Crl.O.P.No.13461 of 2023
and
Crl.M.P.Nos.8455 & 10132 of 2023

Reserved on 16.08.2023	Pronounced on 22.08.2023

G.CHANDRASEKHARAN, J.

This petition is filed to enlarge the petitioners on bail in Crime No.55 of 2023, on the file of the respondent police.

2.The case of the prosecution in brief is as follows:

Defacto complainant is the Assistant General Manager of the State Bank of India, RACPC MRC Nagar, Chennai – 600004. The borrower, first accused J.Muthulakshmi, is one of the Directors of M/s. Framework Infrastructure Pvt Ltd. She has a current account bearing No.35522027792, in State Bank of India, Meenambakkam Airport Branch. She was sanctioned a HTL for two flats i.e., (i) Rs 58,00,000/- in (HTL A/c No.37826858774), (ii) Rs.58,00,000/- in (HTL A/c No.37826861695) and a Suraksha loan for Rs.1,62,202/- by RACPC MRC Nagar, on 19.07.2018 and 09.08.2018, respectively, for the purchase of two flats, namely, G1 and G2, situated in

"VishwathulasiVishakha" at plot No.4, 3rd Main Road, Sri Meenakshi Nagar, Perungalathur, Chennai 600 063. The plan approval submitted by the borrower is a fabricated one, bearing the approval number of another plan given by the Commissioner, Perungalathur Town Panchayat and Member Secretary, CMDA Chennai. The valuation given by the valuer Shri. K.Balasubramanian, at the time of sanction is Rs.72.55lakhs for each flat, which is much higher than the valuation given by the valuer M/s.D.Parthasarathy Associates for Rs.9.50 lakhs and Rs.9.80 lakhs on 14.12.2019. Thus, J.Muthulakshmi and S.Jagannathan submitted a fabricated plan approval, with an intention to cheat the Bank, availed the said loans and constructed unapproved flats, namely, G1 and G2 in the stilt floor. J.Muthulakshmi executed the loan agreement on 21.07.2018, agreement to mortgage, dated 21.07.2018, Deed of undertaking, dated 21.07.2018 and confirmation letter, dated 18.09.2018. She has to pay these loan amounts along with the interest within 300 months excluding the holiday period in equated monthly installment of Rs.47,095/- with interest at 8.60%, commencing from 18.08.2018. As of now, she has paid Rs.5,26,580/- in HTL A/c No.37826858774 and Rs.5,65,706/- in HTL

A/c No.37826861695. The accounts were declared as NPA on 18.10.2019.

3.Since the bank had sensed some foul play, an Audit was conducted and based on the SPOT Audit, dated 22.03.2022, a fraud angle examination (FAE) was ordered. It is seen from the FAE Report that J.Muthulakshmi, one of the Directors of M/s. Framework Infrastructure Pvt. Ltd, Seller Mrs. J.Rajeshwar and Proprietor of Harini Constructions, had cheated the bank. The bank had disbursed the amount in the following manner : Rs.50,00,000/- each on 23.07.2018 and Rs.8,00,000/- each on 30.03.2019, through cheque credited to current account of Harini Constructions. Subsequent to these transfers, an amount of Rs.60,00,000/- and Rs.15,00,000/- were transferred on 24.07.2018 and 25.07.2018 to the current account No.35522027792 of M/s.Frame Work Infrastructure Pvt Ltd. A sum of Rs.6,00,000/- and Rs. 3,50,000/- were transferred on 30.03.2019 and 31.03.2019 to the current account No.35522027792 of M/s. Framework Infrastructure Pvt Ltd. These transfers clearly indicate diversion of funds by collusion among the accused. The construction is found to be unfinished. Both the Ground floor flats are unapproved. Practically, the value of these flats is zero. Accused in this case have conspired with each other and by producing forged and fabricated documents, obtained loan, not used the loan for the purpose intended and used the loan for a different purpose, especially, to meet their own personal needs and thus, cheated the bank.

4.The learned counsel for the first petitioner submitted that first petitioner is an illiterate woman and a villager. Her husband third petitioner started a business in the name and style of M/s.Frame Works Infrastructure Pvt. Ltd and made her as one of the Directors. She has no knowledge about the business and the business is being operated by her husband. She understood that her husband has illicit relationship with second petitioner and they have a nine years old male child, namely, Sai. First petitioner has two daughters. One is doing her under graduation and another is studying in High School. She is only a name lender and if at all anyone is responsible for the alleged criminal offence, it is the second and third petitioners. She is in judicial custody from 19.05.2023.

During the pendency of the bail petition, third petitioner undertook to settle the amount. Therefore, this Court granted interim bail to the accused. Further, her husband was arrested in connection with the other case and therefore, settlement could not be done. Since the settlement has not been done as per the undertaking given, the interim bail granted to the accused was also cancelled.

5.The learned counsel for the first petitioner further submitted that before an account is classified as a fraud account, a reasonable opportunity must be given to the customer. In support of his submission, he produced the judgment of the Hon'ble Supreme Court reported in ***2023 livelaw (SC) 243 in State Bank of India & Ors Vs. Rajesh Agarwal & Ors.*** Thus, he prays for bail for the first petitioner.

