IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO.179 OF 2016

Mr. Naresh Vasant Naik ... Applicant

V/s

State & Anr. ... Respondents

Shri G. Teles, