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

CRIMINAL APPLICATION NO. 3324 OF 2016

Deepak s/o Banavarilal Agrawal ...Applicant

VERSUS

The State of Maharashtra ...Respondent

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Shri V.D.Hon, Senior Counsel i/b
Shri N.L.Choudhary, advocate for applicant
Shri S.G.Karlekar, A.P.P. for respondent/State

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CORAM : SMT.SADHANA.S.JADHAV, J.

DATED : 14th JULY, 2016

PER COURT :-

Heard learned counsel for the applicant and the learned A.P.P. for the respondent/State. Perused the papers of investigation.

2. This is an application under Section 439 of the Criminal Procedure Code. The applicant herein is apprehending his arrest in Crime No. 36 of 2016, registered at Azadnagar police station,

Taluka and District Dhule, for the offences punishable under Sections 420, 465, 467, 468, 471, 472 of the Indian Penal Code.

3. The investigation is completed and charge sheet is filed.

4. It is the case of prosecution that on 7.4.2016 Prakash Sangale, who happens to be Superintendent of Agricultural Department at Dhule, lodged a report against unknown persons alleging therein that on 5.4.2016 the District Superintendent Shri G.D.Wadile had informed him that he had noticed bank accounts of various schemes, such as, A/c No.0139000109250778 in the name of Rashtriya Phalotpadan Abhiyan, A/c No. 0139000109250769 of On Farm Water Management, and A/c No. 0139000109199246 in the name of Ekatmik Phalotpadan Vikas Abhiyan, and at that time he had realized that on 4.4.2016 an amount of Rs.58 lakhs was transferred in the account of Sanket Enterprises. It is alleged that the complainant

had not issued any cheques and yet there was transaction. There was an inquiry in respect of the same. It was revealed that the Proprietor of Sanket Enterprises had placed an order with Kushal Enterprises on 4.4.2016 and had ordered cut and polished diamond. That approximately an amount of Rs.72 lakhs was transferred in the account of Kushal Enterprises by R.T.G.S. Account statement of Sanket Enterprises with Syndicate Bank would indicate that on 6.4.2016 an amount of Rs.40 lakhs was transferred by R.T.G.S. in the account of the Firm of the present applicant and on 6.4.2016 an amount of Rs.31,56,900/- was further transferred in the same account by R.T.G.S. It appears from the record that Manager of Kushal Enterprises had informed the present applicant that there is an inquiry initiated into the genuineness of the income of Sanket Enterprises and in all probability it was an amount which was misappropriated. On being learnt about the same, it appears from the record that on 8.4.2016 the present applicant had returned the amount of Rs.40 lakhs and Rs.31,56,900/- to the account of Sanket Enterprises.

5. It is admitted position that the applicant herein is a diamond merchant. He accepts orders and delivers the same as per the specifications. There was an inquiry into the crime. The applicant was summoned by the investigating officer, Dhule vide notice issued under Section 160 of the Criminal Procedure Code. The applicant had visited the office of the investigating officer, Dhule on 18.5.2016 and had presented his papers. The applicant was then taken into custody and was arraigned as an accused in Crime No. 36 of 2016. It is in these circumstances that the applicant is praying for enlargement on bail, firstly on the ground that the applicant has not committed any offence as alleged against him and secondly that the investigation is completed and charge sheet is filed.

6. The learned A.P.P. appearing for the State

vehemently opposes the grant of bail on the following grounds : -

(i) Firstly it is stated that there is no record to show that Sanket Enterprises had placed an order for diamond with Kushal Enterprises on 4.4.2016, except for the proforma invoice which is filed on record by the accused/applicant.

(ii) Secondly, that the amount of Rs.72 lakhs was then transferred to Khushbu Enterprises which also happens to be a diamond merchant Firm.

(iii) The genuineness of source of income of Sanket Enterprises is doubtful.

7. There is also evidence to show that Kushal Enterprises had demanded the return of the amount from Khushbu Enterprises which he has received and the same was transferred to Sanket Enterprises within four days of the receipt of the said amount. The learned A.P.P. further submits that in all probability this is a conspiracy between Sanket Enterprises, Kushal Enterprises and Khushbu Enterprises, and that the Government money has

been misappropriated.

8. According to the learned A.P.P. a serious offence, such as under Section 409 r/w 120-B of the Indian Penal Code is also attributed to the present applicant. Learned A.P.P. further submits that in the present case 7 accused are yet to be arrested and, therefore, although charge sheet is filed the applicant would not be entitled to be enlarged on bail.

9. As against this learned Senior counsel rightly submits that just because the investigating officer has failed to take steps against the co-accused and that too when charge sheet is not filed under Section 299 of the Criminal Procedure Code or no application for proclamation under Section 82 is filed, the applicant herein cannot be subjected to further incarceration as it would not only be unwarranted but also unjust. It is further submitted that the applicant had received an estimate seeking supply

of cut and polished diamond and that the applicant had received the said amount towards consideration of the order placed before him. Besides this, it is also rightly submitted on the basis of the record that the moment the applicant realized that the investigation is set in motion in respect of the source of income of Sanket Enterprises, the applicant had demonstrated his bonafides by returning the said amount just within four days. Learned Senior counsel further submits that further incarceration of the applicant would be punitive which would be unwarranted and unjust. The learned Senior counsel also submits that the applicant has always shown his willingness to cooperate with the investigating agency, and therefore, he should not be kept in incarceration any further.

10. Taking into consideration the facts of the case, on the basis of the record and the submissions advanced across the Bar, this Court is of the opinion that the applicant has made out

a prima facie case for enlargement on bail under Section 439 of the Criminal Procedure Code. However, it is made clear that the observations made herein above are prima facie in nature and shall not be considered for the purpose of quashing of F.I.R, discharge application or at the time of trial as the said observations are restricted to an application under Section 439 of the Criminal Procedure Code. Hence the order.

(i) Application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) The applicant shall report to the office of the investigating officer as and when called upon being issued notice under Section 160 of the Criminal Procedure Code, which shall precede at least 4 days prior to the scheduled date.

(iii) It is also made clear that the co-accused shall not claim parity with the present applicant as the applicant has been enlarged on bail in the facts of the case restricted to the applicant.

(iv) Application stands disposed of.

(SMT.SADHANA.S.JADHAV, J.)

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