AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.85 OF 2021

Babasaheb Balasaheb Jasud … Applicant
V/s.
The State of Maharashtra … Respondent

Mr. V.V. Purwant i/by Mr. Narencra V. Sharma and Mr. Rachit Khampara for the applicant.

Mr. Hemant Zanjad with Mr. Keshav Borhade for the intervenor.

Mr. Kare Kiran, Constable, Bhosari Police Station, Pimpri Chinchwad, is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 6, 2023

P.C.:

1. The applicant is seeking anticipatory bail in connection with C.R. No.612 of 2020 registered with Bhosari Police Station for offence punishable under Sections 420 read with 34 of the Indian Penal Code, 1860.

2. The manager of a cooperative Bank filed report with police station contending that based on mortgage deed dated 25 March 2015, 14 March 2016 and 22 March 2017, various loan facilities were disbursed in favour of the applicant. The disbursement of loan facility was on the basis of report/declaration by the applicant that the properties mortgaged were free from all encumbrances of whatsoever nature.

3. In a proceeding initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the District Magistrate started process under Section 14 of the said Act. Based on arbitration agreement and the consequent award by the Arbitrator, the applicant initiated various proceedings in the Civil Court and this Court restrained the secured creditor/bank from recovering defaulted loan. Therefore, according to the prosecution, considering the averments in the arbitration award, it was clear that there was dispute between the applicant and his father-in-law which started in the year 2000 to 2005 which he was aware of on the date of execution of mortgage and, therefore, getting disbursement of loan based on false declaration of absence of encumbrances amounts to offence under Section 420 read with Section 34 of the Indian Penal Code, 1860.

4. The applicant filed an application under Section 438 before the learned Sessions Court, Pune which came to be rejected by order dated 4 January 2021. Aggrieved thereby, the applicant has filed present application.

5. This Court by order dated 15 January 2021 protected the applicant by directing him to cooperate with investigation. Said order is in force till today. There is no material on record to indicate that the applicant has not cooperated with the investigation as per order of this Court dated 15 January 2021.

6. Learned advocate for the applicant submitted that considering the rates of mortgage, the alleged encumbrances can be said to have been created with effect from 5 April 2017 which is the date of arbitration award. The charge under the clauses of operative portion of the award is default clause, which creates charge on the properties which are subject matter of mortgage on default committed by the applicant to pay the amount to his father-in-law. Therefore, according to him dishonest intention at the inception of transaction is clear.

7. Per contra, learned APP and learned advocate for the Bank submitted that the amount involved is public money and, therefore, unless the applicant deposits the amount, he is not entitled to any relief. According to them, arbitration agreement along with award is nothing but abuse of process of law and, therefore, the applicant is not entitled to discretionary relief.

8. I have considered the material on record, including arbitration award and the documents filed on behalf of the complainant which includes civil suit filed by the applicant.

9. According to the applicant, he had lodged a report against the Bank alleging that major portion of the disbursed amount has been transferred in the name of relative of the Chairman. At this preliminary stage, it is not necessary to go into allegations and counter-allegations between the parties. The scope of present application is to ascertain prima facie case against the applicant. If the material is carefully scrutinized, it prima facie appears that the mortgage deeds for disbursement of loan were executed on 25 March 2015, 14 March 2016 and 22 March 2017. There is no material as of today on record to indicate that before execution of such agreement, there were any encumbrances or charge over the mortgage properties of the applicant. The arbitration award prima facie indicates that such charge over the mortgage property was created for the first time after 5 April 2017 which is after execution of the mortgage deed. Therefore, in my opinion, custodial interrogation of the applicant is not required.

10. In so far as the request for direction to deposit the defaulted amount is concerned, it is well settled that this Court while exercising power under Section 438 of the Criminal Procedure Code, 1973 cannot impose unreasonable condition of payment of amount. Considering the defaulted amount, in my opinion, direction to repay the amount would be unreasonable condition. However, the Bank will be at liberty to adopt appropriate proceedings for recovery of amount as are permission in law.

11. For the reasons stated above, following order:

a) In the event of arrest of the applicant in connection with C.R. No.612 of 2020 registered with Bhosari Police Station for offence punishable under Sections 420 read with 34 of the Indian Penal Code, 1860, the applicant shall be released on bail on furnishing P.R. Bond in the amount of Rs.1 lakh along with one or two sureties in the like amount;

b) The applicant shall remain present before the concerned investigating officer as and when called by the investigating officer;

c) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

d) The applicant shall cooperate with the investigation and make himself available for interrogation whenever required;

12. The anticipatory bail application is allowed in above terms. No costs.

(AMIT BORKAR, J.)