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

**911 CRIMINAL APPLICATION NO. 3936 OF 2016**
**WITH**
**APPLN/4865/2016**
**IN**
**APPLN/3936/2016**

**RAVINDRA S/O SHANKAR KAMBLE**

**VERSUS**

**THE STATE OF MAHARASHTRA**

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Mr. R.S.Deshmukh i/b Mr. T.M.Venjane,
Advocate for Applicant.
Mr. A.S.Shinde, A.P.P. for Resp. – State.
Ms. Talekar, Advocate to assist A.P.P.

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**CORAM : A.M.BADAR, J.**
**DATE : 2nd SEPTEMBER, 2016**

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**PER COURT :**

1. The applicant who is General Manager of Vasantrao Naik Vimukta Jatis and Nomadic Tribes Development Corporation Ltd., Mumbai [for short, 'Corporation'] from 19/01/1911, is an accused in Crime No. 137/2016 registered at Kotwali police station, Ahmednagar for the offences punishable u/ss 420,467,468 read with 34 of the

Indian Penal Code, by this application u/s 438 of the Code of Criminal Procedure is seeking pre-arrest bail.

2. Heard the learned counsel for the applicant. He argued that the applicant is now under suspension. During pendency of the similar application before the learned Sessions Judge, he has submitted himself to the Investigating Officer. As he is under suspension, the applicant has no access to the record and, therefore, according to the learned counsel for the applicant, custodial interrogation of the applicant is not at all warranted. He further argued that the alleged offence is in respect of beneficiaries from Ahmednagar district and the prime accused is Mr. A.V.Nagare, District Manager of the Corporation at Ahmednagar. The learned counsel further argued that as a General Manager of Pune region, the applicant was entrusted with the duty of recovering amount of loan disbursed in Pune, Amravati and Nagpur regions. Learned counsel drew my attention to the Office Order dated 19/01/2011 in this regard and submitted that Ahmedngar district is not falling within the jurisdiction of Regional Manager at Pune. He further argued that the applicant, as a General Manager of Pune region, was not having powers to select beneficiaries, to sanction loan, to disburse loan or to hand over the amount of loan to the benefiriaries. He further argued that District Managers of the Corporation are directly under control of the Managing Director of the Corporation stationed at Mumbai. Learned counsel further argued that it was main accused Mr. A.V.Nagare, District Manager who had sanctioned loan of ₹ 2.5 Crores to 50 beneficiaries with which

the present applicant has no concern. Present applicant, according to the learned counsel, has no relation whatsoever with co-accused Ganesh Sanap.

3. The learned counsel for the applicant argued that though the previous similar application was withdrawn by the applicant, he now wants entertainment of present application because of subsequent events which took place. According to the learned counsel, after withdrawal of the first anticipatory bail application by the present applicant, the Investigating Officer has called the Legal Advisor-cum-Enquiry Officer Mr. Anil Vaidya for the purpose of investigation by intimating him that the material in the report of enquiry is not sufficient to infer culpability of the applicant. Learned counsel further drew my attention to the reply of the Legal Advisor-cum-Enquiry Officer, whereby he had intimated the Investigating Officer that except report of his enquiry, he is not having additional material against the present applicant. With this subsequent development, the learned counsel for the applicant seeks entertainment of the present application by arguing that the evidence collected by the Investigating Officer does not show involvement of the present applicant in the crime in question.

4. The learned counsel for the applicant drew my attention to the order passed by the Division Bench of this Court from time to time while dealing with proceedings for quashing the F.I.R. filed by the applicant.

5. As against this, learned A.P.P. pointed out to me the statements of 4 witnesses and submitted that in this financial scam, the applicant may not be having administrative control over the district office, but he has conspired with other accused persons and indulged in defrauding the State exchequer by preparing forged documents and showing disbursement of loan to fictitious beneficiaries.

