IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO.167 OF 2016

Mr. Udit Narayan ... Applicant

V/s

State & Anr. ... Respondents

Shri S.G. Desai, Senior Advocate with Shri Pavithran A.V., Advocate for the Applicant.
Shri M. Amonkar, Additional Public Prosecutor for the Respondents.

CORAM : C.V. BHADANG, J.

Reserved on : 15th September, 2016
Pronounced on :16th September, 2016

ORDER :

On 5/04/2016, at 17.00 hours, an offence vide Crime No.42/2016 was registered under Section 408, 409, 420 and 120 B of IPC against (i) Udit Narayan, the then Branch Manager of Bank of Baroda, Anjuna Branch, (ii) Swagatika Mohanty, the then Clerk of Bank of Baroda, Anjuna Branch, (iii) Mr. Sada Gaonkar, the then Cashier of Bank of Baroda, Anjuna Branch, with the allegation that the aforesaid officers with the connivance of constituents/account holders of the Bank, hatched a criminal conspiracy, where under the amounts of some of the account holders were illegally and unauthorisedly transferred to the account of the co-accused which has then been siphoned off. It is the prosecution case that the aforesaid officers in conspiracy with the account holders namely; (i) Mr. Mohammad Ali Daulati, (ii) Mr. Naresh Vasant Naik and (iii) Mr. Suraj Gurudas Gawas and others had misappropriated the said funds of the account holders for their personal gains and have indulged into cheating. The said offence was registered on the basis of the complaint lodged by Mr. Dinesh Kumar Namdeo, Deputy General Manager (Goa & West, Maharashtra) Bank of Baroda. The period of such transfer and misappropriation of the amount is said to be from March, 2015 to December, 2015. The total amount involved is to the tune of Rs.244.22 lakhs.

2. During the course of the investigation, the internal investigation report, prepared by the

Bank, has been collected which according to the prosecution shows that the aforesaid Bank officials with the active connivance of the account holders had transferred various amounts without any documents/instruments.

3. It appears that the investigation has since been transferred to the crime branch. On 21/07/2016, an offence under Section 7, 13(1)(c) and 13(2) of the Prevention of Corruption Act has been included.

4. The present application pertains to Shri Udit Narayan, who was the Branch Manager at the relevant time at Anjuna Branch who has since been placed under suspension. The application for bail filed by the petitioner before the learned Sessions Judge has been rejected, inter alia, on the ground that the offence is an 'economic offence', and the investigation is at a preliminary stage and there is possibility of the applicant destroying the evidence and

"taking away such amounts to unknown destination making it impossible for the prosecution to obtain such amounts". The learned Sessions Judge has inter alia placed reliance on the decisions of the Supreme Court in the case of ***Y.S. Jagan Mohan Reddy V/s. CBI (2013) 7 SCC 439, CBI V/s. Vijay Sai Reddy (2013) 7 SCC 452*** and ***Masroor V/s. State of UP (2009) 14 SCC 286.***

5. I have heard Shri Desai, the learned Senior Counsel for the applicant and Shri Amonkar, the learned Additional Public Prosecutor for the respondents/State. I have gone through the impugned order and the case diary.

6. It is submitted on behalf of the applicant that all the transactions in this case are documented. The applicant has been placed under suspension in February, 2016 and has no access to the bank or other record. The apprehension about the applicant tampering with

the prosecution evidence is ill founded. It is submitted that the prosecution has neither alleged nor demonstrated, any attempt at tampering and thus the apprehension is without any basis. The learned Senior Counsel has submitted that the fact that the amount is not recovered cannot be a ground, for refusing bail. The learned Senior Counsel has pointed out that only because the offence is serious, bail cannot be refused as the continued detention of the applicant is not necessary for the purpose of investigation as the petitioner is in judicial custody. The learned Senior Counsel also submitted that the offence cannot be said to be an 'economical offence', as observed by the learned Sessions Judge.

7. On the contrary, the learned Additional Public Prosecutor has pointed out various transactions effected by the petitioner as set out in the reply as under:

(i) In the account of Mr. Mohammad Daulati totally amounting to Rs.49,50,000.00,

(ii) In favour of Shri Naresh Naik totaling to Rs.35,65,000.00,

(iii) In the account of Shri Suresh Patil amounting to Rs.13,35,000.00, and

(iv) In the account of Shri Suraj Gawas amounting to Rs.92,00,000.00.

It is submitted that during the house search of the petitioner, incriminating material such as cheques and deposit slips have been recovered which have been seized under a panchanama. The learned Additional Public Prosecutor has pointed out that the offence is serious involving huge amount of public money and the investigation is still in progress. The learned Additional Public Prosecutor has placed reliance on the decision in the case of ***Nimmagadda Prasad V/s. CBI (2013) 7 SCC 466*** in order to submit that this being an 'economic offence', would be a class apart and the bail has rightly been rejected.

8. I have carefully considered the rival circumstances and the submissions made. Although there was some debate as to whether the offences can be classified as an economic offence, the fact remains that the offence involves huge public money to the extent of Rs.244.22 lakhs. The Hon'ble Supreme Court in the case of ***Nimmagadda Prasad*** (supra) has held that criminal conspiracy to commit economic offences of huge magnitude involving public money and public property need to be visited with a different approach in the matter of bail. The Hon'ble Supreme Court has noticed its earlier decision in the case of ***State of Gujarat V/s. Mohanlal Jitamalji Porwal (1987) 2 SCC 364,*** and held in para 25 of the judgment thus:

> "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 deeprooted 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.”

9. The Hon'ble Supreme Court has then held in para 24 of the judgment that while granting bail the Court has to keep in mind (i) the nature of accusations, (ii) the nature of evidence in support thereof, (iii) the severity of the punishment which conviction will entail, (iv) the character of the accused, (v) the circumstances which are peculiar to the accused, (vi) reasonable possibility of securing the presence of the accused at the trial, (vii) reasonable apprehension of the witnesses being tampered with, and (viii) the larger interest of the public/State and other similar considerations. The Hon'ble Supreme Court has stressed that the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the Court has only to decide whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support

of the charge.

10. Coming back to the present case, prima facie there is enough material available on record to suggest that the applicant with the connivance of the other officials and some of the account holders had transferred huge amounts from the account of some other customers of the bank and the amount is siphoned off. It is neither necessary nor appropriate at this stage to examine the material in depth or to record any binding opinion which will prejudice either the prosecution or the accused at a later stage.

11. The offence punishable under Section 409 Indian Penal Code is punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years and also with fine.

12. The offence involves huge public money and it has the effect of shaking the confidence

of the public in general in the banking industry. Thus, considering the nature of the offence and the fact that the investigation is still in progress, I do not find that a case for grant of bail is made out at this stage. In the result, the application is dismissed.

C.V. BHADANG, J.

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