IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3366 OF 2016

Akhilesh S/o Late Madhusudhan Joshi,
Aged 39 years, Occupation : Business,
R/o Flat No.1205, Pushpa Vinod-II,
Wing "A", S.V. Road, Boriwali (West),
Mumbai – 400 092 .. Applicant

Vs.

The State of Maharashtra,
Through Police Station Officer,
Police Station, Azad Nagar,
Dhule .. Respondent

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Mr. Amit Khare, Advocate for the applicant
Mr. A.S. Shinde, APP for the respondent-State

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CORAM : N.W. SAMBRE, J.
DATE : 03/08/2016

ORDER :

Heard.

2. The applicant is seeking pre-arrest bail in Crime no. 36 of 2016 registered at Azadnagar Police Station, Dist. Dhule for the offences punishable under section 420, 465, 467, 468, 470, 471, 472, 409, 120-B of the Indian Penal Code.

3. The prosecution case, as against the present applicant is, the District Superintendent from the Department of Agriculture Officer, Dhule received grants, to be disbursed to the farmers and accordingly the said amount was parked in the account of the State Government operated in the name of District Superintendent, Agricultural Officer, Dhule in Punjab National bank.

4. The accused persons, in connivance with each other, with the help of the employees of the said bank, transferred an amount of Rs.4,78,00,000/- through RTGS in the account of M/s Sanket Enterprises in the Syndicate Bank, Kalbadevi, Mumbai. The said amount which was transferred to the said Sanket Enterprises, was tried to be siphoned off by practising fraud.

5. The amount that was transferred in the name of Sanket Enterprises, appears to be in the name of one Shaileshkumar Jain, main accused in the crime in

question. Said Shaileshkumar Jain approached Dnyaneshwari Multi State Urban Co-operative Credit Society Ltd. (hereinafter referred to as "**the Society**"), stating that he want to open an account in his name with the said Society. Without complying with the necessary formalities, present applicant has facilitated said Shaileshkumar Jain, claimed to be the proprietor of Sanket Enterprises, in whose name, the amount was transferred in Syndicate Bank and as such, participated in operating the said account. As such, the crime in question.

6. While trying to make out a case for grant of pre-arrest bail, learned counsel for the applicant Shri Khare would strenuously urge that the applicant is falsely implicated in the crime in question. According to him, one of the accused was apprehended at the behest of applicant, to be more precise, in the bank of the applicant at Mumbai in view of the intimation to that effect given by the

applicant to the Police and as such, innocence of the applicant could be inferred from the said conduct of the applicant. He would then submit that from Syndicate Bank, an amount of Rs.55,00,000/- + Rs. 55,00,000/-, total Rs.1,10,00,000/- was transferred through RTGS to the account of said Shaileshkumar Jain, however, since RTGS facility was not available with the Society, the amount was initially transferred in the account of the Society maintained with ICICI bank and was parked there. The main accused, though tried to withdraw the said amount, he was not permitted to do so, whereas the amount was secured by issuing appropriate communication to the accused to provide his identity. Shri Khare would then refer to various communications, so as to submit that the applicant cannot be held responsible for the crime in question, as the applicant is neither a beneficiary nor a member of the syndicate, which has committed the crime in question. He would further add that the amount was returned from the Society's account with ICICI bank to the Syndicate Bank, pursuant to the instructions given by the Investigating Officer to the ICICI Bank and as such the same cannot be taken as adverse to the interest of the applicant. He would submit that he is very much available for the investigation and is without any criminal antecedents, hence, he be released on pre-arrest bail.

7. Learned A.P.P. Shri Shinde would strenuously urge that the Application is not liable to be entertained and the applicant does not deserve any protection from this Court, as the crime in question has the colour of economic offence and the same has a long reaching adverse impact over the economy of the State, particularly in view of the amount involved in the crime in question. According to him, the Apex Court has already observed that in an economic offence, the Courts below, while

considering the prayer for bail, must view the same independently. Learned A.P.P. would then add that the applicant was working as a Manager of the credit co-operative Society and he has permitted Shaileshkumar Jain, main accused to open an account and to withdraw the amount from there, though Shaileshkumar Jain has not furnished any KYC (documents disclosing identity of the said person to open the account), he would then submit that the applicant is absconding and as such, looking to the nature of fraud in the present case, the involvement of the applicant, his connection with the other co-accused and their involvement in other similar offences, is also required to be investigated into. He would also submit that custodial interrogation of the applicant is necessary, as the role of the applicant in a case of money laundering is also to be enquired.

8. Having considered the rival submissions of

the parties, it is required to be noted that the offence in question has started from the Punjab National Bank, where the employees of the said bank acted in connivance with the main accused Shaileshkumar Jain, as by RTGS, they transferred an amount of more than Rs.4 Crores to the account of Sanket Enterprises of Shaileshkumar Jain, though the said account, which was not meant for the said accused but was meant for the farmers, who are suffering from famine. It is then required to be noted that after the amount was received in Syndicate Bank, the same was transferred through RTGS to the account of the Society of applicant, to be diverted to the account of Shaileshkumar Jain, which was opened with the Society.

