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

CRIMINAL APPLICATION NO. 3601 OF 2016

Vishal s/o Uddhav Manavatkar,
Age: 28 years, Occ. Service,
R/o Row Houses, Miri Maka Road,
Tal. Shevgaon, Dist. Ahmednagar ..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Incharge Police
Station Officer,
Sonai Police Station,
Sonai

2. The Superintendent Of Police,
Ahmednagar, Dist. Ahmednagar ..RESPONDENTS

Mr P. R. Katneshwarkar, Advocate for applicant;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondents

WITH
CRIMINAL APPLICATION NO. 3570 OF 2016

Himanshu s/o Jayantilal Khedkar,
Age: 33 years, Occ. Service as
Branch Manager with Bank of Maharashtra,
Branch at Village Maka, Taluka: Newasa,
Dist. Ahmednagar
R/o 27, Yashodhan Colony,
Dondaicha Road, At post Tq. Shahada,
Dist. Nandurbar ..APPLICANT

VERSUS

1. The State of Maharashtra,
Through the Police Inspector,
Sonai Police Station, Tal. Newasa,
Dist. Ahmednagar

2. The Superintendent Of Police,
Ahmednagar ..RESPONDENTS

Mr N. R. Dayama, Advocate holding for Mr Rajendra S. Deshmukh, Advocate for applicant;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondents

WITH
CRIMINAL APPLICATION NO. 3533 OF 2016

Kishor s/o Ananda Shirsath,
Age: 55 years, Occ. Service/Peon
R/o Maka, Tq. Newasa,
Dist. Ahmednagar ..APPLICANT

VERSUS

1. The State of Maharashtra,
Through the Incharge Police
Station, Sonai,

2. The Superintendent Of Police,
Dist. Ahmednagar ..RESPONDENTS

Mr R. J. Godbole, Advocate for applicant;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondents

CORAM : N.W. SAMBRE, J.

DATE : 25th July, 2016

ORAL ORDER :

By these applications under section 438 of the Code of Criminal Procedure, the applicants are seeking pre-arrest bail, in connection with C.R. No.I-63 of 2016, registered with Sonai police station, District Ahmednagar, for offences punishable under sections 409, 420, 468 and 477 of the Indian Penal Code. The applicants claim to be the employees of a nationalized bank (Bank of Maharashtra) Branch at Maka, Taluka Newasa, District Ahmednagar.

2. The applicant Vishal Manavatkar was working as Deputy Manager, whereas applicant Himanshu Khedkar was in-charge Branch Manager. The applicant Kishor Shirsath was working as a Daftary.

3. The prosecution story is, one Sudhir Kulkarni, the Chief Manager of Inspection Cell has lodged the first information report alleging that one Shivaji, who was working as a Cashier in the Branch at Naka, has misappropriated the bank amount by making cash withdrawals and adjusting the said amount from the account of his wife and other thirteen account holders.

4. The grounds for seeking bail on behalf of the applicants appear to be common. The applicants, while shifting entire burden on Cashier Shivaji Bhavar, would submit that they are falsely implicated in the crime in question, as they are no way responsible for the alleged act.

5. Mr Katneshwarkar, learned Counsel would urge that applicant Vishal Manavatkar was appointed as a Probationary Bank Officer on 20th October, 2014 and was posted as Deputy Manager. According to him, the applicant being probationary officer, but for supervision, lacks practical knowledge in its entirety *qua* administering the branch and the main accused Shivaji has practiced fraud on him. He would then submit that the entire fraud as is noticed is based on documentary evidence and custodial interrogation of the applicants is not required.

6. Mr Deshmukh, learned Counsel appearing on behalf of applicant Himanshu, who was posted as in-charge Branch Manager, would urge that he was given charge of the said post on 2nd January, 2016. According to him, in addition to the charge of the post of Branch Manager, the applicant was required to look after other administrative exigencies, including that of soliciting customers and increase in the business of the bank. He would submit that no direct duty is cast upon the applicant to supervise the cash flow/verification of vouchers and as such, the applicant be released on pre-arrest bail.

7. Mr Godbole, learned Counsel appearing on behalf of applicant Kishor, who is posted as a Peon, would submit that the applicant is falsely named as he is class IV employee of the bank and has hardly any role to play in withdrawing or maintaining the record of the bank, particularly in relation to the entries about cash withdrawals. According to him, till date the applicant is not suspended from the services of the bank, which itself speaks of his non-involvement in the crime in question. He would adopt arguments of the other applicants *qua* requirement of custodial interrogation of the applicant.

