IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1232 OF 2023

Dr. Advay Prashant Hiray ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Manoj Mohite, Senior Advocate, a/w Shri. Anilkumar Patil, for the Applicant.
Mr. S. H. Yadav, APP for the State/Respondent.
Mr. N. R. Bubna, for the Intervener.
PI Rahul Tarane, EOW, Nashik (R), present.

CORAM: N. J. JAMADAR, J.
DATED: 6th NOVEMBER, 2023

ORDER:-

1. Heard Mr. Mohite, the learned Senior Counsel for the applicant, the learned APP and Mr. Bubna, the learned Counsel for the intervener.

2. This is an application for pre-arrest bail in connection with CR No.51 of 2023, registered with Ramzanpura Police Station, initially for the offences punishable under Sections 409, 420, 465, 468 and 471 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code"). Subsequently the offences punishable under Sections 120B, 406, 469 and 201 of the Penal Code and Sections 3 and 4 of the Maharashtra

Order corrected as per order dtd.1/2/2024.

Protection of Interest of Depositors Act, 1999 ("MPID") seem to have been added.

3. The first informant is the Regional Officer, Malegaon Branch, Nashik District Central Co-operative Bank Ltd., Nashik. The applicant was the Chairman of the Nashik District Central Co-operative Bank ("DCC Bank") in the year 2012 – 2013. Smt. Renuka Devi Yantramag Mahila Sahakari Soot Girani Ltd., District Nashik ("Renuka Devi Society"), accused No.1, is a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 ("the Act, 1960"). Accused No.2 Sou. Smita Prashant Hiray was the chairperson of the said Society. Sou. Surekha Dinesh Shirude – accused No.3 was the Vice-Chairman of the said Society. Accused Nos.4 to 14 were the Directors of accused No.1 - Shri Vyankatesh Co-operative Bank Ltd., Malegaon, accused No.15 is another Co-operative Society. Prashantdada Hiray, accused No.16, was its Chairman and accused Nos.17 to 28 were its Directors.

4. In the year 2012, "Renuka Devi Society" had applied for a loan to set up a spinning mill. Initial project report was of 340 laks. On 5th January, 2013, while the applicant was the Chairman of the DCC Bank, under resolution No.13, a loan of

Order corrected as per order dtd.1/2/2024.

Rs.280 lakhs was sanctioned. For the said loan, property bearing Gat No.104 B and 104/1/C, Plot Nos.24, 25 and 26, then valued at Rs.1,51,74,650/-, was mortgaged. Against the same security, under resolutions dated 16th Mach, 2013 and 16th April, 2013, further amounts of Rs.220 lakhs and Rs.246 lakhs were advanced by the DCC Bank under the chairmanship of the applicant. Thus, an amount of Rs.7.46 Crores was advanced to Renuka Devi Society, of which the applicant's mother Smita Hiray, accused No.2, was the then chairperson.

5. An audit conducted under the provisions of Section 81 of the Act, 1960 revealed serious irregularities and fraudulent acts in the sanction of the said land amount. It was, *inter alia,* alleged before sanctioning the loan it was incumbent to upon the Directors of the DCC Bank to ascertain whether any Director or his relative was at the helm of the affairs of the borrower Renuka Devi Society, an inadequate security, then valued at Rs.1,51,74,650/-, was accepted against the first tranche of loan of Rs.2.80 Crore and the same security was accepted against the second and third tranches of 2.20 Crores and 2.46 Crores, the loan amount was credited to the account of Renuka Devi Society instead of the amount being disbursed to the sellers of equipments and machinery, no equipments and machineries were allegedly acquired and instead the amounts were diverted from the account of Renuka Devi Society to the account of Vyankatesh Society. Eventually the borrower Renuka Devi Society committed default in repayment of the loan amount. And, thus, the money was siphoned off.

6. Alleging commission of offences punishable under Sections 409, 420, 465, 468 and 471, the then Regional Officer, DCC Bank, Malegaon, lodged complaint with Ramzanpura Police Station on 3rd December, 2018.

7. It seems, in the intervening period, the Registrar, Co-operative Societies, conducted an enquiry under Section 88 of the Act, 1960 and under an enquiry report dated 31 December 2021, determined the liability of the delinquent office bearers/officers of the DCC Bank. All the then members of the Board of Directors of DCC Bank, Chief Executive Officer and Manager Non-agricultural Loan Department were held jointly and severally liable. The applicant was allegedly held liable for the principal amount of Rs.35.90 lakhs and the interest accrued thereon in respect of the loan advanced to Renuka Devi Society.