6. I also heard learned counsel appearing for the informant. While countering the submissions of the learned counsel for the applicant, so far as it relates to the quashing proceeding lodged by the present applicant is concerned, the learned counsel argued that subsequently, the Division Bench of this court by Order dated 09/08/2016 in Writ Petition No. 658 of 2016 has observed that the State of Maharashtra itself does not want to investigate the crime in question. The learned counsel for the informant further drew my attention to similar applications for anticipatory bail filed by the co-accused Pramod Nilkanthrao Chavan, Ganesh Sanap and rejection thereof by this Court vide Order dated 21/06/2016. The learned counsel further drew my attention to the statement of Laxman Jagannath Chopade and Rajesh Babruwan Pawar, both employees of the Corporation and submitted that these statements were filed before the Division Bench of this Court in quashing proceeding initiated by the present applicant with affidavit of the informant. The learned counsel further argued that statements of these 2 witnesses recorded by the Investigating Officer, are not finding their place in the case diary of the crime in question. The learned

counsel further submitted that scam revealed as yet is a tip of ice-burg and several such instances are being reported in other districts of the State, wherein the Corporation is taking appropriate action for booking the culprits.

7. The learned counsel for the informant argued that it was the duty of the present applicant to sanction loan and to verify its disbursement by drawing my attention to the duty list placed at page No. 149.

8. In reply, learned counsel for the applicant submitted that duty list so pointed out is not authenticated in view of the specific office order dated 19/01/2011.

9. I have considered the rival submissions and also examined papers of investigation.

10. Prior to lodging the F.I.R. in question, it was revealed by the Corporation that during the period from 15/09/2012 to 10/01/2013 in Ahmednagar district, loan amount of Rs. 2.5 Crorers was disbursed to 50 fictitious beneficiaries and the entire amount of ₹ 2.5 Crorers which was disbursed as loan to the 50 beneficiaries was credited to the Savings bank account of one co-accused named Yogesh Sanap – Manager of Beed District Central Co-operative Bank. The Joint Commissioner and the Registrar of the Co-operative Societies then directed the enquiry. The Divisional Joint Registrar Mr. D.A.Chaugule then submitted report of enquiry. According to the prosecution case, Legal Advisor of the

Corporation Mr. Anil Vaidya had conducted the preliminary fact finding enquiry and submitted his report dated 30/03/2016. On the basis of that report, the F.I.R. of the crime in question came to be lodged by Mr. B.L.Naik, District Manager of the Corporation with police station Kotwali, Ahmednagar. The informant reported that the loan amount of Rs. 2.5 Crores disbursed in favour of 50 beneficiaries was credited to the Savings bank account of Yogesh Sanap with the Beed District Central Co-operative Bank, Beed where he is serving as the Manager. The informant alleged that the fraud was played with the help of the Officers of the Corporation as well as brother of Yogesh Sanap viz. Ganesh Sanap. The informant further averred that Ganesh Sanap was having cordial relations with the present applicant who was serving as General Manager for Pune region so also with Mr. P.N.Chavan, General Manager at Mumbai and Mr. P.K.Gajbhiye, Managing Director of the Corporation. The F.I.R. further contains averment that these 3 accused persons had entrusted 50 cheques to co-accused Ganesh Sanap, who is not even an employee of the Corporation and said Ganesh, in his turn, had handed over those 50 cheques to his brother Yogesh Sanap, which ultimately resulted in depositing this amount in the account of Yogesh Sanap.

11. Now, let us examine whether the applicant, who was then working as General Manager of the Corporation at Pune having duty of recovery of loan of 3 regions, in which Ahmednagar district is not falling; has *prima facie* complicity in the crime in question. One may not influence the fellow

officer only in his official capacity, but one can also indulge in fraud by conspiring with other officers of the institution. Capacity to influence does not depend upon the authority with the person in the hierarchy of the institution, even though such Officer may not be administratively subordinate to him. In the case in hand, it is seen from the statements of witnesses recorded by the Investigating Officer that co-accused Ganesh Sanap was virtually acting as an agent for submitting proposals for getting the benefit of beneficial scheme promulgamated by the State Govt. for upliftment of the persons of Vimukta Jatis and Nomadic Tribes caste. He used to call main accused, the then District Manager Mr. Nagare telephonically and then Mr. Nagare used to go out of the office and used to bring proposals of loan. It is seen from the statements of witnesses that the present applicant was calling the then District Manager and co-accused Nagare repeatedly and even co-accused Nagare used to go to Pune for meeting the present applicant frequently. Similarly, statements of witnesses are showing that co-accused Ganesh Sanap was visiting the office of the Managing Director and spending time with co-accused Mr. Gajbhiye, the then Managing Director of the Corporation. It is a matter of common knowledge that there can not be any direct evidence of conspiracy, as it reflect mental state. However, *prima facie*, statements recorded by the Investigating Officer do show that the present applicant was in touch with main accused Nagare, who in turn was in touch with co-accused Ganesh Sanap and Mr. Gajbhiye. Without actual support and aid of the high ranking officers of the Corporation, financial scam of this magnitude is not possible.

12. The learned counsel for the informant placed on record photo copies of statements of other employees of the Corporation, which are disclosing that at the instance of the present applicant, loan was used to be disbursed by main accused Nagare. Much substance is found in the submission of the learned counsel for the informant that the statements of these 2 persons viz. Laxman Jagannath Chopade and and Rajesh Babruwan Pawar were recorded by the Investigating Officer, but those are missing from the case diary in the light of the observations of the Division Bench of this Court in Writ Petition No. 658 of 2016 on 09/08/2016 to the effect that there is reason to believe that the State of Maharashtra does not want to investigate the case.

13. Case of co-accused Pramod Chavan, General Manager entrusted with the charge of Nasik region was considered by this Court vide Criminal Application No. 3112 of 2016 and in the order passed on 21/06/2016 in para Nos. 11,12 and 13 this Court has made following observations while rejecting his application as well as application of Ganesh Sanap.

> " *11. Having bestowed my thoughts to the submissions made, at the outset, it is required to be noted that the lodging of the first information report is based on the inquiry report submitted by the Legal*

*Advisor of the Corporation, pursuant to the directions given by the corporation. The Enquiry Officer, who is former Judicial Officer, has noted that applicant Pramod Chavan has used his position of General Manager at Bombay and thereafter of the Managing Director, for the purpose of influencing the local officers of the corporation at Ahmednagar, to sanction and disburse the amount. The fraud is apparent, as it is noted that the amount of Rs.2.5 crores, i.e. Rs.5,00,000/- against each of the beneficiaries was transferred to a single account of Yogesh Sanap, who is working as Deputy Manager, Beed District Central Co-operative Bank and thereafter the amount was disbursed/distributed by the accused persons. Applicant Ganesh, though claims to be an agriculturist, still it is not in dispute that he is real brother of Yogesh Sanap, in whose bank account the amount was transferred. Applicant Ganesh was instrumental in collecting, transporting/aiding the process of proposals for loan.*

*12. The fact that the amount was disbursed to the bogus beneficiaries cannot be lost sight of by the General*

*Manager/Managing Director Pramod Chavan, as in the inquiry it is noted that no efforts were made by him for recovery of the said amount, but he had sat tight over the said matter. It is then required to be noted that similar type of frauds are played at Sangli and Thane, where first information reports are already lodged, whereas filing of first information reports at Beed, Alibag and Pune is under consideration, for similar type of offences. It is brought to my notice that the corporation approximately has suffered loss of Rs.70 crores till date and the figure might be more, upon detailed inquiry/investigation. The fact remains that sanction of loan, selection of beneficiaries and transfer of the amount cannot take place without the aid and consent of the officials of the corporation. The Investigating Officer has started investigation in the matter and upon physical verification, has noted that the beneficiaries who are shown to be applicants for the purpose of disbursement of loan, are not at all in existence, as is apparent from the certificates to that effect issued by the Tahsildar and other authorities. Amongst other, applicant Pramod Chavan was duty bound to* *supervise the entire working of the corporation, rather it could be inferred from the record, particularly the inquiry report, that he acted in connivance with Ravindra Kamble and Pralhad Gajbhiye, who were aware about the entire procedure of short-listing of beneficiaries, selection of beneficiaries, compliance of procedure for selection of beneficiaries – disbursement lacunae in the entire process. The applicants-accused, who are higher officers in the corporation, have used their offices for the purpose of exerting pressure on the subordinate officers, as is apparent from from the inquiry report, to commit aid or fraud in question.*

