

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 33603 of 2016

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NASIK MERCHANTS' CO-OPERATIVE BANK LTD.
Versus
STATE OF GUJARAT & 1 other(s)

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Appearance:

MR AJAY S JAGIRDAR(2688) for the Applicant(s) No. 1
MR DAIFRAZ HAVEWALLA(3982) for the Respondent(s) No. 2
MR HK PATEL, PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**

Date : 01/07/2022

ORAL ORDER

Rule. Learned APP, Mr. Patel, waives service of rule for Respondent No.1-State, whereas, learned Advocate, Mr. Havewala, waives for Respondent No.2-accused.

1. This is an application by the applicant-Bank, filed under Section 439 (2) of the Code of Criminal Procedure, 1973 ('the Code', hereinafter), seeking cancellation of anticipatory bail granted to Respondent No.2-accused by the learned 5th Additional Sessions Judge, Surat, vider order dated 06.12.2016, passed in Criminal Misc. Application No. 3290 of 2016.

2. Heard, learned Advocate, Mr. Jagirdar, for the applicant-Bank, learned APP, Mr. Patel, for Respondent No.1-State and learned Advocate, Mr. Havewala, for Respondent No.2-accused.

3. Learned Advocate, Mr. Jagirdar, submitted that the FIR, being C.R. No. I-178 of 2016, came to be filed against Respondent No.2-accused with Khatodara Police Station, Surat, under Sections 406 and 420 of the Indian Penal Code, 1860 (in brief, 'IPC').

3.1 It was submitted that during the course of investigation, the Investigating Agency submitted a report before the concerned Court with a request to add Sections 467, 468 and 471 of the IPC.

3.2 Learned Advocate, Mr. Jagirdar, submitted that there are serious allegations leveled against Respondent No.2-accused, as Respondent No.2-accused forged certain documents.

3.3 It is alleged in the FIR that Respondent No.2-accused obtained loan of Rs.10,00,00,000/- in the name of partnership firm, by mortgaging certain properties. It was submitted that, as on the date of filing of the aforesaid FIR, an amount of Rs.8,42,93,640/- (approximately) was outstanding.

3.4 It was submitted that, since, Respondent No.2-accused was apprehending his arrest, he filed an application under Section 438 of the Code before the concerned Sessions Court.

3.4.1 According to learned Advocate, Mr. Jagirdar, in the proceedings under Section 438 of the Code before the concerned Sessions Court, Respondent No.2-

accused gave an undertaking and on the basis of the said undertaking, the concerned Sessions Court granted anticipatory bail to Respondent No.2-accused, on certain terms and conditions.

3.4.2 Learned Advocate, Mr. Jagirdar, submitted that Respondent No.2-accused has committed breach of the aforesaid undertaking, and therefore, the applicant-Bank has challenged the order of the Sessions Court, Dated: 06.12.2016, on merits.

3.5 Learned Advocate, Mr. Jagirdar, submitted that, as per the instructions received by him, the outstanding amount, as on today, is Rs.22,84,00,000/- (approximately).

3.6 Learned Advocate, Mr. Jagirdar, therefore, urged that this application be allowed and the anticipatory bail granted to Respondent No.2-accused be canceled.

4. On the other hand, learned Advocate, Mr. Havewala, appearing for Respondent No.2-accused strongly opposed this application and submitted that the impugned order, Dated: 06.12.2016, passed by the concerned Sessions Court has already been implemented and executed and therefore, only on that ground, this application deserves to be rejected.

4.1 Learned Advocate, Mr. Havewala, further, submitted that pursuant to the passing of the impugned order by the concerned Sessions Court, the

investigating agency formally arrested Respondent No.2-accused and then, released him on bail.

4.1.1 It was, further, submitted that Respondent No.2-accused was also granted regular bail, later on.

4.1.2 It was submitted that the investigating agency has already filed a charge-sheet in connection with the aforesaid FIR against the Respondent No.2-accused and now, the case is pending for trial.

