IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1717 OF 2023

Rajesh Harishchandra Dahanukar ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Sudeep Pasbola with Mr. Divakar D. Rai Mr. Nitin K. Rai, Mr. Aditya Rai, Mr. Abhishek D., Mr. V. S. Tivari, Mr. Sumit Shinde i/b Mr. Ramchandra S. Rane, for Applicant.
Mr. R.M. Pethe, APP for State/Respondent.
Mr. Pratap Bandgar, PSI, Malad Police Station.

CORAM:- N. J. JAMADAR, J.
DATED:- 4th SEPTEMBER, 2023

ORDER:-

1) Apprehending arrest in CR No. 11 of 2023, registered with Malad police station for the offences punishable under Sections 406, 409 and 420 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), the applicant has preferred this application for pre-arrest bail.

2) The gravamen of indictment can be summarised as under:-

(a) Mr. Savio Oswalt Montero, the Branch Manager of Model Co-operative Bank Ltd., Malad Branch, lodged a report with the allegations that the co-accused No. 1 Sapna Kumar Bhatt was empanelled as a valuer by the Bank to certify the metal as gold, its purity, the value thereof and the maximum loan admissible against the gold/gold- ornaments, under the gold loan scheme. During the period of 1st April 2020 to 31st March, 2022, Six of the customers had availed loans by pledging the gold to the tune of Rs.53,03,000/-. Few of the accounts became non-performing assets. To invoke the pledge and sale the security, the bank called the customers and co-accused Sapana, the valuer. None turned up. When the gold pledged by those customers was got verified from another valuer, it transpired that the gold jewellery was made of artificial - imitation metals, stones and beads and they were of not gold. Thus, a report came to be lodged against the empanelled valuer Sapana Bhatt and the customers. Eventually, Sapana Bhatt and customers namely, Sonal Shringare Mohammad Saifi and Sabina Mohd. Saifi came to be arrested.

(b) During the course of the investigation, it transpired that all the customers had approached Malad Branch through the applicant. In some cases, the fake yellow metal ornaments were made available by the applicant, and the applicant, the Sapana Bhatt and the customers had shared the loan amount, which was fraudulently got disbursed on the strength of fake yellow metal ornaments.

(c) Apprehending arrest, the applicant initially approached the Court of Session. As the learned Additional Sessions Judge declined to exercise the discretion, the applicant has approached this Court.

3) I have heard Mr. Sudeep Pasbola, the learned Counsel for the applicant, and Mr. Pethe, the learned APP for the State at some length. I have also perused the material on record including the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

4) Mr. Pasbola submitted that there is no material to connect the applicant with the crime. The facts that the applicant is a Financial Consultant and has even referred the customers to the Bank in question, even if taken at par, are of no assistance to establish the nexus between the applicant and the offences. It was further submitted that the material sought to be pressed into service against the applicant on behalf of the prosecution, primarily consists of the statements of the co-accused, who are the real beneficiaries. Implication of the applicant, who is not shown to be the beneficiary of the transaction in question, in any form, at the instance of the co-accused, therefore, does not command much weight. Mr. Pasbola would further submit that as the Investigation is practically complete and chargesheet has also been lodged, custodial interrogation of the applicant is not at all warranted. Therefore, a case for exercise of discretion in favour of the applicant is made out.

5) Mr. Pethe joined the issue by canvassing a submission that the applicant has emerged as the principal character in duping the Bank by facilitating the loan by pledging fake yellow metal ornaments. Mr. Pethe urged that the role of the applicant is not restricted to that of mere introducing the customers to the Bank, as was sought to be urged, on behalf of the applicant, but the applicant had also allegedly procured the fake yellow metal ornaments and shared the spoils. It was further submitted that the CDR reveal that the applicant had been in constant touch with the arrested accused, over an extended period of time. This circumstance, according to Mr. Pethe, prima facie establishes the complicity of the applicant. Custodial interrogation is, therefore, necessary to unearth all the facets of the fraud, submitted Mr. Pethe.

6) Few facts appear to be rather incontestable, even at this nascent stage. One, the fact that the accused No.1 Sapana was empanelled as a valuer. Two, loans were advanced to the co-

accused under the gold loan scheme. Three, the articles which were pledged by co-accused-customers were all certified to be gold of specified weight, purity and value by co-accused No. 1 Sapana Bhatt. Four, there is material to indicate that when the accounts became NPA, the bank moved to enforce the pledge and thereupon it transpired that the articles pledged were not made of gold but consisted of imitation jewellery.

7) In light of the aforesaid facts, the role attributed to the applicant is that of introducing the customers, making them avail the loan and sharing a part of the loan so disbursed. It is true, at this stage, the allegations against the applicant are primarily based on the statements of the co-accused. However, the investigating agency cannot be deprived of the opportunity to investigate on the said count alone.

8) The material on record prima facie indicates that the allegations are not only of introducing the customers but also of inducing co-accused Sapana to get herself empanelled as a valuer, furnish fudged certificates of valuation, make available the articles, which were to be pledged to avail the gold loans and share the amount of money disbursed on the strength thereof.

9) There are two factors which, at this stage, assume prima facie significance. One, the statement of one of the co-accused namely Mohd. Asim Saifi that upon disbursal of the loan raised by pledging the gold loan, a part of the money was paid to an associate of the applicant Jitendra Bhosale is substantiated by the extract of the account. Two, the CDR indicate that the applicant had telephonic conversations with the accused - customers Sonal Shringare, Mohammad Saifi, Sabina Mohd. Saifi and Arvind Dave, on numerous occasions, during the relevant period of time.

10) Mr. Pasbole attempted to the salvage the position by canvassing a submission that the applicant being a Financial Consultant, no criminality can be attributed merely on the basis of the aforesaid telephonic conversations. I find it difficult to accede to this submission, at this stage. The material on record prima facie indicates that the applicant was allegedly involved in the fraud right from the time co-accused No. 1 Sapana became an empanelled valuer. The allegations of having procured and made available fake yellow metal articles and shared the amount of loan disbursed thereon, are such that the custodial interrogation of the applicant is warranted to facilitate further investigation. Such custodial investigation of the applicant would assist in unmasking all the characters involved in the alleged fraud, unraveling the circumstances pertaining to the offences and establishing money trail. I am, therefore, not inclined to accede to the submission on behalf of the applicant that the custodial interrogation of the applicant is not necessary.

11) Resultantly, the application deserves to be dismissed. Thus, the following order.

:ORDER:

I) The application stands rejected.

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

[N. J. JAMADAR, J.]