IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. ANTICIPATORY BAIL APPLICATION NO. 2620 OF 2021

Sachin Chandrakant Bodke ..Applicant
Vs.
The State of Maharashtra ..Respondent

WITH
CRI. ANTICIPATORY BAIL APPLICATION NO. 26 OF 2022

Jairam Vishwanath Hon ..Applicant
Vs.
The State of Maharashtra ..Respondent

WITH
CRI. ANTICIPATORY BAIL APPLICATION NO. 213 OF 2022

Vivek Vasantrao Moghe ..Applicant
Vs.
The State of Maharashtra ..Respondent

WITH
CRI. ANTICIPATORY BAIL APPLICATION NO. 2572 OF 2021

Sagar Bandu Khade and Anr. ..Applicants
Vs.
The State of Maharashtra ..Respondent

WITH
CRI. ANTICIPATORY BAIL APPLICATION NO. 2650 OF 2021

Pravin Prabhakar Phadol and Anr. ..Applicants
Vs.
The State of Maharashtra ..Respondent

WITH
CRI. ANTICIPATORY BAIL APPLICATION NO. 2654 OF 2021

Sheela Prabhakar Phadol and Anr. ..Applicants
Vs.
The State of Maharashtra ..Respondent

Mr. Umesh H. Pawar, for the Applicant in ABA No.2620/2021.
Mr. S. B. Deshmukh, for the Applicant in ABA No.26/2022.
Mr. Abhijit Desai i/b. Desai Legal, for the Applicant in ABA No.213/2022.
Mr. Girish Agrawal, for the Applicant in ABA No.2572/2021.
Mr. Pratik Kalantri a/w. Mr. Chetan S. Damre, for the Applicant in ABA Nos.2650/2021 & 2654/2021.
Mr. Y. Y. Dabke, APP for the Respondent / State.

CORAM : C.V. BHADANG, J.
DATE : 9 FEBRUARY 2022
(Through Video Conferencing)

P.C.

. All these Applications, seeking anticipatory bail, arise out of Crime No.978/2021 of Police Station Niphad, District Nashik, under Section 406, 420, 467, 468 r/w. 34 of IPC. The aforesaid crime is registered on the basis of the complaint dated 1 October 2021 lodged by Mr. Sushil Kumar, Regional Manager, State Bank of India, Nashik.

2. According to the first informant, on 12 January 2020, a home loan of Rs.63,67,170/- was sanctioned to Pravin Prabhakar Phadol and Rs.63,30,590/- to Prashant Prabhakar Phadol. Similarly, on their request a medium term loan of Rs.20 Lakhs was sanctioned to each of them, on 24 August 2017. In so far as the home loan is concerned, the Applicant Sachin Chandrakant Bodke is the authorised home loan adviser to the said branch. Mr. Vijay Dada Sabale was a guarantor of the medium term loan. Similarly, Sheela Prabhakar Phadol and Manisha Pravin Phadol were sanctioned loan of Rs.25 Lakhs each for laying pipe line in their agricultural lands, on 24 August 2017 and 20 September 2017 respectively. Out of the said loan, Sheela Prabhakar Phadol has been disbursed with an amount of Rs.24,60,000/- while Manisha Pravin Phadol has been disbursed with an amount of Rs.24,70,000/-. The borrowers have executed the necessary documents in favour of the Bank.

3. It is the material allegation that when the officers of the Bank had visited the spot on 26 August 2020, 20 October 2020 and 2 November 2020, it was found that Pravin Prabhakar Phadol and Prashant Prabhakar Phadol have not constructed any house nor Sheela Phadol and Manisha Phadol have laid any pipe line in their agricultural lands. The completion certificate in so far as the home loan is concerned, the same was allegedly given by the Accused Dhanraj Khade and Sagar Khade of Shree Construction. It was also

found during the inquiry that substantial amount from out of the loan account has been transferred to the account of one Vijay Dada Sable. Thus, in short according to the first informant, the Accused have cheated the Bank and committed misappropriation of the amount of Rs.2,16,97,760/-.

