IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 979/2023

Rajersh Vasantrao Rainchwar V/s State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr. D.V.Chauhan, counsel for the applicant.
Mr. Nikhil Joshi, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/12/2023.

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with the Crime No. 218/2021 registered with Police Station Sawli, District Chandrapur for the offences punishable under Section 406, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860.

2. The applicant is arrested on 24/05/2023 and since then he is in jail.

3. As per the accusation, the crime is registered on the basis of report lodged by Branch Manager - Jivan Dashrath Tangadpalliwar, of Kanyaka Nagari Cooperative Bank, Chandrapur, on an allegation that the wife of the present applicant applied for the loan from the Bank and misleading the information has been tendered in loan application

form to the bank. Resultantly, the Cash Credit Limit was provided on the basis of the said information.

4. It is further alleged that the property bearing No. 383/2, area 0.40 HR Class-I agricultural land, situated at Mouza Sawli, House No. No.11 within the limits of Nagar Panchayat Sawli, Panchayat Samiti Sawali was mortgaged in favour of the bank. It is further alleged that when the attachment panchanama was drawn, it revealed that the house was demolished and the house which was mortgaged to the Bank was not in existence and demolished by the present applicant with intention to avoid the liability to pay the loan. On the basis of said report, the Police have registered the crime against the wife of the present applicant.

5. Mr. D.V. Chauhan, learned counsel for the applicant submitted that wife of the applicant applied for the loan, she had executed collateral security and only land was given as a collateral security. He invited my attention towards spot inspection report and submitted that the spot inspection was carried out by the official of the bank. The said report also nowhere discloses that any house is standing in the said land and only, the land was mortgaged as a security against the said loan.

6. He also invited my attention towards the title investigation report and submitted that the title investigation report also nowhere states about the house property which alleged to be mortgaged in favour of the bank.

7. Thus, he submitted that mortgage deed, spot inspection report, title investigation report, none of the document speaks about the house property and nothing is on record to show that the said house property was mortgaged in favour of the bank. Now, the FIR is lodged with an allegation that the landed property along with house was mortgaged and now the said house is not in existence at the same land, and the applicant has demolished it without prior permission of the Bank only to avoid the liability to pay the loan.

8. He further submitted that now investigation is completed, as far as the recovery of loan is concerned, the proceeding is already going on under the SARFAESI Act. Considering the investigation is completed, the landed property is already mortgaged in favour of the bank, further incarceration of the present applicant is not required.

9. He further submitted that the offence alleged are not punishable with more than seven

years, considering all these circumstances, he prays for grant of bail.

10. Per contra, learned APP strongly opposed the present application on the ground that there is a prima-facie material against the present applicant which shows that wife of the present applicant has approached to the Bank for getting business loan of Rs. 75 Lakhs in her name. For that purpose, she mortgaged the land survey No. 383/2, admeasuring 0.40 HR in which house, Rice Mill and Godown are constructed. The bank further asked to submit necessary documents including Valuation Report, Search Report and other documents and on the basis of such documents, the loan was sanctioned.

11. He further submitted that during the investigation it revealed that when the attachment Panchanama was drawn, neither the House, Rice Mill and Godown were seen to be in existence at the same property, which was mortgaged

12. He submitted that as far as the information given by the Sub-Registrar and Tahsildar, the property mentioned in the mortgaged property. There is no House, Rice Mill and Godown. During the proceeding, the inquiry was also made with the Guarantor No. 2 namely Ajay Arunrao Dantulwar and the said witness has denied the signature appeared on

the guarantee agreement. He submitted that thus on the basis of the false and forge document, the loan is obtained and now only to avoid the liability, the said construction in the nature of the House and Godown is demolished. Considering the huge amount, requires to be recovered from the present applicant, his bail application deserves to be rejected.

13. He further raised the apprehension that if the applicant is released on bail, he would not be available for trial and trial will be held up. He further submitted that considering the nature of offence, bail application deserves to be rejected.

14. Having heard learned counsel for the applicant and learned APP for the State. Perused the investigation papers. There is no dispute as to the fact that wife of the present applicant has applied for the loan for the business purpose, on the basis of the documents submitted, loan was sanctioned.

