IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.401 OF 2021

Balkrishna Jamnalal Vyas ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Aniket Vagal with Mr. Kunal Pednekar, Divesh Mehani for the Applicant.
Mr. S.V. Gavand, APP for Respondent-State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th APRIL, 2023.

P. C. :-

1. The Applicant seeks pre-arrest bail in C.R. No.180 of 2018 registered with Mahim Police Station, Mumbai, for the offences punishable under Sections 120B, 406 and 420of the IPC.

2. Heard Mr. Vagal, learned counsel for the Applicant and Mr. Gavand, learned APP for the Respondent-State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR dated 26/05/2018 lodged by Rafik Gulam Mohd. Maniyar. The

Applicant herein was the Branch Manager of Bank of India, Branch-Kalbadevi. The FIR reveals that the Applicant herein had sanctioned loan of Rs.2.50 crores to one Company by name M/s. Gayatri Exports, of which one Sunil Gupta was alleged to be one of the Directors. It is stated that the land owned by the First Informant was mortgaged as collateral security to procure the loan. It is stated that said Sunil Gupta as well as the co-accused Sharad Rochlani siphoned off the loan amount and cheated the Bank by forging the documents.

4. Learned counsel for the Applicant states that the Company-M/s Gayatri Exports was in the name of Viral Tanna, who is one of the Directors of M/s. Gayatri Exports and that the Applicant is in no way connected with the said Company. It is stated that Sunil Gupta and Sharad Rochlani availed loan of Rs.2.5 crores by forging and fabricating the documents and they have misappropriated the said amount and cheated the Bank. Learned counsel for the Applicant states that the Applicant is a bank official and that he had sanctioned the loan on the basis of the report submitted by the panel of lawyers.

5. Per contra, Mr. Gavand, learned APP submits that the Applicant is involved in committing another crime being C.R. No.321 of

2018 wherein the Applicant has sanctioned loan of Rs.2 crores to one Ganesh Iyyar of M/s. Water Stone Company. It is stated that the land, which was mortgaged for securing the said land was situated at Village-Kiravali, Taluka -Vasai. It is stated that the co-accused -Sunil Gupta and Sharad Rochlani are also accused in the said crime and they have misappropriated an amount of Rs.2 crores in that crime and the modus operandi in both the crimes is exactly the same. Learned APP further states that the Applicant has sanctioned loan in both these crimes on the basis of forged and fabricated documents and without physical verification of the land. He submits that same set of subordinate officers are involved in both these crimes.

6. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. A perusal of the FIR prima facie reveals that the First Informant was interested in selling his land situated at Murbad, District-Thane. He came in contact with Sharad Rochlani -accused No.1, who expressed his willingness to purchase the said land for an amount of Rs.2 crores. Said Sharad Rochlani alongwith one Sunil Gupta, who claimed to be one of the Directors of M/s. Gayatri Exports applied to the Bank of India, Branch-Kalbadevi for loan of Rs.2.5 crores

to purchase the said property. The First Informant therefore handed over all the original documents in respect of the said property to accused No.1-Sharad Rochlani in order to enable him to avail the said loan. The First Informant also gave no objection to Sunil Gupta to mortgage the said property at Murbad towards collateral security to procure the loan of Rs.2.5 crores.

8. The First Informant has stated that co-accused Sharad Rochlani gave him a cheque for an amount of Rs.3,00,000/- as a token amount. Thereafter the Bank Officers visited the property and on 26/12/2014 a mortgage deed was executed whereby the property belonging to the First Informant was mortgaged in favour of the bank. The First Informant was asked to stand as guarantor and mortgage deed came to be executed by mortgaging the said property in favour of the bank as collateral security. The First Informant has stated that accused No.1-Sharad Rochlani had paid to him an amount of Rs.5,00,000/- by cheque towards part sale consideration. The First Informant thereafter received notice from the Bank of India for attachment of the property. The First Informant learnt that the account of M/s. Gayatri Exports was declared as NPA and securitisation proceedings were initiated by the Bank. The First Informant therefore

lodged the FIR against Sharad Rochlani and others for cheating him and misappropriating the money.

9. The records reveal that the Applicant herein was the Branch Manager of the Bank of India. He had sanctioned the loan in favour of Sunil Gupta, proprietor of M/s. Gayatri Exports at the instance of the co-accused Sharad Rochlani. The records reveal that said Sunil Gupta was neither the proprietor, partner nor Director of M/s. Gayatri Exports. He was not concerned with M/s Gayatri Exports. The Applicant has sanctioned loan of Rs.2.5 crores in favour of Sunil Gupta without verifying the documents of the Company and the other details of the borrower, such as PAN card, Aadhar Card, etc. The least that the Applicant was expected to do before sanctioning the loan was to comply with these mandatory requirements.

