Diksha Rane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.798/2022

RAKESH KIRIT KADAKIA ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

WITH
INTERIM APPLICATION NO.1571/2022
IN
ANTICIPATORY BAIL APPLICATION NO.798/2022

YES BANK LIMITED ..APPLICANT
VS.
THE STATE OF MAHARASHTRA & ANR.
..RESPONDENTS

Mr. A. P. Mundargi, Senior Advocate a/w. Mr. S. N. Raj for the applicant.
Mr. Sandeep C. Kekane for the intervener.
Mr. S. H. Yadav, APP for State.

CORAM : M. S. KARNIK, J.

HEARD ON : DECEMBER 14, 2022.

PRONOUNCED ON : MARCH 9, 2023.

ORDER :

1. This is an application for pre-arrest bail. The offences alleged against the applicant is registered vide First Information Report (FIR) No.16/2022 dated 11.01.2022 registered by E.O.W., Mumbai, under

Section 406, 409, 420, 477(A), 120(B) r/w 34 of Indian Penal Code.

2. Before setting out the prosecution case as per the complaint, a few facts are necessary to be stated.

The applicant is one of the directors of a company named 'Vrise Securities Pvt. Ltd. (hereafter 'the company' for short). In the year 2012, the YES Bank approached the said company and offered to provide banking facilities to the said company. During the course of negotiations, the company informed YES Bank that it wanted a bank guarantee issued in favour of Edelweiss Custodial Services Pvt. Ltd. (hereafter 'Edelweiss' for short) to the extent of Rs.10 crores. The company was asked to apply for overdraft facility and if the same was sanctioned, YES Bank would issue bank guarantee in favour of Edelweiss based on the overdraft facility. On July 27, 2012, the company applied for overdraft facility to the tune of Rs.10 crores. After conducting due diligence including inspection of books of accounts and relevant documents, inspection of immovable property to be offered as security, YES Bank issued a letter on June 25, 2013, sanctioning the said facility to the extent of Rs.9.5 crores in favour of the company. Based on the aforesaid facility, YES Bank issued a bank guarantee in the year 2012 to the extent of Rs.9.30 crores in favour of Edelweiss. Following securities came to be provided by the company: -

(a) Fixed Deposits of Rs.2.75 crores pledged with YES Bank.

(b) Mortgage of residential flat admeasuring 1380 sq.ft. situated at Worli (hereafter 'the said flat' for short), the present value of which according to the applicant is Rs.5.27 crores.

(c) Balance lying in the company's Exchange Clearing Accounts.

(d) Personal Guarantees of Directors

3. According to the applicant, the valuation of the said flat under the distress sale is Rs.5.27 crores. According to the applicant, an amount of Rs.8 crores was always there with YES Bank as security ever since the inception of the transaction leaving behind only an outstanding exposure to the extent of Rs.1.3 crores. The said exposure was backed up by personal guarantee and security of amount lying in bank account of the company with YES Bank. It is the applicant's case that the bank's overdraft facility of Rs.9.3 crores was adequately covered by the aforesaid collaterals given to YES bank by the company. The facility was renewed by YES Bank from time to time till the year 2019. Every year due diligence was conducted by YES Bank by inspecting the relevant documents and books of accounts. YES Bank charged and earned income of approximately Rs.6.5 crores from the company as and by way of fees and other charges for renewing the said guarantee from the year 2013 to 2019.

4. The applicant states that the brokerage charges kept on reducing every year but expenses remained the same. On November 7, 2019, Edelweiss invoked the said guarantee for a sum of Rs.9.3 crore alleging that the company had defaulted. Edelweiss also sold shares belonging to the clients of said company as observed in order dated February 12, 2020 passed by National Stock Exchange, causing tremendous prejudice to the company. Upon invocation, YES Bank paid Rs.9.3 crores to Edelweiss under the said guarantee on November 7, 2019. YES Bank was still holding Fixed Deposits of about Rs.2.75 crores, the said flat valued at about Rs.5.27 crores and balance of about Rs.40 Lakhs in bank accounts as security in addition to personal guarantee.

5. On June 29, 2020, YES Bank issued demand notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter 'the SARFAESI Act' for short) calling upon the company to pay Rs.7,13,20,169/- being the outstanding dues. The possession notice was issued under Section 13(4) of the SARFAESI Act on September 4, 2020 to take possession of the said flat. The applicant repeatedly requested the YES Bank to take possession of the said flat, which they eventually did but have not yet sold the said flat.

6. By letter dated November 11, 2019, the applicant had asked YES Bank to appropriate the amounts lying in the bank accounts of the company towards liability of the company. On April 28, 2021, the E.O.W. addressed a letter to the applicant about enquiry being conducted into the complaint filed by YES Bank against the company and its directors including the applicant. The applicant appeared before E.O.W. on several occasions from April 29, 2021 onwards. Thereafter, the FIR being C.R.No.16/2022 was registered against the applicant.

