

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

CRIMINAL APPLICATION (BA) NO.372/2022

Shishir s/o Prabhakar Bhongade

...Versus...

State of Maharashtra, Through its Police Station Officer, Police Station Bajaj
Nagar, District : Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri S.R. Kadam, Advocate for applicant
Shri A.R. Chutke, APP for non-applicant/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 02/05/2022

1. Heard Shri Kadam, learned Counsel for the applicant. The applicant has been arraigned for the offence punishable under Sections 420, 409, 467, 468, 471 r/w 34 of Indian Penal Code in Crime No.370/2021, registered with Police Station Bajaj Nagar, Nagpur. The incident is dated 18/02/2014. FIR is dated 27/12/2021. The applicant has been arrested on 29/03/2022. The matter is said to be still under investigation.

2. It is the contention of learned Counsel for the applicant that the applicant has been falsely implicated in the aforesaid offence. The applicant, who was the borrower of the

Kanyaka Nagrik Sahakari Bank earlier in point of time, which account was declared as NPA, was merely recipient of a sum of Rs.76,00,000/- and odd, which has been transferred in his account by the original borrower, as a result of which, the account of the applicant has been closed. He, therefore, submits, that the applicant has no role to play in the crime and therefore, is entitled for bail.

3. Shri Chutke, learned Additional Public Prosecutor for the non-applicant/State does not dispute that the only role attributed to the applicant is the receipt of the amount in his account by way of transfer by the accused no.1/Swapnil, as a result of which, the account of the applicant which was NPA, with the Kanyaka Nagrik Sahakari Bank, has been closed. He, therefore, submits, that since the applicant is a recipient of the amount taken on loan by the original accused, the application needs to be rejected.

4. On 18/02/2014 the original accused/Swapnil had applied to the Kanyaka Nagrik Sahakari Bank for loan of Rs.1,25,00,000/-, for which, immovable property bearing Plot no.9, admeasuring 301.501 sq. meters, belonging to one Sheela Karhade was offered as a mortgage, which was accepted and a loan of Rs.1,25,00,000/- was disbursed to the borrower Swapnil, in two installments, the first one is Rs.76,64,695/- on 11/3/2014 and Rs.28,35,305/- on 10/6/2014. Out of the first installment of loan received by the

accused no.1, an amount of Rs.76,64,695/- has been transferred on 11/3/2014 itself in the account of the applicant, as a result of which, the account of the applicant which was NPA, has been squared off and consequently closed. Shri Chutke, learned Additional Public Prosecutor admits that the present applicant had no role to play in securing the loan by the accused no.1/Swapnil, inasmuch as he is not the co-borrower with Swapnil neither is a party to a mortgage nor a witness to the mortgage and the entire transaction of availing loan by Swapnil is an independent transaction between Swapnil and the Bank. It is, thus, apparent that there is *prima facie* no involvement of the applicant in the matter of procuring the loan or giving the aforesaid property on mortgage, which is claimed to be a fraudulent mortgage, as the complainant claims not to be the person who has executed the same. That apart, though the amount of Rs.76,64,695/- has been transferred in the account of the applicant, the beneficiary is the Bank, as the account of the present applicant has been squared off because of such deposit, considering which, I do not see any reason to continue the further incarceration of the applicant. However, since the investigation is still in progress, the presence and co-operation of the applicant has to be ensured. Hence, the following order.

ORDER

(i) Criminal Application is allowed. The Applicant, namely, Shishir s/o Prabhakar Bhongade be

released on bail in Crime No.370/2021 for the offence punishable under Sections 420, 409, 467, 468, 471 r/w 34 of Indian Penal Code, registered with Police Station Bajaj Nagar, Nagpur upon his executing PR. Bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with two solvent sureties in like amount.

(ii) The applicant shall not, directly or indirectly make any attempt to influence the prosecution witnesses or otherwise tamper with the evidence.

(iii) The applicant shall attend the concerned Police Station on every Monday between 11:00 a.m. to 1:00 p.m., till the charge-sheet is filed and shall also render all co-operation to the Investigating Officer.

(iv) After filing of the charge-sheet, the applicant shall attend each and every date before the learned Trial Court and shall ensure that the trial is not protracted on his count.

(v) Violation of any of the above conditions, shall result in cancellation of bail.

(AVINASH G. GHAROTE, J.)

Wadkar