IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 777 OF 2023

Santosh Vithal Khamkar
Age : 58 Years, Senior Manager and
Special Recovery Officer :
The Sahebrao Deshmukh Cooperative
Bank Ltd., 103, Trade Corner,
Sakinaka Junction, Andheri East,
Mumbai : 72. ...Applicant

vs.

The State of Maharashtra,
[Through Police Inspector :
Satara City Police Station,
District : Satara]. ...Respondent

ALONG WITH
INTERVENTION APPLICATION NO. 1007 OF 2023
IN
BAIL APPLICATION NO. 777 OF 2023

Sanjay Chandrakant More
Age : 63 Years, Occupation : Business,
R/o. : Plot No.C-3, N1, Town Centre,
Aurangabad. ...Complainant/Intervenor

<u>In the matter between</u>

Santosh Vithal Khamkar ...Applicant

vs.

The State of Maharashtra ...Respondent

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Mr.Ashok Mundargi–Senior Advocate a/w Mr.Vishal C. Ghosalkar – Advocate for Applicant.
Ms.Anamika Malhotra – APP for the Respondent – State.

Mr.Anoop U. Patil i/b. Mr.Diptendu Bose – Advocate for Complainant /Intervenor.

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CORAM : S. M. MODAK, J.
RESERVED ON : 26th APRIL, 2023
PRONOUNCED ON : 13th JUNE, 2023

P. C. :-

1. The Applicant Santosh Khamkar worked in Sahebrao Deshmukh Co-operative Bank Ltd., (referred to as "Bank") in different capacities as Branch Manager to the post of Chief Executive Officer ("CEO"). He served roughly for a period of 2010 till 2021. In the month of September-2021, he took voluntary retirement. Soon he was appointed as Deputy Chief Executive Officer on contract basis. The First-Informant Shri.Sanjay More has laid emphasis on the report submitted by Special Auditor, Cooperation. This report was submitted after inquiring about allegations made by few directors of the Bank who have resigned. The Auditor has objected to the manner of appointing Mr.Khamkar on contractual basis (Page No.12). Copy of this report is filed in Court on behalf of the First-Informant.

2. Mr.Khamkar is arrested in connection with present C.R. No. 70 of 2023 registered under Sections 406, 420, 468, 467, 471,

120-B read with 34 of the Indian Penal Code, 1860 ["IPC"]. First-Informant Sanjay More (purchaser of mortgaged property with Bank) approached the Court of JMFC and FIR was registered as per direction given under Sections 156(3) of the Code of Criminal Procedure, 1973 ["Cr.P.C."]. Mr.Khamkar is Accused No.3. Few of the directors, employees of the Bank and purchasers of mortgaged properties are named as Accused persons.

3. The allegation in the FIR in short is as follows :-

(a) borrower Mr.Vijay Shinde firstly sold land in the year 2011 (mortgaged to Bank) to Partnership Firm M/s. Crystal Builders without obtaining consent of lender / Bank.

(b) Partners of the said Firm consist of relatives of the directors of the Bank.

(c) Borrower Vijay Shinde divided the land into 75 plots after converting the use of the land to non-agriculture.

(d) Bank granted NOC to borrower Shinde to sell 16 plots.

(e) M/s. Crystal Builders sold 5 plots to various persons and sold one plot to one Shri.Arun Nalawade on 25th March, 2014 for Rs.60,00,000/-.

(f) Bank has sanctioned a loan of Rs.2,50,00,000/- to said Nalawade.

(g) The borrowers Shri.Shinde and subsequent borrower

Shri.Nalawade became defaulters.

(h) Certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 ["MCS Act"] was issued in respect of outstanding loan of Shri.Shinde on 17th January, 2013 and in respect of outstanding loan of Shri.Nalawade on 29th July, 2019.

(i) The Applicant being CEO of the Bank is aware of all the transactions.

(j) The Bank appointed Shri.Arvind Dhanawade as Special Recovery Officer and he put the mortgaged properties to auction.

(k) The auction was organised on 26th September, 2016 in the Office of Grampanchayat – Kodoli.

(l) Mr.Dhanawade even though knowing that borrower Shri.Shinde was a defaulter, he was allowed to participate in the auction.

(m) Offer given by borrower Mr.Shinde was accepted for two properties. He paid EMD for one property whereas cheque issued towards EMD of another property got dishonoured.

(n) Bank Officials insisted on First-Informant Mr.Shinde to participate in the bid.

(o) When cheque given by borrower Shri.Shinde was dishonoured, Bank Officials including present Applicant visited Aurangabad and convinced Applicant to go further for that property as he was second highest bidder.

(p) Bank has also sanctioned him loan of Rs.2,00,000,00/-.

(q) Bank executed two sale-deeds in favour of the First-Informant Shri.More on 30th March, 2017.

(r) Lands transferred in his name.

(s) He got knowledge about defect in the title of Bank to transfer the lands when he went to SBI and Saraswat Bank for loan.

(t) He has issued legal notice to Bank and others on 23rd October, 2017.

