IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2242 OF 2022
WITH
INTERIM APPLICATION NO.2997 OF 2022

Prem Jagumal Karda ..Applicant
Versus.
State of Maharashtra ..Respondent

Mr. Rajiv Patil, Senior Advocate i/by Vidyadhar V. Gangurde, for the Applicant.
Mr. N. B. Patil, APP for the Respondent/State.
Mr. Dinesh Tiwari a/w Mikhail Dey, for the Intervenor.
Mr. Narendra Baisane, API, Gangapur Police Station, Nashik City – present.

CORAM : NITIN W. SAMBRE, J.

DATE : 29th SEPTEMBER, 2022

P.C.

1. Applicant is seeking pre-arrest bail in Crime No.I-157 of 2022 registered with Gangapur Police Station, Nashik for the offence punishable under Sections 120-B, 406, 409, 468, 469, 471, 447 of IPC.

2. The complainant/Ashutosh Raghunath Rathod, borrower from Union Bank of India, Main Road, Nashik having committed default in repayment has faced action under the provisions of SARFAESI Act. In the said proceedings, the immovable property of the complainant was to be auctioned and accordingly a

public notice was issued on 18th October, 2007 scheduling the date of auction as 23rd November, 2007. The said auction, instead of conducting on 23rd November, 2007 was shown to have been conducted on 12th September, 2007 without notice and the auction procedure was shown to have been completed in favour of the applicant on 26th September, 2007.

3. It is claimed in the prosecution case that the bank through pleadings in Writ Petition No.5446 of 2014 has brought the transaction of auction of complainant's property with the applicant, for the first time on record on 12th September, 2007. In the said proceeding, it was noticed that, before the public notice dated 18th October, 2007, the bank officials conspired with the applicant rigged entire alleged auction process and sold the property, namely Plot Nos.2, 3, Survey No.48, Panchak Nashik Road to the applicant for Rs.18,50,000/- which was scheduled on 23rd November, 2007. The applicant accordingly shown to have deposited 25% of the amount in the loan account of the said complainant on 26th September, 2007.

4. The moment complainant noticed aforesaid fraud/ cheating, criminal breach of trust, forgery and conspiracy, approached the police authority. However, he was issued with notice informing that the offence is non-cognizable. Subsequently, complainant was prompted to move before the Court of Judicial Magistrate First Class who upon inquiry directed registration of

offence in exercise of powers under Section 156(3) of CrPC. As a sequel of above, the offence came to be registered.

5. The applicant, who is direct beneficiary in the aforesaid alleged auction process has approached this Court for grant of pre-arrest bail.

6. Mr. Rajiv Patil, learned senior counsel appearing for the applicant would urge that the alleged transaction is of 2007, whereas the offence is registered in 2022. According to him, there is delay and delay defeats very object with which the offence is registered and lodged. Apart from above, he would invite my attention to the pendency of Writ Petition No.5446 of 2014 at the behest of present applicant wherein order passed under the provisions of SARFAESI Act in favour of complainant is under challenge.

7. He would urge that legality of the issue as to whether the proceedings initiated under the SARFAESI Act pursuant to which the auction is conducted and the property is sold to the applicant can be looked into in the said Writ Petition.

8. He would urge that in case, if the complainant's claim in the FIR is appreciated, the same amounts to interference in the pending writ petition which is subjudice before the division bench. According to him, even if the transaction by the applicant with the

bank in the matter of purchase of the property is analyzed, at the most, the applicant gets himself exposed to the extent of financial liability i.e he might loose his amount, if the property is not received by him. Mr. Rajiv Patil would stress on the fact that the complainant is still in possession of the property in question.

9. His further contentions are, the issue of auction and sale of property is purely an act between the bank and the complainant. The applicant is bonafide auction purchaser of the said property. That being so, the claim put forth that the applicant has conspired with the bank officials for purchase of the property by rigging the auction process is far away from the truth. Mr. Rajiv Patil would further urge that apart from absence of any criminal antecedents, the applicant has deep root in the society and is available for the investigation. According to him, the entire offence alleged is based on the documents which are very much available.

10. Learned APP assisted by the counsel for the complainant would oppose the claim based on the offence narrated in the FIR and the investigation carried out.

11. I have appreciated said submissions.

12. It appears that the complainant has defaulted in repaying the loan and as such the property was attached by the bank.

13. As regards the liability fastened on the complainant under the provisions of SARFAESI Act and issue about Writ Petition No.5446 of 2014 to that effect preferred by the applicant questioning the order of the appellate authority can be looked into independently by the said Court. However, what is required to be appreciated here is, whether there was any attempt on the part of the applicant to act in connivance of the bank officials in rigging auction and drawing illegal benefits out of the same.

14. It is the claim of the complainant that for the first time applicant's name came on record through the aforesaid writ petition as the bank by placing on record the communication *inter se* between the applicant and itself referred to the above events before the auction was conducted. It appears that the public notice was issued by the bank thereby scheduling auction of the property of the complainant. Such notice was issued on 18th October, 2007. The auction was to take place on 23rd November 2007. It appears that the said auction was preponed without any notice and shown to have been conducted on 12th September, 2007 and finalized in favour of the applicant on 26th September, 2007. On 26th September, 2007 the applicant is shown to have purchased the property for Rs.18,50,000/- and the applicant has deposited 25% of the amount. This can be demonstrated at a glance by following chart:-

Date when Notice of auction of the property was issued.	Date on which auction was to take place.	Date of auction preponed **without any notice and auction shown to have been conducted.**	Date on which Applicant shown to have purchased the property for Rs 18,50,000/- and deposited 25% of the amount.
18/10/2007	23/11/2007	12/09/2007	12/09/2007

15. The fact remains that the property under the provisions of SARFAESI Act was decided to be sold through public auction and accordingly public notice and the auction was scheduled which was not only tampered with but the property which the complainant claimed to be having more market value was sold to the applicant for peanuts. Not only the auction was shown to have been conducted on papers but the same appears to have been confirmed in favour of applicant.

16. The entire process undertaken by the bank officials who are also implicated as accused in the offence in question appears to have been for the benefit of the applicant, as applicant is direct beneficiary under the said auction process.

17. In the aforesaid background, the claim put forth that the the matter is subjudice in Writ Petition No.5446 of 2014 will have hardly any impact on the present criminal investigation. The issue in the said proceedings is altogether different than the one in the

criminal matter. Writ petition would not decide criminal angle of the auction process, as has been alleged in the case in hand. It appears that the applicant was aware of the tampered date by the bank officials in pursuant to which he has taken every steps to get benefits. As such, it cannot be *prima-facie* held that the applicant was not aware of date which was fixed by the bank officials in the matter of auction of property and preponing of the date. From above conduct, it can be *prima facie* inferred that not only the applicant has acted *malafide* with criminal intention but has also drawn benefits. *Mens rea* at the behest of applicant is apparent.

18. As such, the entire conduct of the applicant which can be *prima-facie* inferred from the Investigation papers satisfies the very ingredients of Sections 120-B, 406, 409, 468, 469, 447, 471 of IPC, as not only the criminal breach of trust but also forgery can be inferred at its face value.

19. In view of above, having noticed that there appears to be *prima-facie* involvement of the applicant in the serious offence, no case for grant of pre-arrest bail is made out.

20. The application as such fails, rejected.

21. In view of rejection of bail application, interim application also stands disposed of.

[NITIN W. SAMBRE, J.]