IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2554 OF 2024

Ashwini Satish Nalawade ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Kuldeep S. Patil a/w. Mr. Ashish Kumar Srivastava, i/b. Saili Dhuru for applicant.

Mr. Bapu V. Holambe-Patil, APP for respondent-State.

N. S. Magdum, PSI, Karad City Police Station, District Satara.

CORAM : MANISH PITALE, J.
DATE : 26th SEPTEMBER, 2024

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No.0831 of 2024 dated 14.06.2024, registered at Karad City Police Station, District Satara, for offences under Sections 120-B, 167, 193, 218, 220, 420, 465 and 499 read with Section 34 of the Indian Penal Code, 1860.

3. The informant in the present case, had to approach the Magistrate under Section 156(3) of the Criminal Procedure Code, 1973 for an order/direction resulting in registration of the aforesaid FIR. The informant claims that his father, being an old person, was duped by the accused persons, including the applicant herein, into applying for loan from Krushna Koyna Nagari Sahakari Patsanstha Maryadit, Karad (hereinafter referred to

as the co-operative credit society) for a loan of ₹ 20 lakhs. It is claimed that the accused gave an impression to the father of the informant that an interest-free loan of ₹ 5 lakhs was being arranged for him. Such amount was given to the father of the informant out of which, ₹ 3 lakhs was taken away in cash by the applicant and the co-accused persons, for the services provided by them. It is claimed that only when the recovery agents of the co-operative credit society approached the father of the informant in October 2023, that the informant and his family became aware for the first time about ₹ 20 lakhs being credited into the loan account of the father of the informant. It is also alleged that the accused persons, including the applicant, had taken signatures of the father of the informant on 4 blank cheques, which appear to have been encashed for the benefit of the accused persons. On the basis of the aforesaid allegation, the said offences have been registered against the accused persons, including the applicant.

4. The learned counsel for the applicant submitted that the applicant is a woman and she is an advocate. She acted only as a guarantor when loan for ₹ 20 lakhs was applied on behalf of the father of the informant. It was submitted that the theory now floated by the informant that he and his family became aware of the loan only in October 2023, is not borne out by the material available on record. It is submitted that the theory is floated only in order to avoid the consequences of default in repayment of loan. It is further submitted that the applicant, as one of the guarantors, is herself facing the heat of the consequences of default in repayment of loan. It is further pointed out that upon the default occurring, the applicant voluntarily deposited huge amount of ₹ 12 lakhs in the loan account, so as to reduce the liability.

5. It is further submitted that when the mutation entry pertaining to the land of the father of the informant, which was mortgaged for the said loan, was challenged by a Trust and an adverse order was passed, the father of the informant filed a statutory appeal, indicating that he was throughout aware about the loan having been taken and the mortgage deed being mentioned in the mutation entry pertaining to the said land. It was submitted that these documents clearly indicate that the theory floated in the FIR, is clearly an after-thought, when recovery proceedings have been initiated by the co-operative credit society. Reference is also made to the summons issued by the Co-operative Court on a proceeding initiated by the co-operative credit society against the borrowers as well as the applicant, as one of the guarantors, for recovery of the balance amount concerning the said loan. It is submitted that since the applicant is ready to co-operate with the investigation, this Court may consider granting protection from arrest.

6. On the other hand, the learned APP submitted that the statement of the informant clearly brings out the ingredients of the offences registered against the accused persons. The applicant and other accused persons duped the innocent old father of the informant and gave him meager sum of ₹ 2 lakhs, while loan of ₹ 20 lakhs was taken by mortgaging the land belonging to him. It is submitted that the fact that the applicant deposited the amount of ₹ 12 lakhs in the loan account, indicates that she admits to her liability in respect of the allegations levelled against her and the other accused persons. It was submitted that the steps taken by the father of the informant with regard to the land in question and the mutation entry, could be looked at from the angle that the father of the informant was bound to take necessary steps to protect the land belonging to him. In any case, such proceeding could be in the nature of defence. But, it cannot be the basis for granting any

relief in the present application. It was submitted that the investigation in the present case would be hampered, if relief is granted to the applicant.