8. Eventually, FIR No.51 of 2023 came to be registered on 30th March, 2023, interestingly at 1.13 am. Apprehending arrest, the applicant and other five co-accused had approached the Court of Session. By an order dated 21st April, 2023, the learned Additional Sessions Judge was persuaded to exercise the discretion in favour of the rest of the co-applicants. However, the learned Sessions Judge declined to exercise the discretion in favour of the applicant primarily for the reason that the applicant was the then chairman of DCC Bank and the loan came to be advanced to Renuka Devi Society, of which applicant's mother was the then chairperson.

9. When the application was listed before this Court, upon a statement being made on behalf of the applicant that the applicant was willing to deposit an amount of Rs.25,00,000/- without prejudice to his rights and contentions, this Court was persuaded to grant interim protection in the nature that the applicant shall not be arrested till the next date. The applicant deposited the said amount of Rs.25,00,000/- on 4th May, 2023.

10. Mr. Mohite, the learned Senior Counsel for the applicant, submitted that the fact that FIR came to be registered at 1.13 am. on 5th March, 2023, when the complaint was lodged by the then Regional Officer of DCC Bank in the year 2018, by itself, indicates the design with which the applicant is sought to be proceeded against. It was submitted that the applicant has been working with a political party. In the wake of a split in the said political party, applicant joined forced with a group which is out of power. On account of the said political affiliation, a spate of FIRs followed in quick succession. Out of political vendetta the police machinery was galvanized to dug up a complaint which was lodged in the year, 2018. Therefore, the personal liberty of the applicant deserves to be protected, urged Mr. Mohite.

11. On the merits of the matter, Mr. Mohite submitted that the falsity of the allegations that the loan amount was siphoned off without purchasing the machineries and equipments is borne by the fact that the property, alongwith equipments and machineries, of Renuka Devi Society was sold by the Bank, after resuming possession thereof, and a sum of Rs.1,78,00,000/- has been realised. The failure on the part of the Renuka Devi Society to repay the loan amount was on account of the circumstances which rendered the spinning mill business unviable and default, in turn, on the part of the debtors of Renuka Devi Society.

12. Moreover, an audit under Section 81 of the Act, 1960 has been conducted, followed by an enquiry under Section 88 of the Act, 1960. In any event, all the documents are in the custody of the Bank. At this stage, the custodial interrogation of the applicant is not at all warranted for any purpose whatsoever. The applicant is held liable to the tune of Rs.35.90 lakhs. Out of the said amount, the applicant has already deposited Rs.25,00,000/- and, therefore, the applicant deserves the exercise of discretion, submitted Mr. Mohite.

13. In opposition to this, the learned APP submitted that a clear case of fraud has been made out. It was urged that the bank had lodged the complaint immediately after the fraud was realized and default was committed by Renuka Devi Society. Therefore, the fact that the FIR came to be registered in the year 2023 cannot be pressed into service by the applicant to question the prosecution. The deposit of Rs.25,00,000/- by the applicant is of no avail as the determination by the Registrar of the liability of Rs.35.90 lakhs cannot be said to be apportionment of the blame. In

Order corrected as per order dtd.1/2/2024.

fact, the applicant being the chairperson of the DCC Bank was disabled from sanctioning the loan to a Society, of which the applicant's mother was the chairperson.

14. Mr. Bubna, the learned Counsel for the intervener, laid emphasis on the fact that the property, of which the value was even then grossly inadequate was taken as a security for the first tranche of loan of Rs.2.80 lakhs. In fact, prudent banking norm required that security should have at least covered the principal amount, if not more. The subsequent resolutions passed in the month of March and April, 2013 sanctioning further tranches of loan against the very same security clearly indicate a fraudulent intention. Mr. Bubna made a pains taking effort to draw home the point that, in effect, applicant had advanced loan to himself by furnishing a non-existing security. It was further urged that accounts of the use of the funds submitted by Renuka Devi Society further indicate that out of the loan amount, a plot admeasuing 1215 sq. mtrs. valued at Rs.91,12,520/- was purchased and the same was, in turn, offered as a security. Fraud is writ large, urged Mr. Bubna.

