2023:BHC-NAG:16973

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

CRIMINAL APPLICATION (ABA) NO.739 OF 2023

Arun Vishwanath Bhatkar and another
Vs.
State of Maharashtra, Through Police Station Officer, Shegaon City

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Amol Jaltare, Advocate for applicant.
Mrs. Deepa Charlewar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 04.12.2023
PRONOUNCED ON : 11.12.2023

1. By this application, the applicants are seeking pre-arrest bail in connection with Crime No.547/2023, registered with Shegaon Police Station, District Buldhana, for the offences punishable under Section 420, 406, 466, 468, 471 and 120-B of the Indian Penal Code.

2. The applicants are apprehending arrest as accusation is against him, on the basis of report lodged by Mangashe Prakash Vasu, who is the Branch Manager of Jijau Commercial Cooperative Bank Limited, Amravati. As per the accusation, the present applicants have obtained loan of Rs.1,75,00,000/- from the Bank by mortgaging the property Survey No.306 Plot No.7, Flat No.A-3 and

Survey No.320/1 Plot No.10 along with the properties. The present applicants have committed the default in payment of the loan and the applicant No.2 Rajesh Parkhede without obtaining the consent of the_Bank and though his property was mortgaged to the Bank, illegally sold out the said property. Applicant No.1 Arun Bhatkar had also sold out his Flat No.A-3 without obtaining the permission of the Bank and, thereby, duped the Bank. On the basis of said report, crime is registered against the present applicants.

3. Learned Counsel Mr. Jaltare submitted that though the applicants have sold out the above said properties, but there are other properties which are mortgaged, therefore, the loan amount which is disbursed by the Bank is secured. He further submitted that now, investigation is already completed, as entire case is based on the documentary evidence, for which the custody of the applicants is not required therefore, they be released on bail in the event of their arrest.

4. Learned APP strongly opposed the application on the ground that though present applicants have obtained the loan, they have not repaid the same with intention to dupe the Bank. They without obtaining the consent of the Bank sold

out the properties which are mortgaged in favour of Bank. Thus, the act on the part of the present applicants is of serious nature and, therefore, application deserves to be rejected.

5. Having heard the learned Counsel for the applicant and learned APP for the State. Perused the recitals of the FIR and other statements of the witnesses. It reveals from the investigation papers as huge loan amount of Rs.1,75,00,000/- is disbursed to the present applicants as a loan against which they have executed mortgaged deed of Survey No. 306 Plot No.7 Flat No.A-3 and Survey 320/1 Plot No.10. These properties were mortgaged as a security towards the Bank. It reveals form the investigation papers that both applicants have entered into the agreement and executed the sale deed of the said properties without obtaining the consent of the Bank, by keeping the Bank in the dark. Admittedly, the loan amount which was disbursed to the present applicants is a public money. The facility of loan was granted to the present applicants from the amount which is investment of the general public. It was the duty of the present applicants to repay the loan amount which is disbursed to the present applicants. Instead of repaying the loan amount, which is a public money the applicants have with intent to dupe

the Bank, sold out the said properties without obtaining the consent. While considering the bail application and while exercising the discretion in favour of the present applicants, the factors to be taken into consideration are; 1) the nature of accusations and severity of the punishment; 2) reasonable apprehension of tampering with witnesses; 3) reasonable possibility of securing presence of accused, and 4) character, behaviour and standard of accused.

6. Considering the nature of the act of the present applicants, who have obtained the loan which is a public money and instead of repaying the amount, they have disposed of the security which is mortgaged in favour of the Bank. Admittedly, the public funds are misused by the present applicants which needs to be viewed seriously. While granting bail it has to be keep in mind the nature of accusation, the nature of evidence in support thereon, the severity of the punishment and the character of the accused, circumstances in which the accused has sold out the properties. As observed earlier, the public funds are misused by the present applicants. The act of the accused which is committed with due calculation and deliberate design with an intent to gain the personal profit

though the property was mortgaged. Disregard for the interest of the community is betraying the trust and faith of the community. Considering the act of the present applicants and in the background of the accusation, the applicants are not entitled to release on anticipatory bail and, therefore, their application deserves to be rejected and the same is rejected.

(URMILA JOSHI-PHALKE, J.)

Sarkate