7. This Court has considered the rival submissions, in the light of the material placed on record. This Court is inclined to allow the present application for the following reasons:

(a) The FIR has been registered on the basis of a complaint filed by the son of the borrower in the present case. The allegations are not made by the borrower in whose account the loan amount was transferred by the co-operative credit society. The trigger point for approaching the police authorities and the Magistrate for registration of FIR, according to the informant, is the event of the recovery agents of the co-operative credit society approaching the informant and his family in October 2023. It is to be noted that the loan amount in the present case, was disbursed in the account of the father of the informant as far back as on 25.08.2018 and the documents on record *prima facie* indicate that the informant and his father cannot feign ignorance about disbursal of the said loan. In that sense, it can be said that the FIR is *prima facie* belated.

(b) The loan amount in the present case, was disbursed into the account of father of the informant on 25.08.2018. It is alleged by the informant himself that 4 blank cheques were got signed by the applicant and other accused persons from the father of the informant. These cheques were utilized to withdraw the amounts from the aforesaid loan account. Photocopies of the said cheques are made available for perusal of this Court, to show that while 3 cheques pertained to the account of father of the informant, 1 cheque pertained to the account of mother of the informant. The 2 cheques pertaining to the account of father of the informant, were utilized for withdrawing cash amounts, while 1 cheque was utilized to transfer ₹ 3.50 lakhs into the account of mother of the informant. The only cheque bearing the signature of mother of the informant shows cash withdrawal of ₹ 3.48 lakhs. It is pertinent to note that at least in one of the cheques, there was over-writing and there were further signatures of the father of the informant. Considering the aforesaid material, *prima facie* it would be difficult to accept at this stage itself that the *modus operandi* adopted by the accused, including the applicant, was to get the loan amount clandestinely credited in the account of the father of the informant and then, to utilize such signed cheques for withdrawal of cash amounts. The assertions made by the informant in the year 2023-2024 for such alleged actions undertaken in the year 2018, *prima facie* appear to be belated.

(c) The proceedings pertaining to the mutation entry as regards the land belonging to the father of the informant, mortgaged in the present case, further indicate that the informant and his father appear to be feigning ignorance about the disbursal of the loan. The mutation entry specifically refers to the mortgage deed and the fact that the land stood mortgaged to the co-operative credit society. It was this very entry that was challenged by the Trust and upon the challenge succeeding, the father of the informant filed the statutory appeal before the competent authority. The appeal was filed on 16.12.2019 and the father of the informant has been attending the proceedings since then. The proceedings bear his signatures also. This clearly indicates that from 2018-2019 onwards, the father of the informant was clearly aware about the mutation entry mentioning the fact that the land was mortgaged to the co-operative credit society, thereby indicating that the claim regarding the informant and his father being unaware about the loan proceedings, *prima facie* can be said to be unsustainable.

(d) The applicant is admittedly a guarantor in the said loan transaction. If the applicant intended to dupe the father of the informant in the context of the loan transaction, there was no necessity for her to be a guarantor in respect of the said transaction. It is also evident from the material on record that the applicant herself transferred huge amount of ₹ 12 lakhs in the loan account on 30.08.2022, thereby partly returning the outstanding amount. This is a factor in favour of the applicant. Apart from this, as a guarantor, the applicant is still facing the heat and this is evident from the summons issued by the Co-operative Court on 04.05.2024 to the applicant as a guarantor alongwith the principal borrowers i.e. the parents of the informant, in a proceeding initiated by the co-operative credit society, under the provisions of the Maharashtra Co-operative Societies Act, 1960. Therefore, it is not as if the applicant has remained scot free, while the father of the informant is facing the music.

(e) The applicant is ready to co-operate with the investigation and it is evident that the investigation in the present case would necessarily involve documentary material.

8. For the aforesaid reasons, the application is allowed in the following terms:

(i) In the event the applicant is arrested in connection with FIR No.0831 of 2024 dated 14.06.2024, registered at Karad City Police Station, District Satara, she shall be released on bail on furnishing PR Bond of ₹ 50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

(ii) The applicant shall remain present before the Investigating Officer on 30.09.2024 and 01.10.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when required by the Investigating Officer.

(iii) The applicant shall not tamper with the evidence of the prosecution in any manner. She shall not influence the informant, witnesses and other persons concerned with the case.

(iv) The applicant shall co-operate with the investigation, including producing documents in her possession, as may be demanded by the investigating officer. She shall also co-operate in the proceedings before the trial court.

9. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

10. It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

11. The application stands disposed of.

(MANISH PITALE, J)

Priya Kambli