

(2009) 02 BOM CK 0054

In the Bombay High Court

Case No : Criminal Application No. 4137 of 2008

Milind Vidyasagar Ghatе

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120B, 201, 34, 406, 408

Citation : (2009) 02 BOM CK 0054

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : V.J. Dixit and L.V. Sangit, for the Appellant; N.H. Borade, Assistant Public Prosecutor and P.P. Chavan, for Society, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Rule, returnable forthwith.

This application is filed for anticipatory bail in connection with Crime No. 216/2008 registered at Chalisgaon Police Station, Dist. Jalgaon for the offences punishable under Sections 406, 408, 409, 420, 465, 468, 471, 120-B, 201 r.w. 34 of I.P.C. on 19th October, 2008.

2. Apprehending arrest, the present applicant filed application for anticipatory bail before the Sessions Court, Jalgaon being Criminal Bail Application No. 1103 of 2008 which came to be rejected on 26.11.2008. Hence, this application.

3. The learned Senior Counsel for the applicant invited my attention to the contents in the complaint and submitted that the only allegation against applicant is that he has borrowed huge amount of loan for partnership firm. The present applicant was partner of the firm only from 31.3.2004 till 1.4.2004 and he resigned from the partnership firm on 1.4.2004. Therefore, hardly he was there as a partner. He further invited my attention to the contents of the F.I.R. at page 17 of the compilation and submitted that the only allegation against the

applicant is that the applicant has misappropriated the amount by putting the Bank in economical loss by entering into criminal conspiracy with the another partner of the firm. According to the learned Counsel, he was partner of the said firm from 31.3.2004 to 1.4.2004 only. Therefore, he cannot be held responsible for any repayment of the loan by the concerned firm. Therefore, he submitted that the present applicant should be released on anticipatory bail. He invited my attention to para 2 of the interim order dated 11th December, 2008 passed by this Court and submitted that in the interim order this Court has observed that it appears that he has not participated in the business of partnership on regular basis.

4. The learned A.P.P. assisted by the learned counsel for the Society / Bank submitted that the offence in question is very serious. Arrest is a part of the process of the investigation intended to secure several purposes. The applicant accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. Loan is granted to the applicant and other various borrowers in utter disregard to the rules and regulations of the Maharashtra Cooperative Societies Act, 1960, Bombay Regulation Act, 1949 and various circulars issued by the R.B.I. due to which now the Bank is put into liquidation. By way of illegal activities of the Directors, Borrowers, there is huge misappropriation, siphoning of money of the Bank and therefore, this is not a fit case for grant of bail.

5. It is further submitted by the learned A.P.P. that for the following reasons, bail should not be granted to the present applicant:

(a) A dishonest financial transactions have taken place. Undoubtedly, there is sufficient material to indicate that financial irregularities and dishonest and fraudulent loan transactions have taken place in the affairs of the said Bank, for which the board of directors and present borrower, who were in collusion with them are responsible. Requisite security was not obtained, without mortgage, without valuation report, title report, without verifying the stock, license of the shop, annual report of the shop, under the garb of loan amount was advanced to person residing outside the jurisdiction of the Bank. However, forged and fabricated record was created, the exposure limit was four lacs however, loan was sanctioned above four lacs. Fraudulently the fix deposit receipts were not pledged, loan was sanctioned to a person whose capacity, ability to repay the amount was not considered. The applicant hatched the conspiracy with board of directors and manager hence, deliberately and knowingly with malafide intention to defraud the bank they had not taken any action. The police custody is required for custodial interrogation which. There is voluminous record to be examined and confronted, which cannot be done without police custody.

(b) The involvement of the applicant in the alleged offence is clearly made out. There is documentary evidence against the applicant. The overact of the applicant is manifest and the crime is serious one.

(c) There was designed plan, prima facie to defraud the depositors and member of the bank. The bank is put to loss of approximately 20 crores due to financial bungling, manipulations and money laundering.

(d) The chairman, members of the board of Directors, Manager and the present applicant in furtherance of their common intention committed breach of trust and they have been involved in unlawful disbursement of the said amount under the garb of loan. The said loan was not refunded by the applicant. The loan was disbursed by-passing the rules and regulation.

(e) There was systematic fraud committed due to which bank has suffered great loss.

(f) As per the master circular dated 4th July, 2007, in the point 6.2 - the willful default is defined and in 6.3 - diversion and siphoning of funds elaborately narrated. The penal measures are also narrated in 6.6(b) and in 6.9 - a criminal action is directed to be taken against the borrower by the R.B.I. in the said circular in point No. 4.6.3 oral sanction is prohibited.

(g) The cause of the community deserves better treatment at the hands of the Court. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequences to the community. Funds of the public bodies were utilized as if they were private funds. There was no legitimacy in the transactions, the funds were diverted under the garb of loan and all the concerned accused played dubious roles in this illegitimate transactions.

(h) There is no possibility to receive the huge amount and therefore, there is every possibility that applicant is likely to abscond and will tamper with the prosecution evidence and witnesses and hence, bail may be rejected.

(i) The applicant was in service at Mumbai. However, as a merchant, he has misappropriated the amount under the garb of loan. The amount was advanced on 31.3.2004 and immediately on next day i.e. on 1.4.2004 the applicant resigned from the partnership firm only with a view to defraud the bank. Yet, the applicant has not informed the bank about his resignation. Hence, custodial interrogation is necessary to find out where the amount is diverted and siphoned off.