9. If the account details of Shaileshkumar Jain, who claims to be the proprietor of Sanket Enterprises is noticed, Shaileshkumar Jain has not furnished any identity proof, still, he was

permitted to open and operate the account by the present applicant in the capacity of the Manager. The account opening form, which is produced by the applicant on record depicts the signature of said Shaileshkumar Jain. However, necessary information, such as to whether Sanket Enterprises is a registered firm, paid income taxes or not, the identity of said Shaileshkumar Jain, particularly, his Aadhar card / PAN card photos, family details and other identity proof were also not called for. Perusal of the form further depicts that Shri Shaileshkumar Jain has not furnished his office address or the residential address and has also not given details of family members, as was required in the form for opening of account. He has also not furnished his photographs and other important details, still, the present applicant has permitted him to operate the account.

10. The fact remains that the applicant has

facilitated the said accused Shaileshkumar Jain of Sanket Enterprises in transferring the amount from the account of Syndicate Bank through RTGS to the account of the Society, though the present applicant has not permitted Shaileshkumar Jain to withdraw the amount, however, the same was in view of the fact that Shaileshkumar Jain was apprehended by the Police.

11. While responding to the Court's query, as to how the applicant has permitted Shaileshkumar Jain to open the account without the sufficient documents, learned counsel for the applicant submits that it is with the intention to gain an important customer like Shaileshkumar Jain and to increase the business of the bank, the provisional account was opened. It is required to be noted that the opening of provisional account that too without any identity proof of a person, is nowhere provided in any of the Banking Manual, much less the instructions of the

Reserve Bank of India. The instructions of the Reserve Bank of India are other way round i.e. without any identity of the customer, a person need not be permitted to operate or open an account with the Bank. The said act on the part of the applicant is required to be viewed very seriously and as such *prima facie*, involvement of the applicant in the crime in question could be inferred.

12. For the purpose of recovering the amount, the Investigating Officer was required to approach the various banks viz. The Bank of India, Syndicate Bank, Yes Bank, Dnyaneshwari Multi State Co-operative Credit Society Ltd., ICICI Bank. It is required to be noted that though in exercise of powers under section 91 of the Code of Criminal Procedure, vide communication dated April 23, 2016, certain information was sought in regard to the Society of the applicant, where he was working, the entire information is not furnished. It is to be

noted that the applicant was informed by the Investigating Officer vide communication dated April 7, 2016, to hand over entire amount of Rs.1,10,00,000/- to the Investigating Officer, as the same was required to be seized, being the amount involved in the crime; the applicant, instead of co-operating, re-transferred the said amount to the account of accused Shaileshkumar Jain in Syndicate Bank, instead of aiding the Investigating Officer in seizure of the same. The said act on the part of the applicant, *prima facie*, appears to be in aid and facilitating the main accused Shaileshkumar Jain, so that he can withdraw the said amount from his account in the Syndicate Bank. Even if the applicant has taken a plea that the Investigating Officer has written to the Syndicate Bank and the ICICI Bank to that effect, the fact remains that it was always open for the applicant to withdraw the amount and hand it over to the Investigating Officer since he was knowing that the amount is subject matter of the crime in question. However, his said conduct of not co-operating the Investigating Officer in seizing the said amount but transferring the same to the Syndicate Bank, speaks of his criminal mind and intention.

13. Though the applicant has come with an excuse that the amount was transferred pursuant to the instructions of the Investigating Officer, however, the Investigating Officer was required to give such instructions to the Syndicate Bank / ICICI bank, as the applicant has not co-operated the Investigating Officer in seizure of the said amount though the applicant was the custodian of the same.

14. Though, Mr. Khare has tried to impress upon this Court to show bonafides of the accused/applicant, by stating that the applicant has co-operated in the investigation, however, the above referred observations in regard to the return of the amount from his credit Society, facilitating the

main accused Shaileshkumar Jain to open the account account without KYC documents and the alleged measures by the applicant/accused after the arrest of accused Shaileshkumar Jain i.e. after April 8, 2016 speaks voluminous about the criminal mind and the involvement of the applicant in the crime in question.

15. Perusal of the entire investigation papers depicts that there is big syndicate and number of persons are involved in the crime in question. The crime in question is an economic offence and is required to be viewed apart the other offences under the Indian Penal Code. Though the chargesheet in the matter is filed, however, it depicts that the investigation is not complete. Most of the accused are absconding including that of applicant and there are some accused, whose identity itself is not traceable.

16. In view of above, in my opinion, the

custodial interrogation of the applicant is very much called for. The applicant since has facilitated Shaileshkumar Jain to open his account with the Society, that too without any identity proof, in my opinion, does not call for any interference at his behest. No case for grant of pre-arrest bail is made out. The Application fails and is rejected.

[N.W. SAMBRE]
JUDGE

arp/-