IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.52 OF 2022

Mr. Deepak S/o Vitthalrao Gundawar
Versus
State of Maharashtra, through P.S.O., Bajaj Nagar, P.S. Nagpur, Tq. & Dist. Nagpur

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri S.U. Lalit, Advocate for the applicant.
Shri V.A. Thakare, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : 17th FEBRUARY, 2022

1. The applicant, by way of present application filed under Section 438 of the Code of Criminal Procedure is seeking grant of bail in the event of his arrest in Crime No.370 of 2021, dated 27.12.2021 registered with the Police Station Bajaj Nagar, Nagpur against 8 accused persons plus all the 9 office bearers of the bank namely Shri Kanyaka Nagari Sahakari Bank Ltd., Chandrapur, including the applicant, for the offences punishable under Sections 409, 420, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860.

2. It is the case of the prosecution that in the month of June, 2020 the complainant, who is a 80

years' old lady came to know about a fraud played by the accused persons by fraudulently mortgaging the property owned by her husband. It is stated that the old lady initially pursued the matter by making complaints to various authorities, including Home Department, Mantralaya, Mumbai and as such, a delay has been caused in lodging the criminal report.

3. On lodgement of the complaint, the investigation was carried out and in turn Investigating Agency collected numerous documents and found that there is a substance in the complaint lodged by the complainant and also about the role of the present applicant and other accused persons in commission of the offence.

4. It is alleged that the applicant as a Director is one of the signatories, to the resolution passed on 27.12.2013 sanctioning a mortgage loan to the tune of Rs.1,25,00,000/- in favour of Mr. Swapnil Prabhakar Bhongade, the main accused.

5. During the investigation, it was revealed that in fact the plot, which was mortgaged to the bank by the accused Swapnil Prabhakar Bhongade, was owned by Manohar Karade, husband of the complainant, who was out of India during the period

from 1984 to 2018. Thereupon, it is further revealed that on the basis of forged and bogus document, the loan was obtained by the main accused Swapnil Bhongade in connivance with the applicant and other accused persons.

6. I have heard Shri S.U. Lalit, learned counsel for the applicant and Shri V.A. Thakare, learned A.P.P. for the non-applicant/State.

7. Shri Lalit, learned counsel for the applicant submits that in the process which needs to be followed, on sanctioning of a loan case, till disbursement of the loan amount, the role of the Director ends once the loan is sanctioned.

8. He submits that in the present matter, after the resolution dated 27.12.2013 was passed sanctioning the loan, the role of the applicant ended there. Hence, for the subsequent event he cannot be held responsible.

9. He submits that the aforesaid sanction was conditional and there were six conditions to be complied with by the borrower before disbursement. It is the duty of the Branch Manager, Loan Manager and Chief Executive Officer of the Bank to see and seek

compliance of all the conditions of sanction before disbursement is made.

10. He therefore, submits that if the applicant is added as a accused despite of above referred limited role of the applicant, it is the responsibility of the Investigating Officer to point out specifically the role played by the applicant after sanctioning the loan, by giving material details about it.

11. He further submits that the Head Office of the bank is at Chandrapur, whereas, the application for loan as well as the disbursement was made at Nagpur Branch. He therefore, submits that unless the role is specifically pointed out in the alleged offence, police should not be allowed to take away the liberty of the applicant.

12. It is submitted that all the documents in relation to alleged transaction has already been seized by the police and no further recovery is to be made in this matter and as such, his custody is not required.

13. He further submits that, in reply, the State is silent about the role played by the applicant in the complete transaction, more particularly after sanction of the loan with certain conditions, on 27.12.2013.

Accordingly, he prays for grant of pre-arrest bail in the alleged offence.

14. On the other hand, learned A.P.P. strongly opposed the application and made the case diary available for perusal. From the case diary, the learned A.P.P. has pointed out that the applicant was a signatory to the resolution passed in meetings held on 29.02.2020 and dated 31.07.2020, wherein the decision was taken for auction of the land in question. He submits that as both these meetings were held after 27.12.2013, the applicant cannot say his role was ended after sanction of loan on 27.12.2013 i.e. after sanction of loan case.