6. It is further submitted that the Chairman of the Bank himself is in jail and his bail application is rejected. The learned Counsel for the Bank relied on various decisions of the Apex Court as well as of this Court in support of his contentions. It is further submitted that all 13 F.I.Rs. are registered and during the investigation a serious offence is disclosed as well as there is ample evidence against the present applicant. There is prima facie evidence and case against the applicant and hence, the application of the present applicant is sought to be rejected.

7. The learned A.P.P. appearing for the State invited my attention to the contents

of the complaint and submitted that so far the offence registered against the present applicant is under various sections of I.P.C. including Section 120B of I.P.C. He further submitted that the present applicant has taken loan of huge amount from the said Bank and even a single pai is not repaid by the applicant. He submitted that not only the the applicant is involved in the present crime but, he is also involved in two other Crimes namely Crime No. 254/2008 and 259/2008. It is further submitted that though bail was granted by the Sessions Court to the present applicant on condition to attend the police station, the present applicant has violated the condition and he did not attend the police station. Therefore, since the applicant is involved in various crimes and cheated the Bank, this Court may not grant anticipatory bail to the applicant.

8. While considering the scope of anticipatory bail u/s 438 of Criminal Procedure Code in case of *Adri Dharan Das v. State of West Bengal* reported in 2005 AIR S.C.W. 1013, relying on the earlier Constitutional Bench judgment in case of *Balachand Jain v. State of Madhya Pradesh* reported in AIR 1977 S.C. 366, the Supreme Court in para 7 has observed thus:

The power exercisable u/s 438 is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty then power is to be exercised u/s 438. The power being of important nature it is entrusted only to the higher echelons of judicial forums i.e. the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation of non-bailable offence. The object which is sought to be achieved by Section 438 of the Code is that the moment a person is arrested if he has already obtained an order from the Court of Session or High Court, he shall be released immediately on bail without being sent to jail.

9. It would also be relevant to refer to the observations of the Supreme Court in the case of *Narinderjit Singh Sahni and Another Vs. Union of India and Others*, , wherein the Supreme Court has observed that if accused facing a charge under Sections 406, 409, 420 and 120-B is ordinarily not entitled to invoke the provisions of Section 438 of the Criminal Procedure Code unless it is established that such criminal accusation is not a bona fide one.

10. In the case of *Ram Narain Poply v. Central Bureau of Investigation with Ram Narain Poply, Pramod Kumar Manocha, Vinayak Narayan Deosthali and Harshad S. Mehta Vs. Central Bureau of Investigation and Others*, the Supreme Court has observed thus:

382. The cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment

upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national Economy and National Interest, as was aptly stated in *State of Gujarat v. Mahanlal Jitmalji Porwal and Anr.* AIR 1987 1321.

11. The Supreme Court in the case of *Himanshu Chandravadan Desai and Ors. v. State of Gujarat* reported in 2006 Cri.L.J. 136 in para 7 referring to another judgment of Constitution Bench of the Supreme Court in case of *Bihar Legal Support Society Vs. Chief Justice of India and Another*, observed:

The crime in which the petitioners are involved is very serious involving a conspiracy to cheat and defraud public institutions in a systematic manner and the punishment is likely to be severe in the event of conviction. High Court has recorded a finding that the material shows that the petitioners are prima facie involved in the offence. Large portion of the amount advanced to Bhavika Creations (about Rs. 7.5 crores) has allegedly been diverted by appellant No. 1 for acquiring shares in Nedungadi Bank Ltd. As a result of the scam, the Bank is under liquidation from 31-7-2003. On account of the fraudulent activities of the then Managing Director and Appellant No. 1 (the then Director) and Appellants Nos. 2 and 3, nearly Rs. 23 crores is due from Bhavika Creations alone.

On the facts of that case, the Supreme Court came to the conclusion that the High Court was justified in rejecting the bail application of the applicant therein.

12. After hearing the learned Counsel for the applicant and the learned A.P.P., I am of the considered view that in the light of the aforesaid judgments of the Supreme Court and in the facts of this case, the present applicant does not deserve to be released on bail. It is pertinent to mention that there are three crimes namely Crime Nos. 216/2008, 254/2008 and 259/2008 registered against the present applicant and others. Another application of the present applicant for anticipatory bail in connection with Crime No. 254/2008 is already rejected by this Court. If the conduct of the present applicant is taken into consideration, prima facie it appears that there was systematic plan and intention to misappropriate the huge amount by borrowing money for own benefit without security, in various names. In the instant case, in a very systematic manner, the present applicant became partner of the firm Uma Agency on 31.3.2004, on which day loan was advanced to the said firm and immediately on the next day i.e. on 1.4.2004 he resigned from partnership of the said firm to escape from the liability. This indicates the systematic plan of the present applicant along with other co-accused to defraud the bank. It should not be forgotten that the Bank is in heavy loss and has to recover more than Rs. 27 crores from the borrowers. The depositors have deposited more than Rs. 37 Crores in the Bank which the

Bank has to refund. Therefore, this is not a fit case in which protection u/s 438 of Cr.P.C. can be granted.

13. Considering the judgments of the Apex Court referred hereinabove, scope of Section 438 of Cr.P.C. and the facts of this case, I am of the view that the present application deserves to be rejected.

14. For all the aforesaid reasons, the applicant does not deserve to be released on bail. The application is rejected. Rule is discharged.