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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

902 BAIL APPLICATION NO. 1512 OF 2024

ABHISHEK JAGDISH JAISWAL

VERSUS

THE STATE OF MAHARASHTRA

WITH

CRIMINAL APPLICATION NO. 3835 OF 2024

IN BA/1512/2024

RAJENDRA NAMDEO JADHAV

VERSUS

ABHISHEK JAGDISH JAISWAL AND ANOHTER

WITH

CRIMINAL APPLICATION NO. 3908 OF 2024

IN BA/1512/2024

SHAIKH FUZEL AHMED S/O SHAIKH ZUBER AHMED AND OTHERS

VERSUS

ABHISHEK JAGDISH JAISWAL AND ANOTHER

Mr.Rajendra Deshmukh, Sr. Advocate i/b. Mr. N.S. Ghanekar a/w. Mr. Ramankumar G. Dodiya, Advocate for the applicant.

Mr.Joydeep Chatterji and Mr. H.I. Pathan, Advocate for the intervenors in the respective criminal applications.

Mr.A.S. Shinde, APP for the respondent-State.

CORAM : KISHORE C. SANT, J.

DATE : 25.10.2024

PC :-

01. This application is filed seeking release of the applicant on bail in connection with Crime No.61 of 2024, registered with Vedant Nagar Police Station, Dist. Chh. Sambhajinagar, for the offences punishable under sections 406, 409. 420, 467, 468, 471 of the Indian Penal Code.

02. In the FIR it is alleged that this applicant has availed a loan of Rs. 9 crore by furnishing false and fabricated documents. In the loan proposal, he offered a property bearing CTS No.17850/2 having area admeasuring 2395.94 sq.mtr. It is shown that the said land is purchased by him by sale-deed dated 31.12.2018. After obtaining the loan, there was default in repayment of loan amount. The bank, therefore, started recovery proceedings. In the recovery proceedings, the bank created a charge on the said land. The original owners of the said land approached the bank with complaint that the mortgaged land belongs to them and they have never transferred the land in favour of anyone else. They were surprised to see that the bank has put up a board on their property. On that, the bank made enquiry with the Sub-Registrar's Office about the said document. In reply to the enquiry, the Sub-Registrar Office communicated that there is no such document registered with the office of the Sub-Registrar by communication dated 19.04.2024. It is, thus, revealed that the applicant has furnished false and fabricated documents with the bank while obtaining loan. The fabrication came to be noticed only when the bank started recovery proceedings and took symbolic possession of the said property. Immediately, on getting the loan amount, said amount is transferred on very same day in the account of

three different firms and in individual account of this accused. The complaint, therefore came to be lodged. The accused came to be arrested immediately on lodging the complaint.

03. Learned Senior Advocate Mr. Rajendra Deshmukh for the applicant submits that the applicant is behind the bars since 26.04.2024. The applicant himself is deceived by the original owners of the property. The applicant himself had been to the Police Commissioner on 22.04.2024 with application making allegations against the owners with application. He has also filed a Special Civil Suit seeking declaration against the original owners on 19.04.2024. The suit is still pending. He submits that the maximum punishment for the offence under section 409 of the IPC is 10 years, however, ingredients of section 409 are not attracted. Even section 467 is not attracted and offence alleged would be only of forgery, where punishment is only two years. Maximum punishment provided for the offence punishable under section 420 of the IPC is seven years. All the offences are triable by the Magistrate. He has already undergone practically six months imprisonment till now. He submits that the criminal proceeding is not for recovery of the amount. The co-accused is already released on bail. Learned Sr. Advocate Mr. Deshmukh further pointed out that the learned Sessions Judge in his

order itself has observed that the offence is triable by the learned Magistrate, however, refused bail only stating that the offence is serious. Thus, he prays for the bail of the applicant.

04. The learned APP submits that *mens rea* is apparent on the face of record. It is not civil dispute as tried to be shown by the applicant. In the FIR, there are clear allegations made against the accused persons. Some of the accused persons are still absconding and thus the investigation is still pending. In-fact the officers of the bank are also not traceable as they are absconding. In spite of investigation till now the amount is not traced. Money of the bank is ultimately money of depositors. He submits that the applicant is an influential person. If he is released on bail, he would influence the witnesses and tamper with the evidence.

05. Learned APP relies on the judgment in the case of **Nimmagadda Prasad Vs. Central Bureau of Investigation, 2013 Cr.L.J. 3449** to submit that no bail be granted when the allegations are genuine. He further relied upon judgment in the case of **Y.S. Jagan Mohan Reddy. Vs. Central Bureau of Investigation, reported in 2013 Cr.L.J. 2734 S.C.** and lastly on the judgment in the case of

Deepak Yadav Vs. State of U.P. and Anr. reported in AIR 2022 SC 2514.

06. Learned Advocate Mr. Chatterji though has filed application to assist the learned APP, this Court has heard him for the complainant. He submits that the Assistant Registrar has clearly stated that no such sale-deed is executed in the office of the Sub-Registrar. Thus, he prays for rejection of the application.

07. Learned Advocate Mr. H.I. Pathan for another intervenor in another application submits that in this case the property of his client is shown to have been transferred in favour of accused No.1. Said document is totally false. His clients were surprised to see a board of the bank on their property, showing that the property is mortgaged to the bank and a charge is created. Learned Advocate Mr.H.I. Pathan further states that the signatures of the owners are forged. The defence now sought to be raised is false and after thought. He thus prays for rejection of the application.

08. The learned Senior Advocate relies upon judgment passed by the Hon'ble Apex Court in **Criminal Appeal No. 2743 of 2024** in the

case of **Krishna Damani Vs. State of West Bengal.**

09. Considering all above facts, this Court has to consider as to whether a case is made out to keep the applicant in the custody. Co-accused – Ambrish Jagdish Jaiswal is also already released on bail. There is no complaint of misuse of his liberty by the said accused. The charge-sheet is also filed. Other accused persons are absconding, cannot be a ground to reject the application of the present applicant. It is settled position that the criminal prosecution is not for recovery of the amount. For these reasons, this Court is inclined to allow this application. Hence, the following order :-

ORDER

- (i) The application is allowed.
- (ii) The applicant shall be released on bail in connection with Crime No.61 of 2024 registered with Vedant Nagar Police Station, Dist. Aurangabad for the offence punishable under sections 406, 409, 420, 467, 468, 471 read with section 34 of the Indian Penal Code on furnishing PR bond in the sum of Rs. 30,000/- (Rupees Thirty Thousand) with one solvent surety in the like amount.
- (iii) The applicant shall attend the concerned police station as and when called by the investigating officer for the purpose of investigation.

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- (iv) The applicant shall not tamper the prosecution evidence and shall not pressurize the prosecution witnesses.
- (v) The applicant shall give his contact details like mobile phone number, address etc. and in case there is any change in the contact details, same shall be informed immediately to the concerned police station.
- (vi) Criminal Application Nos. 3835 of 2024 and 3908 of 2024 for assist to learned APP are allowed and disposed off.

[KISHORE C. SANT, J.]