4.2 At this stage, learned Advocate, Mr. Havewala, invited the attention of this Court to the fact that prior to the filing of the aforesaid FIR, one of the partners of the partnership firm, namely Manoj Singapuri, had already filed a private complaint before the concerned Magistrate Court, where, the concerned Court passed an order under Section 156(3) of the Code to carry out investigation and pursuant to the same, an FIR, being M. Case No. 1 of 2015, came to be registered with the concerned Police Station. Thereafter, investigating agency carried out the investigation and filed charge-sheet in M. Case No. 1 of 2015, which is registered before the concerned Court as Criminal Case No.12574 of 2016 pending in the court of learned Additional Chief Judicial Magistrate, Surat.

4.3 Learned Advocate, Mr. Havewala, submitted that thereafter, with the similar types of allegations, aforesaid FIR came to be filed, wherein also, the

charge-sheet has been filed, now.

4.4 It was submitted that Respondent No.2-accused, then, filed Criminal Misc. Application No. 22229 of 2017, wherein, the Coordinate Bench of this Court ordered that the charge-sheet filed against Respondent No.2-accused in connection with the complaint filed by the applicant-Bank shall be treated as Supplementary Charge-Sheet in the Criminal Case No.12574 of 2016, pending before the court of learned Additional Chief Judicial Magistrate, Surat.

4.4.1 In other words, it was submitted that the charge-sheet filed in connection with the aforesaid FIR is ordered to be kept, as Supplementary Charge-Sheet, in the Criminal Case No.12574 of 2016,

4.2 Learned Advocate, Mr. Havewala, then, submitted that in the undertaking given by Respondent No.2-accused before the concerned Court, it is not stated that Respondent No.2-accused shall give a particular amount, within some stipulated time.

4.2.1 Learned Advocate, Mr. Havewala, referred to the said undertaking and submitted that the same mainly states that Respondent No.2-accused shall cooperate with the original complainant, i.e. applicant-Bank, in the process of selling certain units, which are referred to in the aforesaid undertaking, and shall give his consent for the same.

4.3 It was submitted that against the order passed in the arbitration proceedings, initiated by one of the partners of the partnership firm, namely Manoj Singapuri, if, the applicant-bank files any application for joining it as a third party, Respondent No.2-accused shall cooperate and shall give consent in favour of the applicant-Bank.

4.3.1 It was, however, submitted that no such application has been filed by the applicant-Bank before the learned Arbitrator. It further states that after the final order shall be passed by the learned Arbitrator in favour of Respondent No.2-accused, then, within the period of six months thereafter, all the units shall be sold and the amount, which may be received towards the sale consideration, shall be given to the applicant-Bank.

4.3.2 Thus, it was contended that Respondent No.2-accused has not given any undertaking to pay any particular amount to the applicant-bank within some stipulated time, as is being submitted by the learned Advocate for the applicant-Bank.

4.4 Learned Advocate, Mr. Havewala, submitted that, while considering the case of Respondent No.2-accused for anticipatory bail, the concerned Sessions Court also took note of the fact that the applicant-Bank had already been given the symbolic possession of certain units / properties by initiating the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (in brief, 'SARFAESI Act'.

4.4.1 It was submitted that, however, during the pendency of the present proceedings before this Court, i.e. for almost six years, the applicant-Bank has not taken any further action for selling the aforesaid properties / units.

4.4.2 It was submitted that the applicant-Bank has also not filed any application for joining, itself, as a third party in the arbitration proceedings.

4.5 Learned Advocate, Mr. Havewala, therefore, submitted that as the concerned Sessions Court has exercised discretion in favour of Respondent No.2-accused after considering all the aspects so also the material placed before it, this Court may not entertain this application.

5. Learned APP, Mr. Patel, appearing for Respondent No.1-State, under the instructions, submitted that Respondent No.1-State has not filed any application, seeking cancellation of the anticipatory bail granted to Respondent No.2-accused. Learned APP supported the submissions canvassed by learned Advocate for the applicant-Bank.

6. Having heard the learned Advocates for the parties and having perused the material on record, it emerges that prior to the lodging of the FIR by the applicant-Bank, one of the partners of the

partnership firm, namely Manoj Singapuri, had filed a private complaint before the concerned Magistrate Court being M. Case No. 1 of 2015, where, the Court passed an order under Section 156(3) of the Code and directed the concerned police authorities to carry out investigation.

