

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

45 ANTICIPATORY BAIL APPLICATION NO.985 OF 2023
RAJENDRA S/O TAKHATMAL GUGALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. V.D. Sapkal, Senior Advocate i/by. Mr. Sandip R. Sapkal,
Advocate for Applicants
Mr. V.S. Badakh, APP for Respondent – State

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AND

ANTICIPATORY BAIL APPLICATION NO.961 OF 2023
KADUBHAU CHHAGAN KALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. N.B. Narwade, Advocate for Applicant
Mr. V.S. Badakh, APP for Respondent – State

...

AND

ANTICIPATORY BAIL APPLICATION NO.1018 OF 2023
BALASAHEB REVANNATH TIKKAL
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. Manoj A. Dond, Advocate for Applicant
APP for Respondent – State : Mr. V.S. Badakh

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CORAM : R. M. JOSHI, J.
DATE : AUGUST 28, 2023

PER COURT :

. Applicants are apprehending arrest in connection with
Crime No.223 of 2023 registered with Sonai Police Station,

Dist. Ahmednagar for the offences punishable under Sections 420, 467, 469, 471, 120B of the Indian Penal Code.

The allegations in the FIR can be narrated in nutshell as under:

2. On the basis of direction given by learned Judicial Magistrate First Class, Newasa, Crime No.223 of 2023 came to be registered with Sonai Police Station for the offences punishable under Sections 420, 467, 468, 469, 471, 120B of the Indian Penal Code. It is alleged that the informant is a social worker and Member of the Sant Nagebaba Multistate Co-operative Urban Credit Society. It is alleged in the FIR that Gut no.155 belonging to Bhanudas Bankar is sold to his sons Paraji and Laxman by registered sale-deed for consideration of Rs.6,10,000/-. It is further alleged that out of the total area of the said gut, 80-R land was sold by Paraji and Laxman to their father for Rs.4,00,00,000/-. It is alleged that in order to save stamp duty, valuation of the property was shown lesser than the market value. It is also alleged that the said property was mortgaged by obtaining loan by accused no.3 and 4. It is further alleged that again on 21.10.2020 accused no.3 to 5 obtained loan of Rs.10,00,00,000/- from the society on the basis of bogus search

report. On these amongst other allegations, offence came to be registered against the applicants.

In Anticipatory Bail Application No.985 of 2023 :

3. Learned counsel for the applicants submitted that the informant had filed the suit against the applicants and others. He further drew attention of the Court to the report lodged by the applicant no.1 against the informant for extortion. As regards the transaction of loan, it is contended that the loan which was obtained in the year 2015 of Rs.7,00,00,000/- is already repaid on 25.08.2016. As far as the loan of Rs.10,00,00,000/- obtained in the year 2020 is concerned, it is his contention that apart from Gut No.155 as many as 64 properties are mortgaged by the borrower with the credit society. It is submitted that regarding transaction in respect of Gut No.155 as alleged in the FIR between the owner and subsequent purchaser is concerned, so called purchaser has never raised any objection with regard to the transaction in question. By drawing attention of the Court to the various documents it is sought to be argued that once the issue was raised by the Society in respect of Gut No. 155, the said property was released from the mortgage and Rs.7,00,00,000/- had

already returned to the society though loan was obtained for the period of ten years. It is thus his submission that the FIR is motivated. According to him, there is nothing to show that custodial interrogation of the applicant would be necessary, as all the documents pertaining to the crime in question are already submitted to the Investigating Officer.

In Anticipatory Bail Application No. 961 of 2023 :

4. Learned counsel for the applicant who is Chairman of the Society submits that by following due process, the loan is sanctioned and disbursed. It is submitted that after receiving the complaint in respect of the property Gut No.155, immediately notice was issued to the borrower on 08.10.2021 and borrower was called upon to provide explanation. It is thus submitted that in absence of any allegation against the present applicant of fabricating any document, the disbursement of the loan relying upon search report and following requisite procedure cannot become an offence.

In Anticipatory Bail Application No.1018 of 2023 :

5. Applicant is the Manager of the branch of the credit

society. It is the contention of learned counsel for the applicant that he was Manager of the society till 2019 and that he has no concerned with the loan advanced in the year 2020.

6. Learned APP opposed the applications and submitted that the present applicants in collusion with the other persons have created false documents to obtain loan. By referring to the FIR it is submitted that in respect of Gat No.155 by showing less valuation of the property, the revenue of the government is denied of due revenue. He further argued that in the revenue record part of Gat No.155 belongs to the government, however charge was also created on the said portion of the property. All these facts according to him indicate that the intention of the applicants was to cheat the society. He further argued that it is only after the complaint made by the informant, the society could recover amount of Rs.7,00,00,000/- from the said second loan transaction.

7. In order to ascertain as to whether there was any intention on the part of the borrower to cheat the society, learned APP was asked specific query as to whether there is any material on record

to indicate that the borrower has defaulted any installment of the loan repayment. From the investigation papers, learned APP was unable to point out any default. On the other hand, learned counsel for the applicant / borrower made categorical statement that there is not a single default in the repayment of the loan. In this backdrop if the allegations in the FIR are seen, then they are essentially in respect of the denying the right of the purchaser of the property i.e. Gut No.155 and alleged loss of revenue to the State. Pertinently, no statement is recorded of Hitsh (purchaser) to ascertain his grievance, if any. Moreover, it is always open for the authorities to recover the revenue from the concerned parties to the transaction in respect of Gut No. 155.

8. On the other hand, borrower had written to Bank that he is ready to file the appropriate affidavit of the said alleged purchaser for the purpose of continuation of property Gut No.155 as security to the loan transaction. In alternative, it was proposed to repay the said amount and to discharge the said property. There is no denial of the fact that by paying of the amount which was advanced against the said property, Gut No.155 came to be discharged. These facts clearly

indicate absence of any intention on the part of the applicant to obtain loan and not to repay the same.

9. As far as the allegations in respect of Gut No.155 is concerned, the aggrieved person would be the purchaser and not the informant. Even in respect of the allegations about the loss caused to the revenue of the State, it is open for the concerned authorities to take appropriate action in this regard. These observations are necessary in view of the material documents placed before this court which indicate that serious complaint of extortion is made against the informant by the borrower. Furthermore, the proceedings filed by him against the borrower and other persons clearly indicate that he may be person interested in lodging of the complaint against the applicants and others and not aggrieved person.

10. As far as the custodial interrogation of the applicants is concerned, admittedly, by letter dated 10.01.2022 and 25.05.2023 all the documents are already handed over to the Investigating Officer. In view of this, custodial interrogation of the applicants would not be necessary. As a result of above discussion, following order is passed.

ORDER

(i) Anticipatory Bail Applications no.985 of 2023 and 961 of 2023 are allowed in terms of interim order dated 26.06.2023. Anticipatory Bail Application No.1018 of 2023 is allowed in terms of interim order dated 04.07.2023.

[R. M. JOSHI]
JUDGE

GGP