*13. The officials of the corporation, in an unequivocal terms, have stated as to the manner and mode in which the present applicants have utilized their offices for the purpose of pressurizing the regional offices, to disburse the amount to unqualified persons. The report of the Legal Advisor Officer of the corporation speak volumes about the conduct of the applicants and their involvement in the crime in question. "*

14. Perusal of the observations of this Court in the

said matter goes to show that similar type of frauds are played at Sangali and Thane, where reports are already lodged and filing of report at Beed and Alibag districts are under consideration. These observations have over-bearing importance, because, as submitted by the learned counsel for the informant, there are only 2 General Managers with the Corporation, who are in-charge of the entire State of Maharashtra. Both these General Managers i.e. present applicant as well as co-accused Pramod Chavan are as such *prima facie* involved in the huge financial scam, of which present F.I.R. appears to be the tip and for effective investigation, custodial interrogation of accused persons is must.

15. It is seen from the fact finding report of Mr. Vaidya, which is part of papers of investigation that the scheme of disbursement of loan to members of backward class is for their upliftment. The loan to peoples from backward class was to be disbursed by the Corporation in order to enable them to undertake some occupation for earning their livelihood. Perusal of the report shows that such loan was to be disbursed for professing several occupation by the persons belonging to the backward class. Papers of investigation in this crime goes to show that not a single person from out of 50 beneficiaries is in existence. Forged documents are created to show existence of 50 beneficiaries and loan of Rs. 5 Lakh to each such beneficiaries is sanctioned. Seed money of 5% from beneficiaries was also not collected on instructions of the applicant/accused as seen from the report of the Enquiry

Officer Mr. Vaidya. Similarly, as seen from the said report, beneficiaries of loan as proposed by co-accused Sanap were approved at the instance of the present applicant. The entire amount of that loan went to the Savings bank account of Yogesh Sanap, who is real brother of co-accused Ganesh Sanap. Record of investigation shows that Ganesh Sanap was having good relations with the present applicant who is higher officer of the Corporation.

16. At this juncture, the observations of this court in the matter of ***Digambar Rambhau Jadhavar Vs. State of Maharashtra reported in 2014 ALL MR (Cri.) - 1197*** made in para No. 17 based on the observations of the Hon'ble Supreme Court in the matter of ***Nimmagadda Prasad Vs. Central Bureau of Investigation*** becomes relevant. Para No. 17 of that Judgment reads thus,

> *" The learned counsel for applicant placed reliance on the case reported as (2013) 7 Supreme Court Cases – 466 : [2013 ALL SCR 2184] [Nimmagadda Prasad Vs. Central Bureau of Investigation]. The Apex Court, in paragraph Nos. 23 and 25, has observed as under :*
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> *23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has*

*affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujrat Vs. Mohanlal Jitamalji Porwal this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under : (SCC p. 371, para 5).*

*5.... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eyue on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with an permissive eye unmindful of the damage done to the national economy and* *national interest.*

*24. ………………*

*25. 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 as a whole and thereby posing serious threat to the financial health of the country.*

*The learned counsel for applicant placed reliance also on the case reported as AIR 1985 Supreme Court – 969 {Pokar Ram Vs. State of Rajasthan & Ors.[. In this case, the power of Apex Court under Article 136 of Constitution of India is discussed. ".*

17. Considering the enormity of the crime in question and the manner in which the same is committed as well as the fact that the major portion of the disbursed amount is yet to be recovered, so also the *modus operendi* of commission of the crime is required to be traced out, in my opinion, custodial interrogation of the present applicant is warranted though he

might have submitted to the Investigating Officer on few occasions insulated with the orders passed u/s 438 of the Code of Criminal Procedure by the learned Sessions Court.

18. In the result, Criminal Application stands rejected. In view of disposal of present Criminal Application, Criminal Application No. 4865 of 2016 stands disposed of.

19. Needless to mention that the observations in this order are *prima facie* in nature having no bearing on the trial against the present applicant.

**[A.M.BADAR, J.]**

KNP/Cr.Apln. 3936.2016