6.The learned counsel appearing for the second petitioner submitted that as per the FIR allegations, it was the first petitioner, who produced forged and fabricated documents for obtaining loan. This petitioner worked as a Manager under A1 and A3. As a dutiful employee, she complied with the directions of her employer. She is just a name lender and she has not involved in any transactions mentioned in the FIR. She has not monetarily gained from the transferred loan amount from the account of A1. She is a widow and has a college going daughter and school going son and she is in jail from 20.05.2023. Her children are not able to pay the school and college fees. Without her presence, her children are struggling for survival. Thus, he seeks bail for the second petitioner.

7.The learned counsel for the intervenor in Crl.M.P.No.10132 of 2023 submitted that this is not the only one case, where, the petitioners are involved in cheating the bank. Petitioners have cheated the State of Bank of India through obtaining various loans to the tune of Rs.13crores. With respect to the present case, the cheated amount involved is Rs.1,58,06,576/-. So far, three First Information Reports had been registered against the petitioners in Crime No.55 of 2023 by the CCB -I, Chennai, Crime No.121 of 2023 by the CCB – I, Chennai and Crime No.66 of 2023 by the CCB – II, Chennai. By producing false and fabricated documents, they have obtained loans for the purpose of construction and then diverted the funds for their own personal use.

8.Another intervenor J.Maheswari, one of the victims at the hands of the accused, filed Crl.M.P.No.8455 of 2023 opposing the bail petition. It is the submission of the learned counsel for the intervenor that at the instigation of the accused, intervenor, Maheswari, invested a sum of Rs.53,00,000/- in the sale of a residential flat in a project styled as “Framework Elite” at Bajarani Kovil Street, Jamin Pallavaram, Chennai. She also paid a sum of Rs.10,00,000/- as hand loan to the accused. She is paying Rs.50,000/- as EMI towards the home loan account every month. Accused used to frequently change their address and phone number. Accused have not completed the work and handed over the flat. Thus, intervenor, Maheswari is paying EMI to a house loan when there is no house in existence.

9.The learned Additional Public Prosecutor strongly opposed the grant of bail to the petitioners, for the reason that accused have consciously conspired to cheat the bank and the house seekers. The money sent to the constructors, namely, the second accused, was transferred to the first accused through M/s.Frame Work Infrastructure Pvt Ltd. Out of Rs.1.16 crores loan sanctioned, a sum of Rs.98,00,000/- was transferred to A1 and A3. Apart from this case, there are three other similar cases pending against the petitioners. There is no construction and there is no building and thus, the bank and intervenor Maheswari are cheated.

10.Considered the rival submissions and perused the records.

11.Since we are concerned about the grant of bail in Crime No.55 of 2023, only the facts in this case and the materials produced in this case are alone taken up for consideration. As narrated above, specific allegations against the accused in this case is that they conspired together. A1 and A3 produced fabricated plan approval and other documents and obtained two loans. After the loan amount was disbursed to the constructor/seller, namely, the second accused, 90% of the amount was transferred to M/s.Frame Work Infrastructure Pvt Ltd, where the first and third accused are the Directors. The details of the money flow are given with dates and account number in the FIR. Accused have not denied the money transfer from the bank to Harini Constructions and from Harini Constructions to M/s.Frame Work Infrastructure Pvt Ltd. Second accused is the proprietor of Harini Constructions. Thus, it is clearly established that accused in this case had, especially, the first and third accused, produced false and fabricated documents to obtain loan, then loan amount was transferred to the second accused and then transferred to the accused 1 and 3.

12.Petitioners were granted interim bail by this Court, on 21.06.2023, in Crl.O.P.No.13461 of 2023, on the basis of the undertaking affidavit filed by the third petitioner to settle the amount. However, as per the undertaking given, no settlement had taken place, constraining the Court to cancel the the interim bail granted to the petitioners. As per the submissions of the learned Additional Public Prosecutor and the learned counsel appearing for the intervenors, it is not the only case where the petitioners are being prosecuted. There are three other similar cases registered against them pending investigation. Amount said to have been cheated by the accused in this case has not been recovered so far. Investigation in this case is not completed.

13.With regard to the judgment produced by the learned counsel for the first petitioner reported in ***2023 livelaw (SC) 243 in State Bank of India & Ors Vs. Rajesh Agarwal & Ors,*** it is true that the borrowers have right to be heard before their accounts are classified as fraud. However, it is also stated in the same judgment that no opportunity of being heard is required before the FIR is lodged and registered. Therefor, the registration of FIR cannot be found faulted with. Similarly, second petitioner's claim that she is only an employee under A1 and A3 and she acted as per the directions of the accused 1 and 3 cannot also be accepted. The reason is that, out of Rs.1.16crores, Rs.98,00,000/- was transferred by her to the account of M/s. Framework Infrastructure Pvt Ltd. FIR allegations show that the defacto complainant made allegations against certain bank officials and others. Their involvement in this case is to be investigated.

14.In view of the materials available showing that petitioners have conspired to cheat the State Bank of India and in fact, cheated by obtaining loan by producing fake documents. The loan amount is not repaid, the loan amount is not recovered so far. Victims like Maheswari had also been cheated. Investigation in this case is pending. Thus, this Court is not inclined to grant bail to the petitioners.

15.Accordingly, this criminal original petition is dismissed. There is no representation for the third petitioner. Therefore, petition against the third petitioner is also dismissed for the reasons stated above. Consequently, connected miscellaneous petitions are also closed.

sli **22.08.2023**

G.CHANDRASEKHARAN , J.

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Pre-Delivery Order in
Crl.O.P.No.13461 of 2023

22.08.2023