10. On 6/11/2020 this Court while granting interim bail to the Applicant had observed that it is necessary to ascertain whether the Bank Officers had played any active role amounting to serious offence in sanctioning the loan of Rs.2.5 crores or they were misled by the main accused by submitting forged documents. It was held that it was necessary to find out the procedure followed for sanctioning the loan and whether there was any deliberate breach amounting to any

criminal offence in sanctioning the loan. The Investigating Officer was therefore directed to file an affidavit to that effect.

11. In compliance with the said order, the Investigating Officer has filed his affidavit. I have perused the affidavit and the statements and the other documents referred to in the affidavit. The affidavit vis-a-vis the statement of witness-Jagmohansing Virendra Sing reveals that he is the proprietor of M/s. J.M.V. Enterprises, engaged in garment business. He had applied for loan of Rs.12 crores from the Bank of India, Branch-Kalbadevi. The loan was sanctioned and that he had mortgaged four shops and one flat as collateral security. He has stated that the Applicant had demanded Rs.35,00,000/- through one Ashok Katiyal. He has stated that he paid cash of Rs.18,00,000/- to the Applicant and Rs.17,00,000/- by way of cheque in the name of Ashok Katiyal and that said Katiyal deposited the said cheque for Rs.17,00,000/- into his account and later encashed it and gave the same to the present Applicant. The statement of Ashok Katiyal corroborates the said statement.

12. The statement of Jagmohansing Virendra Sing also reveals that the Applicant had introduced him to the accused No.1-Sharad Rochlani. He further states that the Applicant instructed Sharad

Rochlani to pay the remaining loan installments of Jagmohansing and that said Sharad Rochlani transferred an amount of Rs.1,25,00,000/- from his account to the account of Jagmohansingh. It is stated that the Applicant had procured cheque for an amount of Rs.2 crores from the witness Jagmohansing towards security amount. It is further stated that said M/s. J.V.M. Enterprises Pvt.Ltd. was subsequently declared bankrupt and auctioned for Rs.10 Crores by the Debt Recovery Tribunal (D.R.T.).

13. The records also reveal that Crime No.321 of 2018 is registered against the Applicant for the offences punishable under Sections 120B, 406, 420, 465, 467, 468 and 471 r.w 34 of the IPC. The said crime was registered pursuant to the FIR lodged by Smt. Gloria Joseph Cardozo. A perusal of the FIR lodged by Gloria prima facie reveals that she is the owner of property under Survey No.10, Hissa No.1. Sharad Rochlani agreed to purchase 2 guntha out of the said property for consideration of Rs.50,00,000/-. She has stated that the co-accused Sharad Rochlani had taken the original documents from her for the purpose of availing the loan and gave Rs.2,25,000/- to her and agreed to repay the balance sale consideration after obtaining loan from Bank of India. The First Informant -Gloria has further alleged

that accused Sharad Rochlani had applied for loan in the name of Ganesh Ramchandran Iyyar, alleged to be the Director of M/s Water Stone Company. It is stated that the said land, which was agreed to be sold to Sharad Rochlani was, in fact mortgaged with the Bank of India towards collateral security. The Applicant herein sanctioned loan of Rs.2 crores to M/s. Water Stone Company on the basis of forged and fabricated documents.

14. The accused in this crime are also the accused in Crime No.180 of 2018. The modus operandi adopted in both these crimes was to enter into oral agreement for sale of property, to avail loan in the name of fictitious person by mortgaging the property of the vendor as collateral security and thereafter siphoning off the money and thus cheating the bank as well as the vendor. It cannot be a coincidence that the Applicant has sanctioned loan in both these crimes without verifying the requisite documents. The material on record also prima facie reveals that the Applicant has close nexus with Sharad Rochlani, the main accused in both these crimes. All these facts and circumstances, prima facie prove the involvement of the Applicant in commission of the crime.

15. Considering the nature of the accusations against the

Applicant and the material in support thereof, in my considered view this is not a fit case to exercise discretion under Sections 438 of the Cr.P.C. Hence, the application is dismissed.

16. Learned counsel for the Applicant seeks extension of interim relief. The interim protection granted to the Applicant is extended by three weeks to enable the Applicant to approach the higher Court.

(SMT. ANUJA PRABHUDESSAI, J.)