IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2310 OF 2024

Avinash Maruti Dhawale	…	Applicant
Vs.		
State of Maharashtra	…	Respondent

Mr. Harshit Kabali i/b. Nomaan Coatwala for Applicant.
Mr. Prasanna P. Malshe, APP for Respondent-State.
Mr. Machindra A. Kharat, Police Naik, Niphad Police Station, Nashik Rural.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 04, 2024

P.C. :

. Heard Mr. Kabali, learned counsel for the applicant and Mr.Malshe, learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No.0040 of 2024 dated 02.02.2024 registered with Niphad Police Station, District - Nashik Rural, for offences under Sections 406, 409, 420, 467 and 468 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The informant in the present case had initially approached the police for registration of offences against the accused persons. It appears that the offences were not registered on one ground or the other and hence, the informant was constrained to file application under Section 156(3) of the Criminal Procedure Code, 1973 (Cr.P.C.) before the jurisdictional magistrate at Niphad. The magistrate passed an order directing registration of FIR and for the police to conduct investigation. Pursuant thereto, the aforesaid FIR came to be registered.

4. The grievance of the informant is that the accused persons cheated

him by inducing him into applying for a loan under a Government scheme for installing shed-nets in his agricultural field. As per the Government scheme, shed-nets could be supplied by the authorized suppliers for agriculturists, for which, loan could be advanced by nationalized banks. It is the case of the informant that the accused No.1, in connivance with accused Nos.2 and 3 i.e. the applicants before this Court, induced the informant into giving documents pertaining to his agricultural field for being used as collateral for obtaining loan, in order to install shed-nets in his agricultural field. It is the case of the informant that no such shed-nets were installed in his filed and when he made enquiries, it came to light that the accused No.1, being a bank official, had conspired with the applicants before this Court and obtained loan in the name of the informant. The loan amounts credited to the account of the informant, were clandestinely siphoned off and credited into the accounts of the applicants. No shed-nets were installed. In this manner, the informant was cheated and this led to registration of the aforesaid FIR.

5. It is to be noted that when co-accused Nilesh Ramrao Shelke approached this Court for relief of anticipatory bail, by an order dated 21.06.2024, this Court dismissed his application and in the said order, certain observations were made, which indicate the role of the present applicant. It is also to be noted that the anticipatory bail application of co-accused Jayshree Nilesh Shelke i.e. the wife of co-accused Nilesh Ramrao Shelke was allowed, primarily on the ground of the said co-accused being a woman and the only material against her being that the loan amounts that were siphoned off were being credited on a few occasions in her bank account.

6. The learned counsel for the applicant submits that when the order dated 21.06.2024 was passed by this Court in Anticipatory Bail

Application Nos.1621 of 2024 and 1622 of 2024, all the relevant facts were not brought to the notice of this Court. It is submitted that the applicant herein, although has been portrayed as one of the main accused persons, his only role was that of verifying the documents pertaining to the applications for loan submitted on behalf of the informant and his father. The verification of the documents was undertaken and eventually, the loan was disbursed. It is submitted that the theory of the informant that he was not aware about disbursal of such loan and loan amounts being directly siphoned off into the accounts of the co-accused persons, is belied by certain documents placed on record at Exhibit-E with the present application. The said documents are the documents pertaining to acknowledgment of liability of repayment of the said loan amounts, which bear the signatures of the informant and his father. It is submitted that the applicant is relying upon such documents to contend that the informant may have a grievance against the co-accused persons, but the applicant is not at all involved in duping the informant, and that therefore, this Court may consider granting relief to the applicant as he intends to co-operate with the investigation. It is submitted that as on today, the applicant has been transferred to Mumbai, where he is presently serving.

7. On the other hand, the learned APP submits that this Court had already taken note of the role of the applicant while passing the aforementioned order dated 21.06.2024 and that there are specific allegations against the applicant in the very statement that led to registration of the FIR. In fact, the FIR was registered after an application under Section 156(3) of the Cr.P.C. was granted by the jurisdictional magistrate. The application itself contained elaborate description of the role of the applicant and the manner in which he had connived with the co-accused persons to dupe the informant and his father. It was emphasized that shed-nets were eventually not installed

and huge loan amount of Rs.24,00,000/- was siphoned off by the co-accused persons in connivance with the applicant.

8. This Court has considered the rival submissions and the material made available with the present application. This Court is inclined to grant interim relief to the applicant, while keeping the present application pending, for the following reasons:-

a. The primary allegation against the applicant, who is a bank official, is to the effect that he connived with the co-accused persons to siphon off the loan amounts disbursed in the name of the informant and his father into the accounts of the co-accused persons. An impression is given in the statement of the informant leading to registration of the FIR that he and his father were unaware as to what had happened to their loan applications and they were not aware about the amounts having been disbursed. The documents at exhibit-E, filed with the present application, which were not available when this Court passed the order dated 21.06.2024 in the anticipatory bail applications filed by the co-accused persons, are documents showing acknowledgment of liability by the informant and his father as regards the amounts to be repaid in the context of the loans disbursed in their favour;

b. These documents bear signatures of the informant and his father. The documents clearly acknowledge liability towards repayment of the loan amounts. This would indicate existence of knowledge about disbursement of the loan amounts with the informant and his father, subject to further investigation into the matter;

c. The allegation regarding forgery in the FIR against the accused persons, including the applicant, is to the effect that certain documents were purportedly shown as having been signed by the informant and his father, which led to siphoning off the loan amounts into the accounts of the co-accused persons. There does not appear to be any allegation regarding forging of signatures on the aforementioned documents i.e. acknowledgment of liability, copies of which are annexed at Exhibit-E to the present application;

d. Hence, when the allegations made in the statement leading to registration of the FIR are examined and analyzed in the context of the documents now placed on record with the present application, particularly the documents at Exhibit-E, it can be said that the applicant's role in the present case could be said to be distinguishable from that of the co-accused persons in whose accounts, the amount eventually found its way;

e. The applicant is presently posted at Mumbai, away from the place where the alleged offences were committed and he is ready to co-operate with the investigation.

9. In view of the above, there shall be interim order in the following terms:-

A. Till the next date, in the event the applicant is arrested in connection with FIR No.0040 of 2024 dated 02.02.2024 registered with Niphad Police Station, District - Nashik Rural, he shall be released on bail on furnishing PR Bond of Rs.50,000/- [Rupees Fifty Thousand only] with one or two sureties in the like amount;

B. The applicant shall appear before the investigating officer on 09.09.2024 and 10.09.2024 between 10:00 a.m. and 12 noon and thereafter as and when called by the investigating officer;

C. The applicant shall co-operate with the investigation, including extending co-operation for obtaining all necessary documents from the Branch of the Bank at Niphad, as may be demanded by the investigating officer;

D. The applicant shall not influence the informant, witness or any person concerned with the case and he shall not tamper with the evidence.

10. Needless to say, violation of any of the aforesaid conditions may result in this order being recalled.

11. List the application for further consideration on 03.10.2024, to be included in the supplementary list.

(MANISH PITALE, J.)

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