6.1 It appears that, on completion of the investigation, police authorities filed charge-sheet against Respondent No.2-accused and the same is pending before the concerned Court for trial.

6.1.1 In the meantime, it appears that the applicant-Bank also filed the aforesaid FIR against Respondent No.2-accused for the offence punishable under Sections 406, 420 etc. of the IPC.

6.1.2 In pursuance of the same, Respondent No.2-accused filed an application under Section 438 of the Code before the concerned Sessions Court, which passed the impugned order, Dated: 06.12.2016, granting anticipatory bail to Respondent No.2-accused, on certain terms and conditions.

6.1.3 It is not in dispute that the impugned order, Dated: 06.12.2016, has already been implemented and executed, since, after the aforesaid order was passed, Respondent No.2-accused had remained present before the concerned police authorities on 13.12.2016, whereupon, he was formally arrested and was released.

6.1.4 Thereafter, investigating agency filed the charge-sheet and as per the order, Dated: 19.03.2018, passed by this Court in Criminal Misc. Application No. 22229 of 2017, the charge-sheet filed in connection with the aforesaid FIR was ordered to be treated and kept as a supplementary charge-sheet with the charge-sheet in Criminal Case No. 12574 of 2016 (arising out of M. Case No. 1 of 2015).

6.1.5 It is the say of the applicant-Bank that Respondent No.2-accused has not complied with the undertaking given before the Sessions Court and therefore, anticipatory bail granted to him by the concerned Sessions Court be canceled.

6.1.5.1 Aforesaid submission made by the learned Advocate, Mr. Jagirdar, for the applicant-Bank is misconceived. This Court considered the undertaking given by Respondent No.2-accused before the Sessions Court, wherein, Respondent No.2-accused has given the details of the properties / units, which are mortgaged with the applicant-Bank and which are not sold. It may be noted that, in the arbitration proceedings initiated by one of the partners of the partnership firm, namely Manoj Singapuri, the learned Arbitrator has granted stay qua the mortgaged properties. It is also stated in the undertaking that as and when the applicant-Bank initiates proceedings for selling the aforesaid unsold properties / units, Respondent No.2-accused will extend his full cooperation and will give his consent for the same.

6.1.5.2 It is also stated in the said undertaking that, if, the applicant-Bank files an application for joining, itself, as a Third Party, Respondent No.2-accused shall give his consent in favour of the applicant-Bank.

6.1.5.3 The undertaking, further, lays down that, if, the applicant-Bank is joined as a third party in the arbitration proceedings and if, the learned Arbitrator passes an order in favour of Respondent No.2-accused, then, by way of selling the aforesaid unsold units / properties within a period of six months, the outstanding amount of the applicant-Bank shall be paid to it by Respondent No.2-accused.

6.1.5.4 Thus, from the undertaking given before the concerned Session Court, it cannot be said that Respondent No.2-accused had assured to pay any particular amount within some stipulated time to the applicant-Bank. Thus, it is not correct on the part of the learned Advocate, Mr. Jagirdar, appearing for the applicant-Bank to state that Respondent No.2-accused has committed breach of the undertaking given before the Sessions Court, concerned.

6.2 Here, it is pertinent to note that applicant-Bank has already initiated the proceedings under the SARFAESI Act and the symbolic possession of certain units / properties has already been given to the applicant-Bank, long back. However, during the pendency of the present proceedings, i.e. for the period of almost six years, the applicant-Bank has

not proceeded further in that regard. Thus, in view of the fact that the applicant-Bank has already initiated the appropriate proceedings, the concerned Court shall pass appropriate orders, after considering the facts and the material placed before it.

6.3 Even otherwise, since, the impugned order has already been implemented, executed and exhausted, this application cannot be entertained.

7. Resultantly, this application fails and is **REJECTED**, accordingly. Rule is discharged.

UMESH/-

(VIPUL M. PANCHOLI, J)

