IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO.178 OF 2016

Mr. Mohammad Ali
Daulati @ Sharukh ... Applicant

V/s

Police Inspector,
Crime Branch & Anr. ... Respondents

Shri A.D. Bhobe, 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 Mohammad Ali Daulati, who is one of the account holders in whose account various amounts were transferred and have thereafter been withdrawn. The application for bail filed by the applicant has been rejected by the learned Sessions Judge, inter alia, on the ground that the offence is an 'economic offence' and therefore a class apart and there is prima facie case established by the

prosecution against the applicant. The learned Sessions Judge has found that although the applicant is not a public servant or the custodian of the Bank records as well as deposits, however, there is prima facie case about the applicant being a party to the criminal conspiracy hatched with the Branch Manager and other staff members in transferring huge amounts from the accounts of the other customers into the account of the present applicant without proper documentation and authority and thereafter withdrawing such amount and committing misappropriation. The learned Sessions Judge has found that, therefore, with the aid of Section 120-B of IPC the ingredients of Section 408, 409 and 420 of IPC stand "prima facie attracted to the present applicant also". 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 Bhobe, the learned 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 by Shri Bhobe, the learned Counsel for the applicant that the applicant is not a public servant and, as such, the offences under Sections 408 & 409 of IPC and those under the Prevention of Corruption Act cannot be said to be attracted. The offence under Section 420 of IPC is not punishable with imprisonment in excess of 7 years. It is submitted that the applicant was not aware of the amounts transferred to his account. It is submitted that the continued detention of the applicant in custody is not required for the purposes of investigation as the applicant has no access to the Bank record and thus there is

no possibility of tempering of prosecution evidence or witnesses.

7. On the contrary, the learned Additional Public Prosecutor has submitted that the applicant has withdrawn various amounts from his account as set out in para 13(I) to 13(XIII) which are withdrawn in cash. He submits that there is strong prima facie case against the applicant 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. 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. The bail application filed by the Branch Manager and the Clerk have been rejected by this Court. Although the applicant may not be a public servant, the prosecution case is about the applicant along with the Branch Manager, the cashier and the Clerk of the Bank having hatched a conspiracy. There is withdrawal of huge

amount by the applicant from his account no.260801/4266 from 13/07/2015 to 16/10/2015. Thus, prima facie, it cannot be accepted that the applicant was unaware of the transfer of huge amounts to his account. The offence involves huge public money and it has the effect of shaking the confidence of the public in general in the banking industry.

11. The investigation is still in progress. In such circumstances, I do not find that a case for grant of bail is made out at this stage. In the result, the Criminal Application is dismissed.

C.V. BHADANG, J.

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