4. I have heard the learned counsel for the parties. With the assistance of the learned counsel for the parties, I have gone through the record.

5. It is submitted by Mr. Mundargi, the learned Senior counsel representing the Branch Manager Mr. Vivek Moghe that the Applicant is only the sanctioning authority. It is submitted that the Applicant as a Branch Manager relies upon the processing of the loan applications by the Field Officer. It is submitted that the Management of the Bank has issued a chargesheet to the Applicant alleging negligence. He has pointed out the statement of the allegations in which the Management has stated that the Applicant has failed to adhere to the Bank's laid down instructions and failed to exercise due diligence, so as to safeguard the Bank's interest, while sanctioning and disbursing the housing loans. It is submitted that thus even according to the Management, the Applicant had sanctioned and disbursed these loans without ensuring completion of formalities / documentation. Thus, in the submission of the

learned counsel, the Applicant has only been charged with a failure in the proper supervision which at the highest would show negligence. It is thus submitted that the Applicant cannot be attributed with any active intention in the matter of sanction or disbursement of the loan or alleged misappropriation of the amount by the borrowers. The learned Senior counsel was at pains to point out the duties of the Field Officer i.e. of Mr. Hon which includes the credit appraisal of the proposals and inspection of the security charged in favour of the Bank at defined periodicity. Thus, it is submitted that it was the duty of the Field Officer Mr. Hon to properly ensure the preparation of the proposal to monitor the disbursement and the use of the funds for the purpose for which the loan was sanctioned. It is submitted that the Applicant was punished with a penalty in the departmental action and he has since retired from service. It is submitted that all the relevant record has been seized by the Investigating Officer for which the custodial interrogation of the Applicant is not necessary.

6. The learned counsel for the Field Officer Mr. Hon has submitted that the Applicant has no power to sanction the loan in excess of Rs.10 Lakhs. He submitted that the loan was sanctioned by Mr. Moghe as a Branch Manager. It is submitted that the home loan accounts have been closed by the borrowers after repayment of the entire outstanding amount and in view of the fact that the evidence

in the matter is of a documentary nature which has already been seized, the custody of the Applicant is not necessary. The learned counsel has placed reliance on the decision of the Supreme Court in Shri Gurbaksh Singh Sibbia and Ors. Vs. State of Punjab [1] and Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors. [2]

7. The learned counsel for the borrowers Pravin Phadol, Prashant Phadol, Sheela Phadol and Manisha Phadol has submitted that the home loan accounts have been liquidated. It is submitted that the Applicants are not beneficiaries as the amount was transferred to different accounts and the Applicants are made scapegoat in the matter. It is the common submission that the evidence being of a documentary nature which has been seized, the custodial interrogation of the Applicants is not necessary.

8. The learned counsel has referred to the complaint of Mr. Prabhakar Phadol to the Police Inspector Niphad City Police Station dated 20 October 2021. It is submitted that all the necessary facts have been mentioned in the said complaint. According to the learned counsel, co-accused Vijay Sabale (Accused No.6 - Guarantor) had represented to Prabhakar Phadol that there is a Company by name Bio Liquor dealing in liquor / wine business and there was a Company called Rexway Services which is an agency.

1 *(1980) 2 SCC 565*
2 *(2011) 1 SCC 694*

Accused Vijay Sabale has represented Mr. Prabhakar Phadol to invest in these companies and proposing that he himself would be a partner and would make joint investments and would share profit and loss. In short, according to the said complaint of Prabhakar Phadol, on such a representation, it was Mr. Vijay Sabale who managed to obtain the housing loan and the other loans in favour of the family members of Prabhakar Phadol and the loans were got sanctioned without active connivance of the borrowers. He also states that the co-accused Vijay Sabale and the home loan advisor Mr. Sachin Bodake (Accused No.1) had represented that they will look after the loan and they should not worry in the matter. In short, according to the borrowers, they have been cheated by the co-accused Vijay Sabale and Sachin Bodake in the matter.

