IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 546 OF 2014

The Kapol Co-operative Bank Ltd. ..Applicant.
Versus
Madhukant Virchand Shah & Anr. ..Respondents

Mr. K. M. Sangani for Applicant.

Mr. Vikram V. Tarepatil for Respondent No.1.

Mr. S. R. Agarkar, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th OCTOBER 2022

PC :

1. This is an application for setting aside the order dated 16/06/2014 passed by the Sessions Court, Mumbai in Bail Application No.1222 of 2014 and for seeking cancellation of bail granted to the Respondent No.1 by the impugned order.

2. The Respondent No.1 was arrested in connection with C.R.No.116 of 2012 registered with EOW- Unit-1. The original offence was registered at Pydhonie police station vide C.R.No.402 of 2012 for commission of offence punishable under sections 409,

420, 465, 467, 468, 471 and 120-B of I.P.C. In this case the charge-sheet is already filed on 17/04/2014 and thereafter this order was passed granting bail to the Respondent No.1. This order is challenged by the applicant herein.

3. The prosecution case, in brief, is that, in the case of three entities namely Metro Steel Traders, Reliance Steel Traders and Nidhi Steel Traders there was irregularity and fraud committed in cash credit facilities and in disbursement of loan to them. The Respondent No.1 is concerned with Metro Steel Traders. He was the owner of the said firm. The allegations are that, while obtaining loan, he had given security as follows:

i) Flat No.A-103, Gokul Gaurav C.H.S. Ltd., Kandivli (W).

ii) Gala No.301 situated at Sanghvi Premises Cooperative Society Ltd., Kandivli (W).

iii) Flat No.501, 5th fllor, Alak Jyot C.H.S. Ltd. Goregaon (E).

iv) Flat No.503, 5th floor, Alak Jyot C.H.S. Ltd., Goregaon (E).

Out of these, the flat Nos.501 and 503 actually were sold to some other person and could not have been offered as security. The allegations are that the Metro Steel Traders borrowed loan of Rs.1,85,87,156/- from the applicant bank against the mortgage of these four properties. There was default in repayment of the loan. There are allegations that the bank Manager Shri. Subramanium who was responsible for the Lakhand Jatha branch, Masjid Bunder had disbursed that loan on these fraudulent documents.

4. The Respondent No.1's account had become overdrawn to the extent of Rs.2,70,38,986/-. Thus, the bank was put to loss.

5. Shri. Sangani submitted that the flat Nos.501 and 503 referred to herein above were already sold to one Bansode and the Respondent No.1 could not have offered them as security. Therefore, disbursement of the loan was based on the fraudulent documents and that caused loss to the bank. Considering the fraud played by the Respondent No.1 and his active participation, he does not deserve to be released on bail. Therefore, bail granted by

the impugned order ought to be cancelled.

6. Learned counsel for the Respondent No.1 submitted that the bail was granted in the year 2014. He has not misused that liberty. He has attended the Court diligently. He has co-operated with the investigation. The bail order was passed after the charge-sheet was filed as his custodial interrogation was not necessary. His custody for the purpose of investigation was not necessary and now the trial is ripe for hearing. At this stage, it would not be justified if the bail is cancelled after more than 8 years.

7. Learned APP submitted that the State has not challenged this order granting bail to the Respondent No.1.

8. I have considered these submissions and I have perused the impugned order. Learned trial Judge has carefully considered the documentary evidence. He has considered the fact that, in respect of those flat Nos.501 and 503 a report was given by Sigma Engineering Consultants. That report was genuine. The Respondent No.1's case was that, one Jagat Parekh had cheated many people and had entered into the transactions in respect of

those two flats. The Respondent No.1 had also complained against Jagat Parekh. Learned trial Judge has observed that the Respondent No.1 was in jail since 22/01/2014. He had completed 5 months in jail. The charge-sheet was already filed. The applicant had relied on various documents to show all the transactions with the bank as genuine and how the Respondent No.1 had repaid the loan amounts. The offence was triable by the Magistrate and except for Section 409 of IPC the maximum sentence was not likely to be life imprisonment and even for the offence U/s.409 of IPC, it was not likely that, such sentence would be imposed in every case. Learned Judge has observed that, there was no possibility of conclusion of the trial in near future from passing of that order. This observation turned out to be true because since passing of the order the trial has not commenced and there are no allegations that the Respondent No.1 is responsible for delay in the trial.

9. Considering all these aspects, learned trial Judge has granted bail to the Respondent No.1. I do not see any reason as to how that order can be termed as perverse. The view taken by the

learned Judge is a possible view. The order was passed on 16/06/2014. More than 8 years have passed and after 8 years I do not see any propriety in setting aside the impugned order, particularly, when reasoning for granting bail is sound.

10. In view of this, the application is rejected.

(SARANG V. KOTWAL, J.)