15. The submission on behalf of the applicant that on account of change in political affiliation the applicant is being

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hounded by registering successive FIRs in respect of the transactions which have taken place in distant past, undoubtedly deserves consideration. There is material to show that in the year 2023 a spate of FIRs came to be registered against the applicant. However, the matter cannot be appreciated through the said prism of loan. The reason is not far to seek. It is trite that an offence must not go uninvestigated if not unpunished. The motive behind the prosecution must enter the judicial determination but, at the same time, were there is an element of criminality, it should not be allowed to go uninvestigated, provided there is no statutory bar.

16. In the case at hand, the submission that the FIR came to be registered at the dead of the night, upon change in the political affiliation, though attractive at the first blush, is required to be subjected to judicious scrutiny. It is imperative to note that the Bank had lodged the complaint in the year, 2018 itself. Inaction on the part of the investigating agency cannot be pressed into service as either reflecting upon the genuineness of the allegations or certifying the innocence of the applicant. Therefore, I deem it appropriate to delve into the merits of the allegations, albeit *ex facie.*

Order corrected as per order dtd.1/2/2024.

17. A clear case of conflict of duty and interest qua the applicant is made out. In all fairness, it deserves to be recorded that, Mr. Mohite, the learned Senior Counsel for the applicant, was candid to state that, perhaps, the conflict of duty and interest cannot be controverted. The applicant was the chairman of the DCC Bank. Loans were advanced to Renuka Devi Society, of which the applicant's mother was the chairperson. Could it be brushed aside as a mere irregularity or an imprudent lending exercise ?

18. The material on record *prima facie* suggest to the contrary. Initially Renuka Devi Society demanded a lona of Rs.3.40 Crores. Property of Renuka Devi Society admeasuring 1215 sq. mtr. valued at Rs.1,51,74,650/-, as of 4th November, 2012, was offered as security. Against the said security, first tranche of Rs.2.80 Crores was advanced. The second tranche of Rs.2.20 Crores and the third of Rs.2.46 Crores were again advanced against the very same security. The second tranche of loan sanctioned under resolution No.12/2012, was under nine days of the application, and the third, under 11 days of the application.

19. The utilization of funds certificate dated 4th November, 2012 indicates that a land admeasuring 1215 sq. mtrs. was purchased out of the a loan advanced by the DCC Bank for a consideration of Rs.91,12,500/-. *Prima facie,* the same land was offered by way of security. All these factors, coupled with a clear conflict of duty and interest justify a *prima facie* inference that the advance of the huge amount of Rs.7.42 Crores was actuated by a dishonest intent.

20. It is true that subsequently the property of Renuka Devi including the plant and machinery was sold and a sum of Rs.1,76,00,000/- has been realized. Yet, there are allegations to the effect that the loan amounts were directly credited to the account of Renuka Devi Society and a substantial amount was diverted to the current account of Vyankatesh Co-operative Bank Ltd. - accused No.15, of which the father of the applicant Prashantdada Hiray, accused No.16, was the chairman.

21. *Prima faice,* it does not appear to be a case of the failure on the part of an enterprise to repay the loan availed from the Bank. On the contrary, if the attendant circumstances are cumulatively considered, a fraudulent intention is manifest from the inception of the sanction of the loan to Renuka Devi Society.

Order corrected as per order dtd.1/2/2024.

22. The submission of Mr. Mohite that the Registrar has determined the liability of the applicant to the tune of Rs.35.90 Crores in an enquiry under Section 88 of the Act, 1960 deserves to be noted to be repelled. It seems the Registrar has simply divided the loss suffered by the bank by the number of persons, who were held jointly and severally liable. That surely cannot be the parameter especially when there is *prima facie* material to show criminal intent since inception.

23. For the foregoing reasons, I am impelled to hold that a clear case of fraud is *prima facie* made out. The DCC Bank was duped by offering an inadequate security, even against the first tranche, leave aside the second and third tranches. Such financial frauds deserve to be properly investigated to unmask the identity of the persons privy thereto, the real beneficiaries of the fraud and, if possible, trace the money which has been siphoned off. Custodial interrogation of the applicant is, therefore, warranted.

24. I am thus not inclined to exercise the discretion in favour of the applicant.

Order corrected as per order dtd.1/2/2024.

25. Hence the following order:

: O R D E R :

(i) Application stands rejected.

(ii) Interim protection stands vacated.

(iii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]

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