9. Lastly, it is submitted by the learned counsel for the Applicants who are the Architects Mr. Sagar Khade and Dhanraj Khade that the alleged completion certificate shown to be issued by the Applicants is fake. It is submitted that the Applicants have no establishment by name *Shree Construction* and the Applicants are not on the panel of the Bank as authorised valuers and Architects. It is submitted that the Applicants are falsely implicated in the offence.

10. Learned APP has submitted that the offence is serious in which all the Accused are involved. It is submitted that the home

loans, the medium term loans and the loans for laying of pipe line were sanctioned without proper completion of the formalities. It is pointed out that even the title verification and search report was a xerox copy on record. It is submitted that there was a failure on the part of the officers of the Bank to verify and monitor the use of the funds for the purpose for which the loans were granted which has resulted into loss to the Bank which manages public money. It is submitted that although the home loans have been liquidated, the other loans are still outstanding.

11. I have considered the submissions made. Accused No.1 Sachin Bodake is the home loan adviser. Accused Nos.2 to 5 are the close relatives and the borrowers. Accused No.6 Vijay Sabale is the guarantor. Accused Nos.7 and 8 are the Architects while Accused Nos.9 and 10 are the officers of the Bank namely the Branch Manager and the Field Officer respectively.

12. It is necessary to note that neither the borrowers nor the home loan adviser as well as the Bank officials have disputed that there are irregularities committed in the matter of the sanction and the disbursement of the loan. This aspect is not seriously disputed. It is also not disputed that neither there was any construction of the house nor there is any pipe line laid in the agricultural lands. Thus, it is not disputed that amount of the loans has not been utilised for

the purpose for which the loans were sanctioned. It is significant to note that except the Applicants Dhanraj Khade and Sagar Khade (the Architects) who have allegedly issued the completion certificate, the defence of the other Applicants is mostly that the co-accused are responsible for the same. Thus, *prima facie,* there is only an attempt to cast the responsibility of the irregularities on the other co-accused. Applicant Dhanraj Khade and Sagar Khade have specifically denied the issuance of the completion certificate, the same being forged and fabricated. It is in the context of these facts and *prima facie* the defence raised that the prayer for grant of anticipatory bail and a need for custodial interrogation has to be examined.

13. It is not disputed that out of the loan accounts, the home loan accounts have been liquidated on payment of the outstanding amount. However, the other two loans namely the medium terms loans sanctioned to the Accused Pravin Phadol and Prashant Phadol and the loans granted to Smt. Manisha Phadol and Sheela Phadol for laying of pipe lines in the agricultural lands are still outstanding. The case of the borrowers as disclosed from the complaint lodged by Prabhakar Phadol referred to above is that it was represented to them by Accused No.6 that the amount can be invested in a wine Company / Agency so as to make profits. If that be so, *prima facie,* the borrowers cannot escape responsibility for the non utilisation of the loan amount for the purpose for which it was sanctioned. The

liquidation of the home loan accounts is besides the point and at any rate, the other two accounts are still outstanding. The report filed by the Investigating Officer shows that out of the total amount of Rs.2,16,97,760/-, amount of Rs.1,26,97,660/- is paid and the remaining amount of Rs.90 Lakhs with interest i.e. Rs.1,44,22,227/- is still outstanding.

14. It is strenuously urged on behalf of the borrowers that the ladies namely Sheela Phadol and Manisha Phadol have absolutely no active role in the matter. The learned counsel, on taking specific instructions made an alternate submission that the Applicants Pravin Phadol and Prashant Phadol would surrender and cooperate in the investigation and the Applicants Sheela Phadol and Manisha Phadol may be protected subject to these Applicants also joining the investigation.

15. This takes me to the case of the Accused Sachin Bodake who as a home loan adviser had facilitated the home loans. He also cannot *prima facie* escape liability in the matter.

16. In so far as the Bank Officers are concerned, the contention on behalf of the Branch Manager is that the management had charged him only with negligence in the supervision and not any active intention of misappropriation. In my humble opinion, the aspect of

the disciplinary action taken in the discretion of the Disciplinary Authority is distinct than the civil or criminal liability, if any and a clear distinction has to be made between them. I find that the stand taken by the management is only between the Bank and the Branch Manager which is an aspect of employee and employer relationship and cannot bind the investigation. Therefore, the contention on behalf of the Branch Manager that he was only charged with negligence in the departmental action cannot *prima facie* come to his aid at the stage of consideration of a pre-arrest bail.

