IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1131 OF 2023

ANAND VIJAY BADVE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
...
Advocate for Applicants : Mr. N. B. Narwade
APP for Respondents: Mr. G. O. Watamwar
...

CORAM : R.M. JOSHI, J

DATE : AUGUST 03, 2023

PER COURT :

1. Applicant apprehends arrest in connection with with C.R. No. 382 of 2023 registered with Kotwali Police Station, Dist. Ahmednagar for the offences punishable under Sections 419, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code.

2. Informant Jayant reported to the police that on 15.11.2019 he received notice from Nagar Urban Bank wherein it was informed that Chaitanya Kulkarni proprietor of Mantra Printers has obtained loan of Rs. 3 crore of land Gut No. 512/1/5/1 owned by informant. Informant, therefore, went to the Kedgaon branch of the said bank wherein it was found that by impersonating him someone has executed the mortgage deed in respect

of his property. Thus, according to him, Macchindra, Ramdas, Mahadev and Anand along with Chaitnya have committed fraud and thereby cheated him.

3. Learned Counsel for the Applicant states that Applicant is the officer of the bank posted at the Kedgaon branch. By drawing attention of the Court to the various documents placed on record, it is submitted that in fact the proposal of the loan was verified by the present Applicant and that he did not recommend for grant of loan as per proposal. It is submitted that this Applicant has raised various queries and expressed candid opinion about rejection of proposal. It is submitted that in spite of negative report by applicant the loan proposal was approved by higher authorities and hence, in compliance thereof he has executed the mortgage deed on behalf of bank. It is further his submission that he did not know the informant and hence, he cannot be held responsible for impersonation.

4. Learned APP opposed the said contention by submitting that when the Applicant had negatived the proposal of the loan submitted by Chaitanya Kulkarni, there was more responsibility on him to verify all the

facts before entering into mortgage deed in respect of the same loan transaction. It is his contention that since present Applicant has failed to discharge his duties, his involvement in the crime needs to be accepted.

5. The allegation of the first informant is that the present Applicant in collusion with co-accused has allowed the proposal of loan of Rs. 3 crores to the Chaitanya Kulkarni. As far as present Applicant is concerned, perusal of the documents placed on record which are not in dispute, indicates that the present Applicant had scrupulously verified the proposal and has raised various objection. There is specific negative report submitted by him against approval of the said proposal. Record further indicates that after the knowledge of the fraud being played, he is the one who lodged report to his superiors on 02.12.2019 and also lodged complaint to police. There is document on record which indicates that he was called for the inquiry in respect of his complaint and has handed over all relevant documents to police on 03.03.2020. All these facts are *prima facie* sufficient to show that

there is no evidence to infer his involvement in the crime.

6. The contention of the learned APP that when he did not propose the approval of the loan, it ought to have been more cautious while executing mortgage deed. Even if the said submissions is accepted, it would at the most indicate that Applicant has failed to discharge his duty diligently. Failure to discharge duty cannot be equated to the offence. More particularly when the record indicates that the person who executed mortgage was identified as informant by witness.

7. In view of above, there is no *prima facie* evidence to connect present Applicant with the crime. He has clean history. He is not likely to flee. Hence, application is allowed by confirming order dated 13th July, 2023.

(R.M. JOSHI, J.)

Malani