IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.912 OF 2024

Madhuri Sukumar Ghosh & Ors. .... Applicants

versus

The State of Maharashtra .... Respondent

…….

- Mr. Omkar Nagvekar i/b. Prabha Badadare, Advocate for Applicants.
- Mr. Prashant P. Jadhav, APP for the State/Respondent.
- Mr. Aavish Shetty i/b. M. V. Kini and Co. Advocate for Axis Bank/Intervenor.

CORAM : SARANG V. KOTWAL, J.
DATE : 25th JULY, 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.177/2024, dated 15/02/2024, registered with Mahatma Phule Police Station, Thane City, under sections 120-B, 406, 420, 465, 467, 471 r/w 34 of the Indian Penal Code.

2. Learned counsel Mr. Aavish Shetty has filed Vakilpatra for the original first informant. He is seeking time to file

separate Intervention Application. However, this application is pending since many days. On 24/06/2024 also Intervenor's counsel had appeared on their behalf. However, till today no Intervention Application is filed. In this situation, he is permitted to assist the learned APP.

3. Heard Mr. Omkar Nagvekar, learned counsel for the Applicants and Mr. Prashant P. Jadhav, learned APP for the State.

4. The FIR is lodged by one Anand Agaskar who was the Assistant Vice President working with Axis Bank. The allegations are that in December 2020, an application for loan was made for purchasing the flat No.9/A, Cenced Apartment, Pali Hill Road, Union Park, Khar (W), Mumbai. The application for loan was made by the accused Somadip, who was the son of the Applicant Nos.1 and 3, and the brother of the Applicant No.2. All the three Applicants were the co-borrowers. The bank sanctioned the loan for Rs.6,90,00,000/-. The FIR mentions that there was already a loan of Rs.2.60 Crores in favour of Skylag Laboratory Pvt. Ltd. along with One Capital Ltd. On 07/01/2021, a Demand Draft of Rs.2.60 Crores was issued in the name of One Capital Ltd.

Thereafter on 01/03/2021, a registered mortgage reconveyance deed was prepared.

5. On 02/03/2021, Somadip executed an agreement deed with Axis bank and accordingly, the balance amount of Rs.4.30 Crores was paid through Demand Draft, which was handed over to Somadip. The EMI was of Rs.7,09,583/-. The loan was to be repaid in 144 installments. Out of which, 32 installments were paid from 10/02/2021 to 10/09/2023. Three EMIs from September 2023 to November 2023 were pending. The bank made enquiries. The bank officers went to the society and went to that flat. They came to know that one Vadhera family was still residing in that flat. Somadip was to purchase that flat from Vadhera family. But the flat was not actually transferred in the name of Somadip. Thus, it was revealed that the money which was taken in the name of the house loan was used for some other purpose. Accordingly, the FIR was lodged. The allegations are that the loan was executed on false representation and on false document like forged NOC.

6. Learned counsel for the Applicants submitted that the bank was taking legal steps in respect of that flat. The loan is a secured loan. Therefore, the bank cannot be at loss. The substantial amount was repaid through 32 installments. The entire allegations are directed mainly against Somadip.

7. Learned APP produced the investigation papers before the Court which includes the application for the said loan. It was in the name of Somadip. The present Applicants were the co-Applicants for borrowing the loan. The loan was sanctioned on the basis of an agreement for sale executed on 22/12/2020 with Gaurav Vedhera and Pranav Vadhera as transferors and Somadip as a transferee. The Applicants were not parties to that agreement. A copy of the agreement for sale is annexed to the memorandum of this application.

8. Learned APP relied on the MOU executed between Somadip and Vadhera family, which mentions that they wanted money for business purpose and for that purpose, a sale agreement of the flat was to be executed. Thus, according to the learned APP, the intention of the parties was fraudulent.

9. I have considered these submissions. It is quite clear that the home loan was obtained on false representation. A huge amount was obtained by way of home loan by Somadip. The Applicants are connected because they were the co-Applicants for obtaining the loan. However, their role is much lesser than that of Somadip. Importantly, Somadip was a party to the agreement for sale and the Applicants were not the parties. The loan was sanctioned on the basis of that agreement for sale and purchase regarding that flat, in which the Vadhera family was transferors and Somadip was the transferee. Therefore, to that extent, the Applicants' role are distinguishable from that of Somadip. The Applicant No.1 and 3 are the old parents of Somadip. The Applicant No.2 is the brother. The main mischief is played by Somadip.

10. On the last occasion, I had protected the Applicants by way of ad-interim relief with directions to attend the concerned police station.

11. Learned APP on instructions states that the Applicants have cooperated with the investigation. In the meantime, the main accused Somadip is already arrested and today even the charge-sheet is filed.

12. In this view of the matter, the Applicants' custodial interrogation is not necessary. The investigation is over, which is evident by the fact that the charge-sheet is filed. The Applicants have cooperated with the investigation. The bank is free to take steps for non-payment of loan amount. In this view of the matter, I am inclined to protect the Applicants by way of order u/s 438 of Cr.P.C.

13. Hence, the following order :

ORDER

(i) In the event of their arrest in connection with C.R.No.177/2024, dated 15/02/2024, registered with Mahatma Phule Police Station, Thane City, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of

Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.

(ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)