4. On this background, FIR came to be lodged. I have heard learned Senior Advocate – Shri.Ashok Mundargi, learned Advocate Shri.Vishal Ghosalkar for Applicant, learned APP Ms.Anamika Malhotra for Respondent-State and learned Advocate Shri.Anoop Patil for First-Informant.

5. From bulky charge-sheet, learned Senior Advocate Shri.Mundargi has pointed out relevant materials which according to him is adverse against his client. According to him, inspite of these materials, detention of Applicant in jail is not required as charge-sheet is filed. According to him, on the date of public auction, he was called by the Special Recovery Officer to assist him only. And even if he has visited Aurangabad, it was in the best interest of the Bank.

6. Whereas, according to learned APP Ms.Anamika

Malhotra and learned Advocate Shri.Anoop Patil, the Applicant being a responsible Officer was supposed to be fair and impartial to outsiders while performing his duties. Along with others, he has failed to disclose to the First-Informant about defect in the title of properties kept for sale in the auction. By not disclosing the material facts, the Applicant has decepted the First-Informant. The First-Informant is cheated for crores of rupees. Because, on one hand, there is a loan of huge amount on his shoulders and on other hand, he could not get a property having clear and marketable title. That is how, they have strongly objected for grant of bail. Apart from Police papers, they invited my attention to following facts / documents :-

(a) Report given by the Special Auditor (visiting squad) vide covering letter dated 30th May, 2022 pointing out various faults, lacunae in loan proposal.

(b) It includes loan granted while purchasing the properties by the First-Informant also.

(c) Not following the procedure while sanctioning loans. Selling properties to the First-Informant when title is not clear.

(d) Report 30th May, 2022 submitted by Special Auditor (visiting squad) about inquiry conducted on the complaint filed by few directors who have resigned. They have objected to certain acts.

(e) Appointment letters and resolution of the Applicant which suggest that how it is against rules.

7. Shri.Ghosalkar invited my attention to following documents :-

(a) Copy of letter dated 8th November, 2017 issued by Bank thereby appointing First-Informant Shri.More as Advisor to Bank with effect from 30th October, 2017.

(b) Reply dated 22nd November, 2017 given by Complainant expressing gratitude for his appointment.

(c) Copy of notice dated 23rd October, 2017 issued by the Complainant to directors of the Bank thereby demanding remaining amount (which mentions that amount of Rs.2,50,00,000/- is returned to him).

(d) Some of the orders passed by this Court in matters involving Bank as one of the parties.

Observations

8. Law permits to take away liberty of the individual if he breaches the law. He can also be detained behind bar till the time his guilt is inquired. But this is not in every case. It can be in serious offences against body, involving property valuing crores of rupees, involving offences under Special Acts etc. Certainly, present offence is not an ordinary offence. There is an allegation that First-Informant is cheated by directors and officers (named therein) and there is a loss of rupees in crores to the First-Informant (in the sense he was

convinced to took loan for purchase of property and property having defect in title is sold to him). No doubt, the Applicant has held responsible post in the Bank. He was Chief Officer of the Bank. He is having full administrative control. His responsibility cannot be restricted to particular branch. One cannot forget that on the date of public auction and thereafter, in Aurangabad, he remained present as Deputy Chief Officer. (even though Special Recovery Officer was conducting the public auction).

9. The acts alleged by the First-Informant give rise to a criminal action and he may think of proceeding further for recovery of damages / compensation. Undisputedly, in a criminal prosecution, you cannot expect the wrongdoer / accused to compensate the First-Informant. While dealing the issues raised before it, Criminal Court does not strive to recover the amount lost by the First-Informant. When an offence just like present offence is based on documents, because it is a piece of evidence.

10. Looking to the present matter on background quoted above, this Court feels that the Applicant is entitled for bail. Because, Court has to strive the balance in between the competitive claims, liberty of an individual on one hand and right of Prosecution to collect evidence. Charge-sheet is filed against the Applicant. In

addition to above stakeholders, now we have to consider the rights of First-Informant also. He has certainly assisted the Court in coming to a proper conclusion. He has got right to place reference on documents and he may throw light on certain aspects which are overlooked on behalf of the Prosecution. But, First-Informant cannot overstretch his rights in such a way which will amount to taking over the responsibility of conducting prosecution.

11. When viewed from above perspective, request for bail needs to be accepted. Under the garb of protecting the interest of First-Informant, Court cannot overlook the principle of innocence. We should not authorize detention (by rejecting bail application) which will amount to pretrial punishment. There can be strict conditions imposed on the Applicant. Hence, order :-

O R D E R

(i) Applicant Santosh Vithal Khamkar be released on bail in connection with C.R. No. 70 of 2023 registered with Satara City Police Station on furnishing personal bond and surety bond of Rs.50,000/-.

(ii) Applicant not to leave the Maharashtra State till conclusion of trial.

(iii) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.

(iv) Applicant to co-operate the Police as and when required.

(v) Applicant is directed to provide mobile, email address to the Investigating Officer.

(vi) Applicant to inform the Investigating Officer about change of residential address.

12. These are my prima facie observations. Let the learned trial Court need not be influenced by them.

13. Application is disposed of in the aforesaid terms.

14. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]