IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.405 OF 2022

Vishwanatha Sridhar Prabhu Applicant
versus
The State of Maharashtra Respondent

WITH
INTERIM APPLICATION NO.1840 OF 2022
IN
CRIMINAL BAIL APPLICATION NO.405 OF 2022

Unity Small Finance Bank Limited
Earstwhile Punjab and Maharashtra
Co. Operative Bank Ltd. (PMC) Intervenor

In the matter between :

Vishwanatha Sridhar Prabhu Applicant
versus
The State of Maharashtra Respondent

Mr.Niteen Pradhan with Mr.Rahul Gaikwad, Ms.Ameeta Kuttikrishnan and Mr.Aman Jhawar i/by M/s.Gravitas Legal, Advocate for the applicant.
Mrs.P.P.Shinde, APP, for the Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 20th June 2022

PC :

1. The applicant is seeking bail in connection with C.R.No.86 of 2019 investigated by Economic Offences Wing for offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 477A, 120B of Indian Penal Code r/w Section 46(1), 47A of Banking Regulation Act, 1949. The applicant was arrested on 12th March 2020.

2. The brief facts of prosecution case are as under:

(a) The FIR was lodged by Jasbir Singh Matta, Manager of Recovery Cell, Punjab and Maharashtra Co-operative Bank Limited (PMC Bank) being authorised by the Administrator appointed by Reserve Bank of India (RBI).

(b) The PMC Bank is registered under the provisions of Maharashtra Co-operative Societies Act, 1960. The bank was granted license to carry on banking business by RBI in 1984. The bank received scheduled status in 2000 and became Multi-State Co-operative Bank in 2004. The conduct of banking business by the PMC Bank is subject to the provisions of Banking Regulation Act, 1949 and the directions/ guidelines issued by RBI.

(c) It was learnt from the records that, the Managing Director of the bank Mr.Joy Thomas and other functionaries including Board of Directors executives of the bank and promoter of HDIL have connived to commit illegal acts/offences. Some of the loans mainly belonging to HDIL group companies were intentionally given to cause wrongful gain to HDIL and its promoters, at the cost of wrongful loss to the bank and its depositors. The records were fabricated/falsified to conceal irregularities. Wrongful acts of the management/bank have resulted in risk of depositors losing their money.

(d) The bank in their regulatory reporting had understated the actual exposure of certain bad loan accounts/ which in the normal course should have been disclosed and classified as Non-performing Assets (NPA's) as per RBI norms. The bank was reporting to RBI as suppressed information of actual loans accounts with huge exposure and deliberately replaced them with fictitious accounts. The borrowers in this loan accounts and the functionaries of the bank, were suspected beneficiaries.

(e) In the advances master indent for the year ended 31st March, 2018 submitted to RBI, the bank had replaced 44 loan accounts during individual balance outstanding was higher with 21049 fictitious loan account, whose individual outstanding was comparatively lower.

(f) Preliminary assessment by interim RBI inspection conducted by RBI revealed that, 10 out of 44 borrowers accounts of HDIL group companies revealed that balance outstanding on 31st March, 2019 was Rs.4355.46 Crores and the balance outstanding as on 31st August, 2019 was Rs.4635.62 Crores. The actual financial position of the bank was camouflaged and the bank dis-actively shows its rosy pictures of its financial parameters, thus encouraging more depositors to open account with bank to their detriment and also the fabrication /falsification affected the depositor's interest adversely.

(g) The perpetrators of the fraud viz. Manager, other functionaries, Board of Directors of HDIL and PMC Bank connived with each other. In furtherance of criminal conspiracy facilitated huge lending to HDIL group companies and other entities which were concealed from RBI and depositors to dupe the regulators, depositors and others. The management and persons responsible for conduct of the business of the bank, are liable to be prosecuted for conspiracy, criminal breach of trust, cheating, forgery, falsification of records etc.

