(2013) 10 KAR CK 0259

In the Karnataka High Court

Case No : Criminal Petition No. 6243 of 2013

Sri. K.V. Sathyanarayana APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 34, 420, 465, 466

Citation : (2013) 10 KAR CK 0259

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : Seshachala M.V, for the Appellant; B. Visweswaraiah, HCGP, for the Respondent

Final Decision : Allowed

Judgement

H.S. Kempanna, J.—The petitioner, who is Accused No. 2 in crime No. 78/2012 on the file of High Grounds Police Station, Bangalore, registered for the offences u/ss. 420, 465, 466, 467, 468, 471, 120B r/w. 34 of IPC and u/s. 42 of the State Financial Corporation Act, is before this court seeking for grant of Regular Bail. The respondent/Police on the basis of the first information filed by Mr. Srinivasappa, the Asst. General Manager of KSFC Bangalore, have registered the above case against the petitioners and four others and have taken up investigation.

2. It is alleged among other things in the complaint, the petitioner had raised loan from the complainant-Corporation to his Firm, the first accused, to the tune of Rs. 4,50,00,000/-. He had offered sufficient security to the said loan raised by him. He was making payment on installments towards the loan raised by him to the KSFC. Subsequently he became a defaulter in making payment. Therefore, he approached Global Trust Bank for additional loan and requested the complaint/ Corporation to offer surety. In response to the same, the complaint/Corporation offered security to the Global Trust Bank and to the said loan, A3 and A4 stood as guarantors. Thereafter, the loan was sanctioned by Global Trust Bank in the

name of the petitioner''s Firm of which he is the Managing Director. Thereafter he went on paying installments as per the original terms of the loan agreement entered into between him and complainant-Corporation. Subsequently, when things stood thus, Global Trust Bank was wound up and was taken up by the other Banking Institution. In the winding up proceedings, they invoked the Bank Guarantee given for the loan sanctioned to the petitioners firm. At that point of time they came to know that A3 and A4 who had stood as guarantors, were not in existence and the documents that had been produced by the said guarantors were false and forged documents. Therefore, the Complainant/Corporation filed a complaint alleging that this petitioner hand-in-glove with the other accused in the case have forged and fabricated the documents in order to avail loan from the Global Trust Bank. Accordingly, the case came to be registered against the petitioner and others in this case.

3. The learned counsel submits at no point of time the petitioner had indulged in either preparing forged or fabricated documents in this case. He was paying installments to the Corporation regularly. On account of financial loss incurred by his firm he could not pay the balance installments to the Corporation. Therefore, he approached the Global Trust Bank for additional loan, for which the Bank wanted surety, for which A3 and A4 stood as sureties to the Bank offered by Corporation and accepting them as sureties, the Bank advanced loan. He has never indulged in creating false and forged documents as alleged. The Bank which is now wound up has been taken over by the other Bank. In the circumstances, the petitioner be granted the relief as sought for by him.

4. Per contra, the learned HCGP opposing the application filed by the petitioner contends the petitioner is a resident of Andhra Pradesh. At his instance the Global Trust Bank have advanced loan and the complainant/Corporation have offered security to the said loan. A3 and A4 in this case have stood as sureties. Since A3 and A4 have created and fabricated false documents to substantiate that they have assets to be offered as security to the loan and as the Bank when it invoked the Bank Guarantee found that the documents produced by the Guarantors are false and forged documents, as the case is still at the stage of investigation and as the entire transaction has taken place at the instigation of this petitioner, the petitioner is not entitled to the relief sought by him hence the petition be dismissed.

5. A perusal of the material now on record reveals the petitioner has raised loan from the Complainant/Corporation for his Firm-A1 to the tune of Rs. 4.5 crores. He was paying the installments due by him regularly to the Corporation. On account of financial loss incurred by his firm in the course of business he could not pay the installments to the Corporation regularly. Therefore, in order to keep up the words as per the terms of the agreement to repay the loan by way of installments, he approached the Global Trust Bank for advancing loan and requested the Corporation to offer security. No doubt, the present petitioner is a resident of Hyderabad. The first accused/establishment run by him is situated at

Bidar coming within the jurisdiction of Karnataka State. In view of the facts aforesaid, it cannot be said that this petitioner is not entitled to the relief sought for by him at this stage having regard to the facts and circumstances and the background in which the transaction has taken place and as he is in custody since 30.08.2013 and as he is no more required for the purposes of investigation. I do not find any justification to decline the request of the petitioner. In the result, for the foregoing reasons I proceed to pass the following:-

ORDER

i) The petition is allowed;

ii) the petitioner is ordered to be released on bail on his executing a personal bond in a sum of Fifty Lakh with two sureties for like sum to the satisfaction of the Jurisdictional Magistrate subject to the following conditions:-

1) He shall not tamper with the prosecution witnesses;

2) He shall make himself available to the Investigating Agency as and when required for the purposes of investigation.