15. As per the allegation for obtaining the loan property disclosed as land survey No. 383/1 admeasuring 0.20 HR. The said property is also mortgaged and the mortgage deed is also on record, which also shows that the land survey No. 383/2 area 0.40 HR Class-II agricultural land is mortgaged with the Bank. As per the allegation when the land was mortgaged in favour of the bank at that time, one

Rice Mill and Godown and one house was also situated on the said land and the land was mortgaged along with the said constructed portion. But when the attachment panchanama was drawn, the said constructed house Rice Mill was not in existence and it was destroyed by the present applicant, to avoid the liability. On perusal of the documents, admittedly in the loan application form only survey No. 383/1 admeasuring 0.20 HR is mentioned. The mortgage deed also nowhere mentions that when the property was mortgage, the House, Rice Mill and the Godown was the part and parcel of the said land. The spot inspection report which is conducted by the officer of the Bank is also on record, which also not disclosed that when spot inspection was drawn, the bank officers has the witnessed any constructed House, Rice Mill or the Godown on the said land. The spot inspection report also discloses Survey No. 383/2 admeasuring 0.40 H.R. and Plot No. 12266.79 Sq.mtr.

16. The learned APP submitted that in a valuation report, there are photographs of the said constructed portion. In fact, none of the documents i.e. loan application form, spot inspection report or the search report discloses any constructed property over the said land. Even if for the sake of argument it is assumed, that constructed portion in the nature of

House, Godown and Rise Mill was there and while taking the symbolic possession, it was not in existence and the offence is made out against the present applicant, now the investigation is completed charge-sheet is filed, the offence alleged against the present applicant are under Section 420, 467, 468, 471 for which punishment more than seven years is not provided. Even considering the applicant has committed economic offence, the Hon'ble Apex Court in ***Satender Kumar Antil Vs Central Bureau of Investigation, [(2022) 10 SCC 51]*** had considered the aspect of economic offence and observed that the question for consideration is whether it should be treated as a class of its now or otherwise. This issue has already been dealt by this Court in ***P. Chidambaram vs Directorate of Enforcement (2020) 13 SCC 791.*** After taking notice of the earlier decision governing the field, the gravity of the offence, the object of the Special Act and the attending circumstances are few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, at it may involved various activities and may differ from one place to another. Therefore, it is not advisable on the part of the Court to categories all the offences into one group and deny bail on that basis.

Suffice to state that the law has laid down in the following judgments will governed the field.

17. The Hon'ble Apex Court has reproduced the para-91 in the case of **P. Chidambram Vs Directorate of Enforcement** (supra) as well as the case of in the case of ***Sanjay Chandra V/s CBI (2012) 1 SCC 14*** and by referring the para-46 in the judgment of **Sanjay Chandra (supra)** observed that - We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, therefore, the presence in the custody may not be necessary for further investigation.

18. The above ratio laid by the Hon'ble Apex Court is applicable in the present case also. Here also, the transaction is in the nature of loan and the property is mortgaged. The recovery proceeding is already going on under the provision SARFCI Act. The investigation is already completed and charge sheet is filed, further incarceration of the present applicant is not at all required.

19. Moreover, the offences are not punishable with imprisonment more than 7 years. In the above view of and circumstances, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

ORDER

(1) The criminal application is **allowed.**

(2) The Applicant – Rajesh Vasantrao Rainchwar, in connection with Crime No. 218/2021 registered with Police Station Sawli, District Chandrapur for the offences punishable under Section 406, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860, shall be released on bail on his executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(3) The applicant shall attend to the concerned police station once a month i.e. first day of every month between 10:00 am and 1:00 pm.

(4) The applicant shall not leave the jurisdiction of the Chandrapur District without prior permission of the court.

(5) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case.

(6) The applicant shall furnish his cell phone number(s) and address with the address proof. Additionally, he shall furnish names of his two relatives and their addresses with proofs.

The application stands **disposed of.**

[**URMILA JOSHI-PHALKE, J]**