IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

902 BAIL APPLICATION NO. 1077 OF 2024

AVINASH PRABHAKAR WAIKAR
VERSUS
THE STATE OF MAHARASHTRA
...
Advocates for Applicant : Mr. Yadkikar Amit A. and Mr.Akshay Kulkarni
APP for Respondent-State : Mr. S.P. Sonpawale
Advocates for assist to P.P. : Mr.Gholap Ajit Manohar & Mr.Ostwal Abhaykumar Dilip
...
WITH
CRIMINAL APPLICATION NO. 2971 OF 2024
IN BA/1077/2024

DHONDOPANT MOHINIRAJ KULKARNI AND ANOTHER
VERSUS
AVINASH PRABHAKAR WAIKAR AND ANOTHER
...
Advocate for Applicants : Mr. Gholap Ajit Manohar
APP for Respondent-State : Mr.S.P. Sonpawale
WITH
CRIMINAL APPLICATION NO. 3325 OF 2024

SURYAKANT KANAKMAL GANDHI AND ANOTHER
VERSUS
AVINASH PRABHAKAR WAIKAR AND ANOTHER
...
Advocate for Applicants : Mr. Ostwal Abhaykumar Dilip
APP for Respondent-State : Mr.S.P. Sonpawale
...
CORAM : S. G. MEHARE, J.

DATE : 9th October, 2024.

P.C.:

1. Heard the learned counsel for the applicant, the learned APP for the respondent-State and the learned counsel for the first informant.

2. The applicant seeks bail in Crime No.121 of 2022 registered with

Kotwali Police Station, for the offences punishable under sections 409, 420, 467, 468 and 471 read with 34 of the Indian Penal Code and section 3 of the M.P.I.D. Act.

3. The prosecution case in brief was that the applicant was the borrower of the bank. He runs a firm by name M/s AVI Engineering Works. That firm raised the loan from the bank for book debt and working capital. He has secured the loans though not able to repay. He had shown the high value of the property mortgaged against the loan. He had prepared incorrect financial statements. He had obtained the loan for the above purpose but he used that amount to repay the loan of Bank of Baroda and other banks. In short, it has been alleged against him that he has diverted the funds for the other purpose than the purpose for which it was raised. He deliberately did not repay the loan. He had conspiracy with the Directors, Chairman and Bank Officers of the bank and they had benefited out of the said loan. The amount of Rs.65,00,000/- secured from the Head office inter branch transaction. He cheated to the depositors by transferring Rs.65,00,000/- from head office inter branch transaction.

4. The learned counsel for the applicant has vehemently argued that the documents placed on record show that he never suppressed the fact that he was raising the loan of Rs.61,00,000/- plus as take over loan to repay the loan of bank of Baroda and accordingly. The loan was sanctioned on disclosing the purpose. He was placed the

sanction letter from the bank. He would submit that it is not a case against him that he did not repay a single penny. He repaid the substantial loan amount. However, the bank has initiated the action against him for recovery of that loan. The matter is pending before the D.R.T. and D.R.T. has granted him interim stay. The sum and substance of argument is that he has been made a scapegoat. He did not forge any document. On the contrary, valuation of the immovable property mortgaged is more than the loan amount. He is languishing in jail for sufficient time. Nothing is to be recovered from him. It is a matter of documentary evidence. Hence, he may be granted bail.

5. The learned APP has strongly opposed the application. He would submit that a systematic fraud has been played with depositors and Bank. He was very close to the Directors and Chairman of the Bank. It is a big scam. The loan amount was not used for the purpose for which it was disbursed. In some of the transactions, he had transferred the money from his account to the bank Manager for no reasons. The offence is serious. Such an offence is affecting the national economy. It would be harmful to grant him bail.

6. One of the Ex-Chairman of the Bank, after defeating in the elections, had made detailed investigation at his own and dug the transactions of the bank. Thereafter, he lodged the report on 17.02.2022. In the first information report, the applicant was not arraigned as an accused. Forensic audit of the bank was done and

auditor has put certain notes about the illegalities by the Directors of the Bank. After a detailed forensic audit, the persons, who have been connected with the crime were arraigned as accused. The bank has already initiated the legal proceedings against them for recovery of the loan due. Overall facts of the case reveals that it is not the prosecution case that after securing the loan, the applicant never repaid single penny. From time to time, he has repaid the loan. So far as the allegations of using the loan amount for repaying the loan of Bank of Baroda and other banks, sanction letter is very specific that it was a take over loan. Therefore, it could not be said that the loan was used for the purpose other than it was sanctioned. Except the allegations mentioned above, whether the applicant has nexus with the Chairman and Directors of the bank benefiting them, is a matter of evidence. The applicant had been interrogated thoroughly. It is not the prosecution case that the applicant did not support the investigating officer. He had roots at Ahmednagar. Hence, there is least possibility of his absconding. The trial will take its time. Hence, this Court is of the view that his detention would serve no purpose. Hence, the following order:

O R D E R

(i) Bail Application is allowed.

(ii) Applicant **AVINASH PRABHAKAR WAIKAR** be released on bail, on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, in the above Crime for the aforesaid offences, on the following conditions :

(a) He should not tamper with the prosecution witnesses.

(b) He should not indulge in identical crimes.

(c) He should attend the trial on each and every effective date of trial and co-operate with the Trial Court to conclude the trial within a reasonable time.

(d) He should co-operate with the Investigating Officer as and when call for in investigation pertaining to this crime or any other crime related to this crime.

(e) He has been released on temporary bail, which is in force till 11/10/2024. Therefore, he need not to surrender before the Superintendent of Jail. However, he should inform the Jail Authority about this order.

(iii) Criminal Application Nos.2971 of 2024 and 3325 of 2024 stand disposed of.

(S.G. MEHARE, J.)

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