(h) In terms of provisions of Banking Regulation Act, 1949 every Chairman, Managing Director, Director, Auditor, Manager and any other employee of the bank were liable to be prosecuted for preparing incorrect documents with intent to cause damage to the interest of depositors.

(i) During the period from 2008 to 2019 the accused committed act of criminal conspiracy, cheating, criminal breach of trust, forgery and falsification of records. Mr. Joy Thomas, Managing Director of PMC Bank alongwith Waryam Singh and other Board of Directors of PMC Bank, other bank officials and Mr. Sarang Wadhwan, Rakesh Wadhwan, Kuldeep Singh Wadhwan and other person of HDIL, executives of Somerset Constructions Pvt. Ltd., Serveall Construction Pvt. Ltd., Sapphire Land Developer Pvt Ltd. Emeralds Realtors Pvt. Ltd. Awas Developers and Constructions Pvt. Ltd., Prithvi Realtors and Hoteld Pvt. Ltd and other executives affiliated bank and related person caused wrongful loss prima-facie to the tune of Rs.4355 Crores to PMC Bank.

(j) About 15 persons were arrested. The arrested accused includes Rakeshkumar Wadhwan, Sarang Wadhwan (Executives HDIL) Joy Thomas, MD, PMC Bank, Waryam Singh Chairman PMC Bank. Surjeetsingh Arora, Director of PMC Bank, Ketan Lakadawalla (Auditor PMC Bank) Jayesh Singhani, Auditor PMC Bank, Anita Kirdat, Auditor PMC Bank, Rajneet Singh, Director PMC Bank, Mukti Bavisi, Director PMC Bank, Dr. Trupti Suhas Bane, Director PMC Bank, Jasvindar Singh Banwait, Director of PMC Bank, Vishwanath Prabhu, Shripad Jere (Valuers of PMC Bank), Surjeet Singh Narang, Brij Bhushan Handa, Omprakash Utpal, Director of PMC Bank.

(k) Statement of witnesses were recorded. Charge-sheets were filed.

3. The applicant preferred application for bail before this Court viz Bail Application No.4957 of 2020. The said application was rejected by order dated 5th May 2021.

4. Learned advocate for applicant submitted as under :

(a) The applicant is in custody from 12th March 2020. The previous application was rejected by this Court on 5th May 2021 with liberty to file fresh application for bail, in the event the trial is not concluded within one year. Although the period of one year has lapsed from the date of rejection of the previous application, there is no progress in the trial.

(b) The co-accused (Auditors) Jayesh Dhirajlal Sangani (accused no.7) and Ketan Pravinchandra Lakdawala (accused no.6) were granted bail by the Sessions Court vide order dated 4th October 2021;

(c) The applicant is a Chartered Accountant by qualification and he had been assigned the job of valuation of stock, shares, securities, debentures, patents, copyrights etc. He is the Director of M/s. Yardi Prabhu Consultants and Valuers Private Ltd. He is not qualified to perform the work of valuation of immovable properties. He was never assigned the said work. For conducting valuation of immovable properties, registered valuers having education in civil engineering, architecture, or town planning would be required. The applicant was not qualified to conduct valuation of property. There is distribution of work in the valuation company. Each Director has been assigned specific role considering their experienced qualification. The other Directors of the said valuation company were entrusted and assigned with task of carrying out valuation of immovable properties. The task of valuation of immovable property was never within the purview of the applicant. The valuation company was on the panel of the PMC since 2004-05.

(d) The prosecution has not collected any evidence against applicant to show his complicity in the crime. On 27th December, 2019 the EOW filed charge-sheet against five accused. No role was assigned to applicant. Supplementary charge-sheet was filed against accused Nos. 6 to12 on 5th February, 2020. There were no allegations against applicant. Another supplementary charge-sheet was filed in 5th June, 2020.

