IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2935 OF 2022

Dinesh Amarnath Pandey ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Aniket Nikam i/b. Mr. Amit Icham for the Applicant.
Mr. S.V. Gavand, APP for the Respondent -State.
Mr. Prakash Sonawane, PSI, Pantnagar Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 29th MARCH, 2023.

P. C. :-

1. At the outset learned counsel for the Applicant seeks leave to amend prayer clause so as to give the case details. Leave is granted. Amendment to be carried out forthwith.

2. This is an application under Section 439 of the Cr.P.C. filed by the aforesaid Applicant, who is facing trial in Sessions Case No.PW/ 112/2021 pending on the file of learned Additional Metropolitan Magistrate, Vikhroli. The said case arises from C.R. No.138 of 2016 registered with Pantanagar Police Station, Mumbai, for the offences punishable under Sections 109,406, 420, 465, 467 and 471 r/w. 34 of the IPC.

3. Heard Mr. Aniket Nikam, learned counsel for the Applicant and Mr. S.V. 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.

4. The aforesaid crime was registered pursuant to the FIR lodged by Atishdas Kishordas, senior Branch Officer of ICICI Bank, Ghatkopar. A perusal of the FIR prima facie reveals that the in the year 2013 one Prasad Shetty and his wife Pournima Shetty applied for home loan to purchase a flat at Andheri from one Smt. Ijjat Haji Hasan Azagar for sale consideration of Rs.99,90,000/-. On scrutinizing the document, ICICI Bank, Ghatkopar Branch sanctioned the loan for the said amount. The loan amount was to be repaid in 180 installments. It is stated that the borrowers i.e. co-accused-Shetty couple repaid total amount of Rs.23,38,506/- in 21 installments of Rs.1,11,861/- per month. The borrowers thereafter stopped making the payment and recovery process was initiated. When the bank officers visited the flat, it was reported that the flat was occupied by the owner Smt. Ijjat Haji Hasan Azgar and he informed the officers that he had not entered into any bank transaction with the Shetty couple or any other person in

respect of the said flat. The borrowers i.e. Prasad Shetty and Pournima Shetty were not traceable. It was reported that all the documents furnished by the co-accused including the sale deed and bank accounts, etc. were fake, forged and fabricated. Hence, the complaint came to be lodged against the borrowers for the aforestated offences.

5. The records prima facie indicate that the co-accused Prasad Shetty and Pournima Shetty had availed the loan by submitting false and fabricated documents. The records further reveal that the Bank had issued a cheque No.213/696 for a sum of Rs.96,00,000/- in the name of Smt. Ijjat Haji Hasan Azgar. The said cheque for Rs.96,00,000/- was deposited in the account opened in the name of Smt. Ijjat Haji Hasan Azgar. It is reported that the said account was fake. The records reveal that from the said fake account an amount of Rs.96,00,000/- was transferred into the accounts of Shivam Enterprises, the proprietorship concern of the Applicant. The records reveal that on 21/11/2013 the Applicant transferred an amount of Rs.14,00,000/- in the account of M/s. Core Trading Company and on 31/05/2014 an amount of Rs.8,13,750/- was retransferred from M/s. Core Trading Company into the account of M/s. Shreya Enterprises, which is also a proprietorship concern of the Applicant. There is

nothing on record to indicate that the Applicant had any other business transaction with M/s. Core Trading Company. No plausible explanation has been given to justify transfer of an amount of Rs.8,13,750/-by Core Trading Company into the account of M/s. Shreya Enterprises. Furthermore, the Applicant has also transferred the balance amount to various other entities. The records thus reveal that the Applicant had transferred the entire loan amount in the accounts of the different entities.

6. Learned counsel for the Applicant contends that the said amount was transferred into the accounts of different entities at the behest of the co-accused-Shetty couple. The fact that almost entire loan amount was transferred into the account of the Applicant from the fake account allegedly opened by the co-accused-Shetty couple and that the Applicant has subsequently transferred the said amount in favour of different entities would prima facie negate the contention of the Applicant. All these facts prima facie prove that the Applicant is involved in misappropriating public money.

7. Considering the nature of the offence and the material in support thereof, I am not inclined to exercise discretion under Section

439 of the Cr.P.C. in favour of the Applicant. Hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)