7. As per the FIR, the prosecution case in brief is that the applicant in collusion with bank officials while renewing the bank guarantee presented falsified balance-sheets and documents projecting that the financial position of the company is sound and also showed income and expenditure in excess in audited balance-sheet of the year 2015-2019, and without showing the contingent liabilities and open trade position, submitted proposal for renewal of the bank guarantee. It is alleged that apart from the bank officials misusing their official position, the bank officials did not scrutinize the documents properly from the perspective of the risk factors, neither did they follow the safeguards provided while scrutinizing these documents. The concerned bank officials with a view that the company should be benefited by such unauthorized and improper renewal of the bank guarantee have misused their position by ignoring these falsified balance sheets and the documents submitted by the company. Upon renewal of the bank guarantee, the company used it for broking firm margin and as broking firm suffered losses, the said bank guarantee though was honoured, upon invocation of the bank guarantee, the YES Bank came to be cheated for Rs.6.76 crores.

8. Learned Senior Advocate was at pains to submit that there was no intention to cheat from beginning. Since 2013 for many years the transaction/banking activities were carried out smoothly. Substantial payments in the form of fees for the renewal of the bank guarantee and other charges was paid to the YES Bank. The bank guarantee was adequately secured. It was because of reduction of brokerage charges which led to the Company facing financial difficulties that there has been a default in paying Edelweiss. It is further submitted that even now the security is adequate to cover the dues of YES Bank. He further submits that an undertaking has been filed on behalf of the applicant that without prejudice to the rights and contentions, a sum of Rs.50 lakhs will be paid within three months from December 20, 2022 in favour of YES Bank (intervener). It is further submitted that the flat at Worli is already secured, the market value of which is Rs.5.27 crores. The applicant has no objection to Yes Bank selling the same and appropriating it towards the dues of the company towards YES Bank. Learned Senior Advocate submitted that the offer made shows the bonafides of the applicant and that the applicant has every intention to repay the dues. It is further submitted that though the allegation is that the applicant colluded with the bank officials, the bank officials have not been arrested. Action is taken only against the applicant. According to learned Senior Advocate, such pick and choose policy of the prosecution is unfair. Learned Senior Advocate relied upon the compilation of the documents to demonstrate that there is no criminality in the dealing the applicant had with YES Bank which was based on a contract and at the highest there is a breach of contract. It is submitted that the custodial interrogation is not required.

9. Learned APP and learned counsel for the intervener invited by attention to the various documents on record and the detailed reports indicating the manner in which the YES Bank has manipulated and misrepresented their financial status by producing falsified balance-sheets and the documents thereby cheating the YES Bank to the tune of crores of rupees.

10. Heard.

11. The allegations are in respect of a serious economic offence committed by the company of which the applicant was a director and responsible for the day-to-day affairs of the company. As a result of the falsified balance-sheets and on the basis of the documents presented by the company, the company projected that its financial status is sound thereby obtaining renewal of the bank guarantee from time to time. The accusation against the applicant is that in connivance with the officials of the YES Bank, on the basis of the falsified balance sheets and statements, the Company succeeded in renewing the bank guarantee from time to time. The concerned bank officials deliberately ignored to scrutinize and conduct due diligence into such falsified statements thereby exposing YES Bank to such a huge risk and a resultant monetary loss. It may be that initially the transactions were carried out by the company in accordance with the established norms. It is not the accusation that in the ordinary course of business the company has suffered losses which resulted in the default for which the appropriate action may be recovery. The specific accusation is that the company falsified the balance-sheets and the documents thereby projecting that the financial condition of the company is sound which resulted in YES Bank renewing the bank guarantee. Further accusation is that the applicant colluded with the officials of the YES Bank who deliberately ignored such falsified balance-sheets and other documents presented by the company. The reports indicate that in the audited balance-sheet of the year 2015 to 2019, there are contradictions in the income and expenditure balance. Merely because, the officials of the bank who allegedly colluded with the applicant are not arrested, cannot be a reason to justify grant of anticipatory bail to the applicant. Had the Company submitted genuine balance sheets, the bank guarantee would not have been renewed in which case the question of revocation of bank guarantee would not have arisen.

12. Considering the nature of the accusations pertaining to an economic offence involving public money, I am not inclined to accept the suggestion of learned Senior Advocate that offering security to cover the outstanding dues of YES Bank can be made a condition for granting anticipatory bail to the applicant.

13. The application is rejected. The interim application is also disposed of.

(M. S. KARNIK, J.)