

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.617 OF 2018

Ashok Chandrej Singh, Age 59 years,  
Occ.Business, R/o.1804, Crimson Tower,  
Lokhandwala Township, Akurli Road,  
Kandivali (East), Mumbai.  
Presently at Arthur Road Central Prison.

Applicant

versus

1. CBI, EOW, Bandra, Mumbai.  
2. The State of Maharashtra.

Respondents

Mr.Sanjeev Kadam I/by Shyamrishi Pathak for applicant.  
Mr.A.R.Kapadnis, APP, for State.  
Ms.Ameeta Kuttikrishnan for CBI.

CORAM : PRAKASH D. NAIK, J.

DATE : 31<sup>st</sup> August 2018

PC :

1. The applicant is seeking bail in connection with FIR No.RC0682017E0014 dated 31<sup>st</sup> August 2017 registered by CBI-EOW for offences punishable under Sections 420, 465, 467, 468 and 471 of Indian Penal Code. The applicant was arrested on 12<sup>th</sup> October 2017. The investigation was conducted by CBI-EOW, Mumbai. On completing investigation the charge sheet has been filed.

2. In short, the prosecution case is that the applicant along with his son Ashish Singh had availed loan to the tune of Rs.17 crores during the period between 2011 and 2012. For the purpose of availing the loan facility, the accused filed exaggerated books of accounts, income tax returns and inflated the value of property

mortgaged. In 2014 the loan account was declared as NPA. At the instance of complainant FIR was registered on 31<sup>st</sup> August 2017 by CBI. The applicant preferred application for bail before the Special Court for CBI, which was rejected on 22<sup>nd</sup> January 2018.

3. Learned advocate for applicant submits that entire investigation is complete and charge sheet has been filed. There is no need for continuing the custody of applicant. It is submitted that during the course of investigation the specimen handwriting samples of the applicant were not obtained to establish the charge of forgery. The properties which were mortgaged were accepted while sanctioning the loan on the basis of valuation report submitted by valuers. The beneficiary of these transactions were the co-accused. The applicant had made payment of Rs.95,64,430/- to the complainant bank. Learned counsel for applicant drew my attention to the statements of witnesses in the charge sheet and various other documents. It is submitted that the factum of depositing the aforesaid amount is reflected in the bank statements which are placed on record by filing compilation of documents. He further pointed out the notice issued to the Court Commissioner who was appointed by the Court for attachment of properties. It is submitted that pursuant to the orders passed by DRT, Mumbai, the Court Commissioner was appointed and two properties of the applicants have been attached. He further pointed out the possession notice u/s 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. My attention was also drawn to the valuation report which mentions that the property situated at 1804, Crimson Tower, Akurli Road, Lokhandwala Township, Kandivali East, Mumbai admeasuring 101.34 sq.mrs.

Approximately which was valued at Rs.1,71,66,996/- as per valuation report, was taken into possession by the bank. He also pointed out that the other property situated at 276, VMall, Asha Nagar, Western Express High Way, Kandivali East, Mumbai admeasuring 39.17 sq.mtr which is valued at Rs.88,32,835/- is also taken into possession in accordance with attachment by Central Bank of India. Learned counsel submitted that third property viz Row House No.6, Amol Nagar, Phase-1, Nr.Saidham Complex, Juhuchandra, Naigaon East admeasuring 186 sq.mtrs having valued at Rs.79,98,000/- as per valuation report is not attached. Learned advocate for applicant, on instructions has made a statement that till conclusion of trial, the applicant and/or any other person through or under him shall not create third party interests in respect of Row House No.6, Amol Nagar, Phase-1, Nr.Saidham Complex, Juhuchandra, Naigaon East. All these documents were placed on record by filing compilation of documents, copy of which was furnished to the advocate for respondent. It is further submitted that the co-accused Smt.Dias, wife of accused, was arrested and she is released on bail by Special Court by order dated 22<sup>nd</sup> January 2018. Learned counsel also brought to my notice the flow chart which is part of the charge sheet which mentions as to how funds were transferred from Ashish Communication Systems. It is submitted that substantial funds were transferred to the accounts of co-accused Pandey. It is further submitted that the respondents had alleged that the accused no.1 along with his wife had offered their property against credit facilities availed of by their son who is proprietor of M/s.Ashish Communication Systems and they also stood guarantor to the credit facility. It is alleged that the credit facilities availed of by their son in the name of his proprietorship firm and who had also

adopted similar modus operandi causing loss to the complainant bank. It is submitted that the offence u/s 467 is not made out. Other offences are not punishable with imprisonment of more than 10 years. It is submitted that considering the role attributed to the applicant, bail may be granted to him.

4. Learned counsel for respondent-CBI-EOW opposed the relief sought by the applicant. She relied upon the contents of affidavit-in-reply filed on behalf of respondent no.1. She submitted that the applicant has played vital role in the entire transaction. He had applied for overdraft facility in the amount of Rs.2 crores under the mortgage scheme in the name of proprietorship firm M/s.Ashoka Property Developers, which was sanctioned by Central Bank of India and fully availed by him, but not repaid to the bank. False documents were submitted in the nature of income tax returns and balance sheet inflating the value of property. The applicant's son had applied and the bank had sanctioned the overdraft facility in the sum of Rs.2.75 crores under overdraft scheme in the name of his proprietorship firm M/s.Ashish Communication Systems in the year 2011. He also availed Rs.2.25 crores by way of CC limit, Rs.5 crores by way of overdraft and Rs.5 crores by way of term loan in the name of his proprietorship firm in the year 2012. He fully availed the credit facilities but did not repay the bank. The applicant stood as guarantor for the credit facilities availed of by his son for his firm M/s.Ashish Communication Systems. Collateral security was furnished by the accused towards facilities provided by the bank. The property was over valued. The accused are the main beneficiaries of the offence. The accused did not utilize the funds for which they had applied. The funds were transferred to various other entities

controlled by them. Considering the manner in which crime is committed and the bank is put to loss, the applicant is not entitled for bail.

5. On perusal of the documents annexed to the application, the compilation of documents furnished by the advocate for applicant, it is apparent that the credit facilities were availed of by the accused. The applicant is in custody from 12<sup>th</sup> October 2017. The investigation is completed and charge sheet has been filed. Two properties as stated above have been attached in accordance with the proceedings initiated by the complainant bank. The applicant so far has deposited Rs.95,60,430/- to the complainant bank. It is debatable whether Section 467 of IPC would be attracted in this case. Section 467 relates to forgery of valuable security, will etc.. the said offence is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years. Learned counsel for respondent had submitted that in accordance with the definition of valuable security, stipulated in Section 30 of IPC, the income tax returns and the balance sheet can be termed as valuable security. The definition contemplated in Section 30 enumerates that the words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right. The illustration to the said definition is relevant for consideration which states ‘A’ writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a “valuable

security”. The other offence for which the applicant is being prosecuted is under Sections 420, 465, 468 and 471. They are punishable and maximum punishment prescribed for these offences is imprisonment for seven years. The applicant is in custody since October-2017. Considering the voluminous evidence it is not clear as to when trial would proceed. The properties of the applicant have been attached. The charge has yet not been framed. Five accused have already been granted bail. The accused who were granted bail includes wife of applicant, valuer of the property, two bank officers and one supplier. It is submitted that out of said five accused, four persons were directed to be released on bail by this Court and one accused was granted bail by Special Court. Learned counsel for CBI, however, submitted that the role attributed to the supplier was completely different and on the basis of nature of allegations against them, they were granted bail. Be that as it may, considering the fact that the applicant is in custody, charge sheet is filed and in the light of circumstances referred hereinabove, bail can be granted to the applicant on certain conditions.

6. Hence, I pass following order :

#### **ORDER**

- (i) Criminal Bail Application No.617 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with FIR No.RC0682017E0014 registered with CBI-EOW, Mumbai, which is subject matter in Special Case No.4 of 2018 pending before the Special Court, at Mumbai, on furnishing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

- (iii) The applicant or any other person through or under the applicant, shall not alienate and/or create any third party interests in respect of Row House No.6, Amol Nagar, Phase-1, Nr.Saidham Complex, Juhuchandra, Naigaon East admeasuring 186 sq.mtrs till conclusion of trial;
- (iv) The applicant shall not tamper with the evidence;
- (v) The applicant shall attend the proceedings before the Special Court regularly;
- (vi) The applicant is permitted to furnish cash security in the sum of Rs.50,000/- for a period of four weeks.

(PRAKASH D. NAIK, J.)

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