IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1833 OF 2024

Shivprakash Shyamlal Varma ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 3719 OF 2024

IN

BAIL APPLICATION NO. 1833 OF 2024

The Cosmos Co-operative Bank Limited
Through Sanjay Rajaram Sawant ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO. 2694 OF 2024

Umesh Kashiram Bhaip ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 3302 OF 2024

IN

BAIL APPLICATION NO. 2694 OF 2024

The Cosmos Co-operative Bank Limited
Through Sanjay Rajaram Sawant ...Applicant

Versus

The State of Maharashtra ...Respondent

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- Mr. S.H. Mishra, for Applicant in BA/1833/2024
- Mr. Chetan Bane a/w Mr. Vaibhav S. Parab i/b Mr. Saurabh More, for Applicant in BA/2694/2024.
- Mr. Tanveer G. Khan, APP for Respondent – State in BA/1833/2024.

- Mr. Prasanna P. Malshe, APP for Respondent – State in BA/2694/2024.
- Mr. Ganesh K. Sovani, for the Applicant in IA/3719 and 3302/2024.
- Mr. Jaywant Sham Shende, Sr. P.I. EOW, Thane.

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CORAM : MANISH PITALE, J.

DATE : 11th DECEMBER, 2024.

P. C. :

1. Heard learned counsel for the applicants and the learned APPs for the respondent – State, as also learned counsel having instructions to appear on behalf of the informant – Bank.

2. The applicants before this Court were arrested in connection with First Information Report No.0405 of 2022, dated 10th October, 2022, registered at Police Station Khadakpada, District Thane, for offences under Section 406, 408, 409, 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (IPC).

3. The applicant in Bail Application No.2694 of 2024, was arrested on 10th October, 2022, while the applicant in Bail Application No.1833 of 2024 was arrested on 23rd May, 2023. Both the applicants have remained behind bars since the date of their arrest.

4. The learned counsel for the applicant in Bail Application No.2694 of 2024, submitted that the only allegation against the applicant is that he worked as a facilitator for 26 borrowers in borrowing amounts for home loans from the informant – Bank. It is submitted that the allegation

against the applicant is that apart from facilitating such disbursal of loan amounts, he was a beneficiary, for the reason that the developer to whom the loans amounts were eventually transferred, had transferred certain accounts into the account of the applicant.

5. It was submitted that there is lack of material to show the role of the applicant in the actual act of forgery and fabrication of documents. At worst, it could be alleged that such documents were relied upon and used by the applicant to facilitate disbursal of loans, which cannot be relatable to serious offence under Section 467 of the IPC. It is further submitted that the main person concerned with the developer – company has been enlarged on bail upon depositing amount that was received by the developer. In such a situation, it is submitted that the applicant having suffered incarceration for a period of more than 2 years, no further purpose would be served in continuing his judicial custody. It is indicated that since 3 accused persons are still absconding, there is hardly any possibility of the trial commencing in the near future.

6. The learned counsel appearing for the applicant in Bail Application No.1833 of 2024, submitted that the role attributed to the applicant as per charge-sheet is that he was responsible for preparing forged documents that in turn facilitated disbursal of amounts in favour of borrowers.

It was submitted that there is hardly any material to directly link the applicant with the aforesaid activity and merely because certain amounts were found transferred in a proprietorship allegedly concerned with the applicant, it cannot be said that the ingredients of serious offence under Section 467 of the IPC are made out. It was submitted that the applicant was even ready to deposit with the Bank the amount that he had allegedly utilized and in that light this Court may consider allowing the application.

7. On the other hand, the learned APPs relied upon the documents placed on record, particularly those filed alongwith the affidavit filed in Bail Application No.2694 of 2024. It was submitted that the documents and the statements of the witnesses sufficiently indicate the involvement of both the applicants in the financial scam in the present case, whereby the complainant – Bank was duped in connivance with its own officials and therefore, this Court may not show any indulgence.

8. At this stage, it would be relevant to record that on behalf of the applicant in Bail Application No.2694 of 2024, parity was also sought with co-accused person, who was Assistant Manager of the complainant – Bank, who has been released on bail.

9. This Court has perused the papers and appreciated the rival submissions in that context. The material on record does show the extent of

the financial scam in the present case, wherein the complainant – Bank was duped of huge amount of money. The *modus operandi* identified during the course of investigation was that the accused persons in connivance with each other arranged for home loans for 26 borrowers and that such amounts were eventually made over the developer and thereafter, it was found that the documents submitted while applying for such loans were forged and fabricated.

10. The material brought on record shows that insofar as applicant in Criminal Bail Application No.2694 of 2024 is concerned, there are specific allegations as to the manner in which he was a facilitator of the aforesaid home loans in connivance with co-accused persons to not only assist in creating documents that would give an impression to the complainant – Bank that home loans would be disbursed, but such borrowers were shown to be employees of bogus companies and in that context the said applicant could also be said to be involved in creating fabricated documents. In this regard, this Court has perused the documents and also statements of witnesses, including statement of a witness recorded under Section 164 of the Code of Criminal Procedure, 1973 (CrPC), which levelled specific allegations not only against the aforesaid applicant but also the applicant in Bail Application No.1833 of 2024.

11. Apart from this, in the detailed affidavit filed on behalf of the respondent – State, a table is given that shows details of the amounts that were transferred by the developer into the account of the aforesaid applicant.

12. The said substantial amounts were transferred in October, 2021 and February, 2022, which was immediately after the aforementioned loan amounts were disbursed in September, 2021. This Court is of the opinion that the aforesaid material does indicate a *prima facie* case against the aforesaid applicant, as regards ingredients of the serious offences, including offence under Section 467 of the IPC, which provides for a maximum punishment of imprisonment for life. No case is made out by the said applicant for being released on bail. The contention that he deserves relief on the ground of parity can also not be accepted because the Assistant Manager of the complainant – Bank, who was granted bail was found not to be a beneficiary while there is sufficient material to *prima facie* reach a conclusion that the said applicant was indeed a beneficiary of the scam.

13. As regards the applicant in Bail Application No.1833 of 2024, there is material to indicate that the said applicant indulged in activities, whereby the persons who were interested in applying for home loans were contacted and such disbursal of home loans was facilitated by concocting documents and in that process duped the complainant – Bank. In the charge-

sheet, the details of the amounts transferred to the proprietorship of the said applicant have come on record. These were amounts that were disbursed towards home loans and some of such amounts found their way to the account of the proprietorship of the said applicant. Thus, *prima facie,* it can be said that he was also a beneficiary of the said scam and considering his *prima facie* involvement in the activity of fabricating documents to facilitate such a financial scam, no case is made out for granting bail.

14. The applications are dismissed.

15. The interim applications are also disposed of.

(MANISH PITALE, J.)