15. The learned A.P.P. has drawn attention of this Court to the complaint lodged by the Branch Manager Shri Kishor Uddhavrao Goliwar on 27.11.2014, wherein there is a specific mention that the person who pretended himself as Manohar Govindrao Karade and who alleged to have mortgaged the land, appears to be a dummy person and by preparing bogus documents, Swapnil Bhongade had cheated the bank.

16. It is submitted that after the complaint lodged with the Police, no steps were taken in the matter by the bank and silence on the part of the bank

clearly shows the involvement of the bank office bearers including the applicant in the alleged offence.

17. He further points out that at the time of resolution dated 27.12.2013, a fact that the loan account of brother of main accused Swapnil, namely Shri Shishir Bhongade was declared as N.P.A. (Non Performing Asset), was well within the knowledge of the applicant and other directors, despite the said fact, the mortgage loan of Rs.1.25 crores was sanctioned in favour of Swapnil Bhongade. According to the learned A.P.P., this fact is sufficient to reach to a conclusion that the Directors, who are the signatories to the resolution dated 27.12.2013, are involved in the alleged offence.

18. He further submits that a huge public amount is involved in this matter and as the offence is very serious, this Court may not grant pre-arrest bail to the applicant. By arguing so, he prays for rejection of the application.

19. I have perused the case diary and also perused the contents of the First Information Report.

20. After going through the case diary, it is revealed that the learned A.P.P is right in saying that after sanction of loan on 27.12.2013 in favour of

Swapnil Bhongade, the applicant was signatory to the subsequent resolutions dated 29.02.2020 and 31.07.2020 in relation to auction of the property.

21. However, nothing has been pointed out whether the information about creation of bogus and fabricated mortgaged deed or lodging of complaint by the Branch Manager to Police in this regard or Public notice issued by the lawyer of Shri Sumit Manohar Karade or the reply given to such public notice by the Branch Manager, was placed before the Board of Directors for their information, at the time of above referred two meetings dated 29.2.2020 and 31.07.2020.

22. The documents on record show that four N.P.A. cases including the present loan case, were placed before the Board of Directors for permission to proceed for sale of the mortgage properties involved in those cases.

23. The notes put up before the Board of Director, do not disclose the above referred fact of bogus and fabricated mortgage deed. Hence, *prima facie,* I am of the opinion that in absence of all the relevant information placed before the Board of Directors, the resolution were passed.

24. *Prima facie* therefore, it cannot be said that despite knowing well about the creation of bogus and fabricated mortgaged deed in this case, the applicant had proceeded to sign the resolutions on 29.02.2020 and 31.07.2020, for auction of the property.

25. At this stage, nothing has been pointed out showing the direct involvement of the applicant or the specific role played by the applicant, after the loan was sanctioned by Board of Directors, in favour of Swapnil Bhongade, in the alleged offence.

26. Thus, I do not find any incriminating material available on record against the applicant. Hence, I am of the considered view that this is a fit case for grant of bail. Accordingly, I pass the following order:

a) The application is allowed.

b) It is directed that, in the event of arrest the applicant shall be released on bail in Crime No.370 of 2021 dated 27.12.2021 registered with the Police Station Bajaj Nagar, Nagpur for the offences punishable under Sections 409, 420, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860, on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand Only) with one solvent surety in the like amount.

c) The applicant shall attend the concerned Police Station as and when his presence is required.

d) It is further clear that the police shall give written intimation to the applicant before 24 hours, whenever his presence is required.

The criminal application is disposed of, accordingly.

[ANIL S. KILOR, J.]

CHETAN LOPCHAND DHAKATE

Digitally signed by CHETAN LOPCHAND DHAKATE
Date: 2022.02.23 10:32:59 +0530

C.L.Dhakate