(e) The desk top report dated 4th March 2019 is only a draft and it was never finalized. It was merely forwarded by e-mail dated 4th March 2019 to Punjab and Maharashtra Bank (`PMC Bank') for confirmation. The contents would show that report was neither finalized nor it was signed by authorized signatory of the valuation company;

(f) There is no evidence to show that applicant has in any manner received gratification from the co-accused;

(g) Out of 78 reports relied upon by the prosecution, none of the report is signed by the applicant;

(h) While adjudicating the previous application for bail the prosecution has relied upon statement of Manjit Kaur to show complicity of the applicant. However, subsequently Manjit Kaur was arrayed as accused in this case and thus her statement as witness cannot be relied upon by the prosecution. She was arrested and granted bail;

(i) Entire investigation is completed. Supplementary charge sheet has been filed. Further detention of the applicant is not necessary;

(j) There is no evidence to show that applicant has conspired with co-accused in the alleged offence. The prosecution has relied on the statement of expert valuer Mr.Rajesh Mehta. The RTI information indicate that Mr.Mehta has not been appointed as valuer in any type of valuation in the EOW and Banking Crime Department. He was not government approved valuer.

(k) The prosecution relies upon several witnesses. The charge sheet is voluminous. The trial has not commenced. It is not clear as to when the trial would be over. There is a list of about 166 witnesses;

(l) Several other accused were arrested and they were granted bail. The applicant is relying upon orders granting bail to the said accused.

(m) Kamaljit Kaur Banwait, who is the Chief Manager of PMC Bank stated that for allocation of any assignment for valuation of property, the point of contact with valuation company was with Shripad Jere and Jeevan Yerulkar. The applicant had not authority to alter or change any valuation report.

(n) The applicant cannot be incarcerated for indefinite period.

(o) Manjeet Kaur, whose statement was relied as witness was arrested and granted bail on 17th February, 2022.

5. Learned APP submitted that there is no change in the circumstance to entertain this application for bail. The previous application was rejected on merits. The applicant has played a role in the crime. The applicant was a conspirator in the crime.

M/s.Yardi Prabhu Consultants & Valuers Pvt.Ltd. Were working as major valuers for PMC Bank. Joy Thomas, Managing Director of PMC Bank was availing services of M/s.Yardi Prabhu Consultants & Valuers Pvt.Ltd for several years. Services of valuation of said firm were utilized in obtaining desired valuation reports of properties provided by borrowers. The applicant was having a mala fide proximity with Joy Thomas, who was Managing Director of PMC Bank. With the aid of Shripad Jere valuation reports were obtained. There is sufficient evidence against applicant. It is submitted that applicant had acted in connivance with the co-accused. During further investigation it was revealed that in July-2018 Mr.Tejinder Singh Bal approached PMC Bank for mortgage loan. Smt.Manjit Kaur discussed about the loan proposal with Joy Thomas and it was decided to grant him mortgage loan on his property which already mortgaged with PMC Bank. In the affidavit in reply, it is stated that statement of Manjit Kaur reveal that she had requested Mr.Jeevan Yerulkar of M/s.Yardi Prabhu Consultants and Valuers Pvt.Ltd to provide PMC bank with latest valuation of the properties and the said request was made through e-mail. Thereafter mortgage loan proposal of Rs.130 lakh of Mr.Tejinder Singh Bal was sanctioned. The applicant was Director of M/s. Yardi Prabhu Consultants and Valuers Pvt.Ld. Applicant and Shripad Jere prepared adulterated valuation reports. Applicant was in contact with Joy Thomas for valuation of property. Applicant was called for discussion and to finalise valuation report. The applicant was asked to increase value of properties. The statement of Manjit Kaur and Kamal Banwait recorded u/s.164 of Cr.P.C establishes the role of applicant along with Shripad Jere. While conducting valuation of properties pertaining to PMC. Considering the evidence against applicant and magnitude of offence, bail may not be granted to the applicant.

