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

CRIMINAL APPLICATION (ABA) NO.408 OF 2021

(RAVINDRA DAMODHAR YERNE....VS.. THE STATE OF MAH. THR. PSO PS WANI, DIST. YAVATMAL)

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

Shri A.A.Naik, Advocate for Applicant.
Shri T.A.Mirza, A.P.P. for Non-applicant No.1/State.
Shri Anjan De, Advocate for Intervener-Complainant-BOM.
Shri A.S.Dhore, Advocate for Intervener-Rangnath Swami Patsanstha.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 19, 2022.

1. Heard.

2. The applicant is seeking pre-arrest bail in Crime No. 330 of 2021, registered with Police Station, Wani, District : Yavatmal for the offences punishable under Sections 420, 465, 468, 471 and 34 of the Indian Penal Code. The applicant is accused No.1. The allegations made in the First Information Report (FIR) are that the applicant has mortgaged one and the same property with four different banks and availed loan facility and thereby cheated the said Banks.

3. Shri Naik, learned counsel for the applicant submits that the total land is 02.28 HR and it is not correct to say that the entire land was mortgaged to four different banks. However, in all the loan transactions part of the land was mortgaged and therefore, no wrong has been committed by the applicant.

4. The learned counsel for the applicant further submits that the land in question is worth Rupees Nine Crores and if the amount of loan is considered, it is much less that the total cost of the land. He submits that there was no intention of the applicant from the inception to deceive the Banks and therefore, Section 420 of the Indian Penal Code (IPC) would not attract in this case.

5. He has further argued that the applicant had deposited some amount in all the loan accounts which shows the bonafides on the part of applicant that since beginning he was intending to regularly pay the installments of the loan. However, due to pandemic the default has been caused and it resulted in lodging of the FIR by the Banks.

6. The learned counsel for the applicant submits that initially the loan of Rupees Twenty Five Lakhs was availed by mortgaging the part of aforesaid land and again thereafter loan of Rupees Twenty Five Lakhs was obtained by executing another Mortgage Deed of part of the said land. It is submitted that it is not that the Bank was not knowing the value of the said land and because the Bank was having knowledge about the valuation of the land, the Bank has sanctioned loan of Rupees Twenty Five Lakhs on two occasions. Therefore, he submits that there is no wrong committed by the applicant.

7. On the other hand, Shri Mirza, learned A.P.P. strongly opposed the present application. He submits that the Mortgage Deed does not disclose that, different part of the land was mortgaged in every loan transaction. But, the land admeasuring 02.28 HR i.e. entire land was mortgaged for availing the loan.

8. He submits that the fact that he mortgaged the same land with all the four banks to avail the loan facility without disclosing the fact that the land is already mortgaged with the other banks, is sufficient to show the intention of the applicant about cheating.

9. The learned A.P.P. has made available the case diary for perusal. From the case diary he has pointed out the modus operandi of the applicant in getting sanctioned the loan amount by mortgaging the same property. He, therefore, prays for rejection of the present application.

10. Shri De, learned counsel, who is for one of the complainants i.e. Bank of Maharashtra and assisting the prosecution in this case, submits that though in 2014 there was an order of the Civil Court in a suit pending between the complainant and his brothers and sisters, wherein the order restraining the applicant from creating third party interest was passed, despite the said order the applicant has mortgaged the said land to four different banks, including the Bank of Maharashtra.

11. He has pointed out that prior to mortgaging the said land to the Bank of Maharashtra, the applicant has mortgaged the land as an agricultural land to other banks and subsequent thereto he converted the said land into non-agricultural land by laying a layout and while availing loan facility from the Bank of Maharashtra he had mortgaged certain plots from said layout.

12. It is submitted that the above referred fact is sufficient to gather the intention of the applicant of cheating.

13. Shri Dhore, learned counsel appearing for the complainant-Rangnath Swami Nagari Sahakari Pat Sanstha, Wani also strongly opposes the present application and he submits that even though the aforesaid land was mortgaged with his Bank, without obtaining no objection he has mortgaged the same property with other three banks and thereby he has committed cheating.

14. I have perused the case diary and the contents of the FIR.

15. In this case, the applicant is not disputing that he has mortgaged the same property to different four Banks while availing the loan facility. However, the contention is that different parts of the said property was mortgaged to four banks and not the entire land.

16. It is submitted that even a suit is filed for declaration that only 0.12 HR land was mortgaged with Rangnath Swami Nagari Patsanstha and not 02.28 HR land.

17. After going through the mortgage deeds executed in favour of the aforesaid society, prima-facie, it can be revealed that the entire land i.e. 02.28HR was mortgaged with the said Society and not 0.12 HR as claimed by the applicant. In the Mortgage Deed at least at four places area of the land is mentioned as 02.28 HR as a land mortgaged.

18. Similar is the case as regards the second loan case of Rupees Twenty Five Lakhs with the same society.

19. As far as Bank of Maharashtra is concerned, there is no mention about the total area but the plot numbers are there which were mortgaged to the Bank of Maharashtra and which are forming the part of the aforesaid land. The mention of plot numbers shows that the agricultural land was converted into the non-agricultural land and certain plots were mortgaged with the Bank of Maharashtra.

20. There was an order of Civil Court, restraining the applicant from dealing with the aforesaid land, which

was passed in the year 2014. However, in spite of the injunction order the applicant has mortgaged the said land to four different banks.

21. The total amount received by the applicant in all the loan transactions is in crores. There is no doubt that to show bonafides the applicant has deposited Rupees Twenty Lakhs in this Court. However, looking to the total amount involved in the alleged offence and the modus opoerandi of the applicant in mortgaging the same property with the different banks and obtaining loan amount is serious and alleged transactions are the financial matters.

22. The Hon'ble Supreme Court of India in the case of *P. Chidambaram ..vs..Enforcement Directorate*[1], has observed thus:

> *"78. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.*
>
> *79....*
>
> *80. Observing that economic offence is committed with deliberate design with an eye on personal profit*

1 (2019) 9SCC 24

regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitamalji Porwal it was held as under:- (SCC p.371, para 5)

"5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest….."

81. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI, the Supreme Court held as under:- (SCC p.449, paras 34-35)

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." [emphasis supplied]

82....
83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."

14. In the light of above observations of the Hon'ble Supreme Court of India, I am not inclined to grant the pre-arrest bail in this case. Accordingly, I pass the following order:

The application is **rejected**.

The amount deposited by the applicant to the tune of Rupees Twenty Lakhs to show his bonafides shall be transferred to the trial Court. Liberty is granted to the concerned Banks/Complainants to make application for withdrawal of the said amount, which may be decided on its own merit as per law.

Pending application(s), if any, shall stand disposed of accordingly.

JUDGE

RRaut..