thombare had filed the complaint, which came to be registered as FIR after the order under Section 156(3) of the Code of Criminal Procedure has been passed that all those documents have been got executed from him by all the accused persons in conspiracy or with common intention. He has given all the transactions and ultimately, it is stated that he has been defrauded for an amount of Rs.3,65,00,000/-. As regards the transactions or talks between Prashant Dakle and Shripad Thombare; the applicants cannot be said to be in picture. At no point of time, the bank or credit society officials could have asked the borrower

that he should enter into the transaction with particular person. It was with the sweet will of Shripad Thombare that he had entered into the transaction with Prashant Dakle. Each and every document which is required by the bank or financial credit society for grant of loan; they have been got executed from the parties and after considering the value of the land, which was towards secured loan, the society has released the amount. The society had also taken legal recourse against Shripad Thombare. Further, it is to be noted that the complainant/informant is not a layman. He and his wife of are Architect by profession, so also in the business of construction. They have the knowledge as to what documents are required . All the documents including the attachment order of Income Tax Department showing that it was issued on 03.08.2017 and was served on Prashant Dakle would rather show that the said fact was suppressed by the complainant and the guarantor Prashant Dakle from the credit society. The credit society is, in fact, cheated by those two persons. The custodial interrogation of the applicants is not required and the interim protection granted earlier deserves to be confirmed.

6. Per contra, the learned Public Prosecutor well assisted by learned Senior Counsel Mr. R. S. Deshmukh instructed by learned Advocate Mr. C. V. Thombre for the original informant/complainant vehemently

submitted that the custodial interrogation of the applicants is necessary. The present applicants, who are the officials of the financial credit society, have cheated the complainant in a designed manner. The complainant was in need of land for development at Shirdi. In 2013, he got acquaintance with accused No.1 - Prashant Dakle. It was told to him by applicant – Omprakash Dadappa @ Kaka Koyate that he has acquaintance with Prashant Dakle, whose land is mortgaged with his Patsanstha. The only fact is that he should repay that loan amount and then he can purchase the same. After he had seen the land, which can be developed by dividing it into plots, he agreed for the transaction. His statement has been recorded apart from the contents in the complaint, which he had filed before the learned Magistrate, as to how in phased manner he was asked or introduced to take further loan and how the documents were got executed from him. Loan was also taken in the name of wife of the complainant. It was promised and assured that the file in respect of change of zone of the land owned by Prashant Dakle is pending in Mantralay and he waited for a considerable period. After waiting for a considerable time, he then had discussion with accused - Koyate, so that some other customer be looked for and, therefore, when he went to Tahsil Office, Rahata, he came to know that the land has been attached by the Income Tax Department, when the income tax in the name of Prashant Dakle from 2009-2010 to 2012-2013 to the tune of Rs.6,99,55,140/- is outstanding. Thereafter, on the promises, he again entered into the transaction. He had repaid loan to the tune of Rs.38,51,000/-, yet by intentionally showing him absent, certificates under Section 101 of the Maharashtra Cooperative Societies Act have been obtained. When the offence has been committed in a designed way, custodial interrogation is definitely required.

7. At the outset, it is to be noted that from the documents, which have been produced along with the applications those are filed in the police papers, it can be seen that there were many transactions between the parties i.e. Prashant Dakle and the complainant and sometimes they are tri-party i.e. even the financial institution is a party to that document. It is also apparent that thrice the certificate under Section 101 of Maharashtra Cooperative Societies Act, has been issued by the competent authority against the complainant. The complainant has not produced on record as to whether he has challenged those actions at any point of time and what is the result of that challenge. The applicants are the officials of the Patsanstha. When the documents produced by them before the competent authority for grant of issuance of certificate under Section 101 of the Act were found to be adequate, it appears that the said certificate has been issued. The transactions appear to be going on

since 2013 and when the attachment order was passed by the Income Tax Department in 2017 also, thereafter, complainant – Shripad Thombare has entered into further transaction with Prashant Dakle, yet the FIR appears to have been lodged on 14.10.2020. If the intention to cheat was there since beginning i.e. from 29.10.2013, then the FIR lodged in 2020 is delayed by considerable time i.e. 7 years.

8. Another fact to be noted is that the offence can be investigated on the basis of documents, which appear to have been already seized or the investigating officer has access to those documents. This Court had granted ad-interim protection to the applicants on 28.12.2021 and as per the report of Sub-Divisional Police Officer, Shirdi Division, the applicants are cooperating with the investigation as of now, but then he has expressed his anxiety that if the application is finally granted, then the applicants may not cooperate. This fear appears to be without any reason. Still, by giving necessary directions to the applicants, the cooperation can be extended.

9. For the aforesaid reasons, the application deserves to be allowed. The interim protection granted earlier by this Court vide order dated 28.12.2021 deserves to be confirmed, however, further conditions are required to be imposed. Hence, the following order :-

ORDER

I) Anticipatory Bail Application No.1614 of 2021 stands allowed.

II) The ad-interim protection granted earlier by this Court vide order dated 28.12.2021 stands confirmed and made absolute. In other words, in the event of arrest of applicants viz., (i) Sachin Shankarlal Bhattad and (ii) Omprakash Dadappa @ Kaka Koyate in connection with Crime No.694 of 2020 registered with Shirdi Police Station, Tq. Rahata, Dist. Ahmednagar for the offences punishable under Sections 420, 406, 467, 468, 471, 472 and 120-B of Indian Penal Code, they be released on P. R. Bond of Rs.20,000/- and one surety of like amount each, if not already released.

III) Applicants shall remain present before the Investigating Officer on every Sunday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.

IV) They shall not tamper with the evidence of the prosecution, in any manner.

V) They shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm