

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.4992 OF 2015

Patangkumar Gagan s/o Sushilkumar
Age 35 years, Occu. Service,
R/o Krishnapuri, Pachora,
Taluka Pachora, District Jalgaon 424 201

..Applicant

Versus

1. The State of Maharashtra,
Through the Superintendent of Police,
Aurangabad (Rural),
District Aurangabad

2. The Police Inspector,
Soygaon Police Station,
District Aurangabad

..Respondents

Mr A.R. Rathod, Advocate for applicant

Mrs M.A. Deshpande, Additional Public Prosecutor for respondents

CORAM : N.W. SAMBRE, J.

DATE : 30th September 2015

PER COURT

1. Heard learned Counsel for the applicant and learned A.P.P. for State.

2. The applicant, who is an accused for an offence punishable under Section 409 of the Indian Penal Code in Crime No.109 of 2014, is seeking pre-arrest bail in the matter under Section 438 of the Cr.P.C.

3. Amongst other, learned Counsel for the applicant has raised grounds for release as under :

4. That applicant being posted at a post where appropriate expertise knowledge of banking was not available hence, while working as Branch Manager might have committed some mistakes and as such, he is an innocent person. In addition to above, he would urge that the applicant is already suspended from the service. According to him, taking into consideration balance tenure of service, the protection is needed. He would further urge that the complaint is not lodged by any of the account holders of the Bank but by the Branch Manager. He argued that falsity of the complainant could be noticed from the fact that nothing objectionable conduct could be noticed against the applicant, leave apart neither any objection in annual audit report. He would urge that the custodial interrogation of the applicant is not necessary. The applicant shall co-operate to the investigating agency and in support of his contentions, he has placed reliance on the following judgments :

1) Gurbaksh Singh Sibbia : Sarbajit Singh Vs. State of Punjab reported in 1980 AIR (SC) 1632;

2) Manoj Prabhakar Lohar Vs. State of Maharashtra, reported in 2009 ALL MR (Cri) 2883;

3) Sureshchandra Ramanlal Vs. State of Gujarat & Anr., reported in 2008 ALL MR (Cri) 2294 (S.C.);

4) Mathloob Abdul Gafoor Qureshi Vs. State of Maharashtra & Anr. Reported in 1998 ALL MR (Cri) 1288

5. Learned Additional Public Prosecutor, while opposing the application would urge that the offence under Section 409 of the Indian Penal Code is a serious offence and is punishable with life imprisonment. The applicant, who was posted as a Branch Manager of a Nationalised Bank has committed defalcation and as such from the first information report and other documents, there appears prima facie involvement of the applicant in commission of the crime in question. She would submit that the amount of defalcation is required to be recovered from the applicant and since the nature of offence is financial mismanagement, the Supreme Court has time and again held that in such cases, the Court should be slow in granting pre-arrest bail, when prima facie evidence is available against the accused.

6. Having considered the rival submissions of the parties, it is noticed that the applicant was working as Branch Manager from 29th April 2011 to 29th June 2012 in a nationalised Bank, i.e. Bank of Maharashtra at Gondegaon, Taluka Soygaon, District Aurangabad. It is noticed from the first information report that applicant has committed total embezzlement to the tune of Rs.13,25,000/- by either making false entries in loan accounts or savings Bank accounts or the account of the Bank by withdrawing the said amount. There is sufficient evidence available against the applicant. Hence, the applicant, in view of his involvement is already suspended from the service.

7. In view of above referred background, in my opinion, it will be appropriate to deny the protection, as claimed under Section 438 of the Cr.P.C., as the case involves the financial implications and the allegations of misappropriation of the amount of the account holders of the nationalised Bank are made against the applicant, which are serious in nature.

8. So far as reliance placed by the applicant on the judgment of Gurbaksh Singh Sibbia : Sarbajit Singh Vs. State of Punjab (cited supra) for seeking protection is concerned, it is required to be noted here that there is prima facie material available against the applicant about the commission of crime in question. Apart from above, the reliance placed on the judgment of this Court in the matter of Manoj Prabhakar Lohar Vs. State of Maharashtra (cited supra), wherein this Court has noted that if the material on the record is not found to be enough, the Court should grant anticipatory bail. Perusal of the record depicts that there is enough documentary evidence available against the applicant at this stage depicting involvement of the applicant in commission of crime in question. The reliance placed by the applicant on the judgment of Sureshchandra Ramanlal Vs. State of Gujarat & Anr. (cited supra) seeking bail on the ground that nothing is to be recovered, it is required to be noted that the amount of defalcation and particularly, availability of material against the applicant disentitles him for the relief claimed. The reliance placed by the applicant on the judgment of Mathloob Abdul Gafoor Qureshi Vs. State of Maharashtra & Anr (cited supra) will be hardly of any assistance, as there is no civil litigation pending between the parties.

9. As such, in my opinion, no case for grant of pre-arrest bail is made out. The application stands rejected.

(N.W. SAMBRE, J.)

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