8. Learned Addl. Public Prosecutor, while opposing the applications, would submit that there is sufficient material available on record to depict *prima facie* involvement of the applicants in the crime in question. So as to substantiate his contentions, he has invited my attention to the duties of each of the applicants in their capacity as in-charge Branch Manager,

Deputy Manager and Daftary. In addition, he would rely upon the inspection report submitted by Chief Manager of Inspection Cell, who has certified that the misappropriation committed is to the tune of Rs.1,95,95,601.39. Learned Addl. Public Prosecutor submits that the offence being economic one is required to be vividly viewed and prays for rejection of the applications as custodial interrogation, according to him, is the need of the hour.

9. With the assistance of respective Counsel and the learned Addl. Public Prosecutor, I have perused the documents placed on record. I have also scanned the investigation papers.

10. The first information report is lodged by the Chief Manager of the Inspection Cell on 12th May, 2016, wherein *prima facie*, misappropriation of about Rs.13 Lacs was noticed. It is mentioned therein that the amount of misappropriation might increase and upon further inspection of the branch, the report is submitted by the said Chief Manager stating that the misappropriation as was noticed in the present case is to the tune of Rs.1,95,95,601.39. The said report dated 31st May, 2016, produced on record by applicant – Branch Manager Himanshu, is self-explanatory. The same could also find place in the investigation papers.

11. In the above background, we are required to analyze the responsibilities and liabilities of each of the applicants, in the matter of discharge of their official duties. My attention is rightly invited to the duties

as are prescribed. If the same is to be ascertained, the primary duty of the Deputy Branch Manager Vishal appears to be as under :-

(a) To attend to effective cash management

(b) Joint custody of cash

(c) Supervision over tallying cash, physical (from docket and cash reports in system)

(d) Authorize cash transactions

(e) Authorizing transactions within his powers

(f) To ensure smooth working of the branch

12. Applicant Vishal in Criminal Application No.3601 of 2016 appears to be directly joint holder of the cash of the bank and owes equal responsibility towards cash management with that of the main accused Shivaji. Apart therefrom, another accused Himanshu, who was working as in-charge Branch Manager, was also required to keep over all control on working of the branch including that of the cash management.

13. What is noticed from the record is, both the applicants, namely, Vishal and Himanshu, who were holding important official position in the bank, have failed in discharge of their duties. Their failure in discharge of duties has resulted into commission of the crime in question, which is to the tune of about Rs.2 Crores, for which the bank, which is required to hold public funds in trust, was misappropriated because of their inaction.

14. The investigation as is carried out till date depicts that the main accused has specifically named all the three applicants as the persons who have aided him in commission of the crime in question. If the said statement is read (keeping in mind that statement of the accused need not be relied upon for the purpose of considering application for bail), it is to be noted that the investigation is going on proper track. The said statement of the accused could be concerned to the above extent, that the Investigating Officer is carrying out the investigation on a right track. Apart therefrom, it is required to be noted that the misappropriation of the amount of Rs.2 Crores is not by virtue of a few entries in the accounts of the wife of main accused Shivaji or his relatives. The span of misappropriation appears to be almost of about 4 to 5 months and the inspection report by the Chief Manager, who is the informant, speaks a volume about negligent and careless attitude on the part of the applicants, who perhaps have aided the main accused Shivaji.

15. So far as the third accused Kishor is concerned, he is custodian of the record, particularly vouchers in view of his role as could be ascertained from the statement of the main accused Shivaji, as he used to give logistic support to the main accused Shivaji as is apparent from the investigation papers. It is then required to be noted that the Investigating Officer, during investigation, has noted that the evidence which was in the form of vouchers was sought to be destroyed by all the accused persons. The last person to be the custodian of the vouchers, which are in documentary

form, appears to be the Peon Kishor and said vouchers were required to be verified by other two applicants – accused, namely, Vishal and Himanshu as is apparent from the duties which are prescribed.

16. The Supreme Court, time and again, has observed that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country and in the present case the concerned bank.

17. In the light of what has been stated above and having regard to the *prima facie* involvement of the applicants in the crime in question, in my opinion, no case for grant of pre-arrest bail is made out. Consequently, Criminal Applications fail and stand dismissed.

(N.W. SAMBRE, J.)

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