17. In so far as the Applicants Sagar Khade and Dhanraj Khade are concerned, I find that the only role attributed to them is based on the completion certificate which these Applicants claim to be forged and fabricated. It is submitted that the Applicants have no establishment by name '*Shree Construction*' and the Applicant Sagar Khade was at the relevant time taking education and none of them was on the panel of the Bank. Thus, I find that the defence of these Applicants goes to the very root of the matter and therefore these two Applicants can be protected subject to them cooperating with the Investigating Agency.

18. The law relating to grant of anticipatory bail is too well settled to be restated. The Supreme Court in Siddharam Mhetre (supra) after taking survey of several decisions holding the field including

the illustrated decision of the Constitution Bench in *Gurubaksh Singh Sibbia v/s. State of Punjab*[1] has noted the following factors and parameters which can be taken into consideration while dealing with such application.

> "*112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*
>
> *i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
>
> *ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
>
> *iii. The possibility of the applicant to flee from justice;*
> *iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
>
> *v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
>
> *vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
>
> *vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*

1 (1980) 2 SCC 565

> *viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
>
> *ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
>
> *x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

It is evident that the question would depend on the facts and circumstances of each case which have to be appreciated in the context of the settled principles. In this case, as noted earlier, the fact that amount of the loans has not been utilised for the purpose for which the loans were sanctioned is not disputed.

19. The Supreme Court in the case of *State (CBI) Vs. Anil Sharma*[1] has held that custodial interrogation is qualitatively more elicitation oriented than the interrogation when the Applicant may be armed with an order of pre-arrest bail.

1 *(1997) 7 SCC 187*

20. In the result, the following order is passed

ORDER

(I) (i) ABA Nos.2620/2021, ABA No.26/2022, ABA No.213/2022 and ABA No.2650/2021 are hereby rejected.

(ii) Two weeks time is granted to the Applicants to surrender before the Investigating Officer/ J.M.F.C. Niphad.

(iii) The Applicants shall file an undertaking to that effect before this Court, within one week from today.

(II) (i) ABA No.2572/2021 is allowed.

(ii) In the event of their arrest, in connection with the investigation of Crime No. 978/2021 of Police Station Niphad, District Nashik, the Applicant No.1 Sagar Bandu Khade and Applicant No.2 Dhanraj Govind Khade shall be released on bail on their executing a P.R. Bond in the sum of Rs.25,000/- each with one or two solvent sureties each, in the like amount.

(iii) The Applicants shall report to the Investigating Officer on 17th and 18th February 2022 between 11.00 and 1.00 p.m. and as and when required.

(iv) The Applicants shall furnish their specimen handwriting / signature to the Investigating Officer, if required and shall cooperate with the investigating agency.

(v) The Applicants shall not leave the jurisdiction of Nashik District, without prior intimation to the Investigating Officer.

(vi) The Criminal Application is disposed of, in the aforesaid terms.

(III) (i) ABA 2654/2021 is hereby allowed.

(ii) The Applicant No.1 Sheela Prabhakar Phadol and Applicant No.2 Manisha Pravin Phadol be released on bail in connection with investigation of Crime No.978/2021 of Police Station Niphad, District Nashik, be released on bail on executing a P.R. Bond in the sum of Rs.25,000/- each with one or two solvent sureties each, in the like amount.

(iii) The Applicants shall report to the Investigating Officer on 17^{th} and 18^{th} February 2022 between 11.00 and 1.00 p.m. and as and when required.

(iv) The Applicants shall furnish their specimen handwriting / signature to the

Investigating Officer, if required and shall co-operate with the investigating agency.

(v) The Applicants shall not leave the jurisdiction of Nashik District, without prior intimation to the Investigating Officer.

(vi) The criminal application is disposed of in the aforesaid terms.

C.V. BHADANG, J.