

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.428 OF 2015

Shri Sarjerao Ganpati Powar ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.M.A. Patil for the Applicant

Mr.S.S. Pednekar, APP, for Respondent – State

Mr.P.P. Shewale, API / Investigating Officer, Panhala police station,
Kolhapur – present

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: APRIL 8, 2015

P.C.:

1. The application is moved under section 438 of the Criminal Procedure Code, as the applicant/accused who was working as a Secretary of Shri Vinay Kore Vividh Karyakari Sahakari Seva Society Maryadit, Bandiwade, Taluka Panhala, Dist. Kolhapur, has misappropriated an amount of Rs.10,23,297/- and has used the same for himself. Out of that, he deposited an amount of Rs.250,200/- in the society after the offence was revealed. Now an amount of Rs.773,000/- is due from him which is misappropriated by him. Hence, the offence is registered against him on 25.2.2015 in C.R. No.19 of 2015 with the Panhala police station.

2. The learned Counsel for the applicant/accused has submitted that he is not a public servant and therefore the offence cannot be registered under section 409. He submitted that he has not cheated anybody. His custody is not required. In support of his submissions, he relied on the judgments in **Ashok Kumar Gupta vs. State**¹; **Naresh Kumar vs. State of Punjab**², **Bharat Chaudhary & anr. vs. State of Bihar**³.

3. The learned Prosecutor opposed the application. He produced the statements of the witnesses. He submitted that the applicant/accused, who was working as a Secretary in the said Cooperative Society did not deposit the amount of the borrowers but he used the same for himself. He relied on the affidavit filed by him before the Executive Magistrate by the accused where he has admitted his act and also admitted that he has committed fraud of Rs.7,73,097/- and he prayed that he be given 3 years time to deposit the said amount.

4. The record discloses that the applicant/accused has committed offences under section 420 and 409 of the Indian Penal Code. The submissions of the learned Counsel for the applicant/accused that section 409 cannot be invoked are not correct as this is a credit society controlled by the Deputy Registrar of Cooperative Societies. The punishment under

1 2008 (1) Crimes 151 (Del.)

2 2 All Cri.LR 253

3 2004 1 Bom CR (Cri.) 543

section 409 of the Indian Penal Code is upto life. Hence, the compliance under section 41A is not required. However, the applicant/accused has received the amount which was handed over by the borrowers to pay off their loans and the applicant/accused did not deposit the said amounts in their respective accounts. Thus, the manner in which the offence is committed is also explained and accordingly, the police have recorded the statement. As regards the rulings cited by the learned counsel for the applicant/accused, they are not relevant to the present facts of the case in view of the nature of the offence.

5. In view of the above, it appears his custodial interrogation is not required. Therefore, on this ground alone, I grant pre-arrest bail on the following conditions:

- i) In the event of arrest, the applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount;
- ii) The applicant shall not tamper with the evidence;
- iii) The applicant shall not indulge into any kind of offence while on bail;
- iv) The applicant shall cooperate with the Investigating Officer

and attend the concerned police station on every Friday, between 6 pm to 8 pm, till filing of chargesheet.

6. Anticipatory Bail Application is disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)