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

CRIMINAL APPLICATION NO.4086 OF 2016

Bramhadev Kerba Chate,
Age: 56 years, Occ: Service,
R/o. Pirya Nagar, Parli-Vaijnath,
Ta. Parli-Vaijnath,
District Beed. ..APPLICANT

VERSUS

The State of Maharashtra
Through Incharge Police Inspector,
Police Station Parli-Vaijnath,
District Beed. ..RESPONDENT

Mr V.D. Sapkal, Advocate for applicant;
Mr A.S. Shinde, Addl. Public Prosecutor for
respondent

CORAM : N.W. SAMBRE, J.

DATE : 2nd August, 2016

ORDER :

The applicant is seeking pre-arrest bail in Crime NO. 37 of 2016, registered on 9th February, 2016 with Parali Vaijnath City Police Station, District Beed, for the offence punishable under Sections 409, 420, 465, 467, 468, 471, 218, 167 read with Section 34 of the Indian Penal Code.

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2. It is the case of the prosecution that the applicant while working as Upper Division Clerk, his employer i.e. Maharashtra State Electricity Distribution Company has caused financial loss by not depositing the amount received from the customers towards electricity consumed in the account of employer i.e. Maharashtra State Electricity Distribution Company.

3. It is required to be noted that earlier two bail applications for grant of pre-arrest bail were withdrawn by the applicant vide Criminal Application No. 1544 of 2016 vide order dated 28th March, 2016 and another application being Criminal Application NO. 2291 of 2016 vide order dated 3rd May, 2016.

4. Mr. Sapkal, learned Counsel for the applicant, while trying to make out an exception qua earlier orders, would submit that the change in the circumstances that one of the co-accused is already granted bail by this Court in the matter of

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Vyankat Phad in Criminal Application No. 3309 of 2016 vide order 11th July, 2016. According to him, under Right to Information Act, the applicant could lay his hand on some of the internal communication of the employer, particularly communication dated 1st April, 2016, the report dated 3rd February, 2016, from which it could be easily inferred that the applicant is not responsible for the crime in question.

5. He would then urge that in view of above referred documents which are not available during the course of earlier two rounds are required to be looked into by giving rethink for grant of pre-arrest bail. He would then submit that he being a public servant, there is hardly any likelihood of the applicant to run away from the process of prosecution.

6. Learned A.P.P. strenuously opposed the application on the ground that the point that is sought to be canvassed was very much available and

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is required to be presumed to have considered by both the Courts while dealing with the claim of the applicant for grant of pre-arrest bail. He would submit that the documents which are sought to be relied upon by the applicant were very much available in the first information report and same could be inferred after having careful glance over the contents in the first information report. He would submit that the Service Manual prescribed that Upper Division Clerk is responsible for unposted mismatch receipts and all the adjustments as regards payment. He would submit that the applicant is very much responsible as he is working on the post of Upper Division Clerk since 2007.

7. Having bestowed my thought to the submissions made, it is required to be noted that the applicant, who is working as Upper Division Clerk was given charge on the post of Assistant Accountant for the period of April and May, 2013. Upon perusal of the first information report, it is reflected that against amount of Rs.31,33,345/-,

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the applicant has deposited Rs.30,37,940/- i.e. amount short by Rs.1,00,405/-. In the month of May, 2013, the amount that was required to be deposited was Rs.54,85,194/-, whereas the amount that was deposited was Rs.56,24,484/- i.e. excess amount of Rs.1,39,290/-.

8. In my opinion, as is rightly pointed out by learned A.P.P., short deposit of the amount cannot be attributed to a particular post but the fact remains that the applicant, when was holding the post of Upper Division Clerk and Assistant Accountant, was very much responsible pursuant to the Service Manual for depositing/verifying/reporting short-fall of deposits to the higher officers as regards billing amount.

9. The point about excess deposits as is sought to be canvassed was very much available and could be inferred from the contents of the first information report. Apart from above, the documents as are relied upon by the present applicant which

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are of dated 17th March, 2016, report dated 3rd February, 2016 could be of hardly any assistance, as both these documents were prior in point of time as with that of order of rejection of prayer for grant of pre-arrest bail. As such, this Court has to presume that the material as was available prior to the date of rejection of the prayer for grant of pre-arrest bail was very much available and considered by the Court and when the Court was about to reject the application on merit, the applicant has opted for withdrawal.

10. The next contention as regards parity as is raised by learned Counsel for the applicant, particularly in the matter of grant of pre-arrest bail to co-accused Venkat Phad is concerned, the said case is situated altogether on different footings as is apparent from the consideration of factual matrix and reasons recorded therein, which are not similar to the claim made in the present application. In that view of the matter, in my opinion, no case for grant of pre-arrest bail, is

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made out. As such, criminal application fails,
stands rejected.

(N.W. SAMBRE, J.)

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