6. The FIR was registered on 30th September 2019. The applicant is in custody from 12th March 2020. While rejecting the previous application for bail, liberty was granted to the applicant to prefer application for bail in the event trial is not concluded within one year. Trial has not commenced. Charge-sheet is voluminous. Prosecution is relying on large number of witnesses. The role attributed to applicant is that he acted in connivance with accused Joy Thomas. False valuation reports were prepared. The applicant is Director of Yardi Prabhy Consultants and Valuers Pvt. Ltd. The prosecution has not controverted the submission of applicant that amongst 75 reports of valuation, none is signed by applicant. The prosecution is relying on statements of Ms. Kamaljit Banwait dated 22nd November, 2019, 25th November, 2019 and 17th November, 2019. Prosecution also relied on statement of Manjit Kaur dated 12th February, 2020, 20th February, 2020 and statements of Jeevan Yerulkar dated 23rd January, 2020. While rejecting the previous application for bail, this Court had observed that, prosecution is relying on statement of Manjeet Kaur. Reference was made to her version in her statement that, Joy Thomas told her to convey M/s. Yardi Prabhu Valuers to prepare Valuation report of properties of Tejinder Bal, 17% more than its value. She called Mr. Yerulkar and asked him to submit valuation of property. She also told Jyotsna Srivastava to forward mail to that effect to M/s. Yardi Prabhu Valuers. In her subsequent statement she stated that applicant was in contact with Joy Thomas for valuation of property of PMC Bank. Even after rejection of bail application of applicant apparently further investigation was in progress, which is evident from the fact that, several other accused were arrested. Manjeet Kaur was

subsequently arraigned as accused No.23 and granted bail on 17th February, 2022. This is important change in circumstance after rejection of previous application for bail. While rejecting previous application for bail statement of Manjeet Kaur was relied upon. Manjeet Kaur had stated that, applicant was in contact with Mr. Joy Thomas for valuation of property of PMC Bank and Mr. Joy Thomas told her to get re-valuation of properties from M/s. Yardi Prabhu Consultants Pvt. Ltd. She assigned the work to M/s Yardi Prabhu. According statement she contacted applicant fo finalise valuation reports and called him for discussion. Thereafter applicant was asked to increase value of properties. Joy thomas is accused in this case. Manjeet Kaur is now accused. The statement record as witnesses looses its sanctity.

7. After rejection of bail application of applicant two auditors were granted bail by Sessions Court. On 17th February, 2022 supplementary charge-sheet was filed against accused Nos.20 to 44 for offences under Sections 201, 406, 409, 420, 465, 467, 468, 471, 477(A), 120-B of IPC r/w 46(1), 47(9) of Banking Regulation Act. Accused Nos. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 & 44 were granted bail. Amongst them Manjeet Kaur was accused No.23. She was working as Joint General Manager in PMC Bank. She had played active role in alleged transactions.

8. The applicant was granted liberty to apply for bail after one year. He is in custody for two years. Considering the aforesaid facts, role attributed to him, further detention of applicant is not warranted.

9. Hence, I pass following order :

ORDER

(i) Bail Application No.405 of 2022 is allowed;

(ii) The applicant is directed to be released on bail in connection with C.R.No.86 of 2019 on executing P.R.Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

(iii) The applicant is permitted to furnish cash bail security of Rs.50,000/- for a period of six weeks in lieu of surety;

(iv) The applicant shall report the Economic Offences Wing Banking II (EOW), once in two months on first Saturday of the month between 11.00 am to 01.00 pm;

(v) The applicant shall not tamper with the prosecution evidence;

(vi) The applicant shall not leave India without prior permission of the Trial Court;

(vii) The applicant shall attend the Trial Court proceedings regularly, unless exempted by the Trial Court;

(viii) Bail Application stands disposed of accordingly;

(ix) Interim Application No.1840 of 2022 is disposed of.

(PRAKASH D. NAIK, J.)

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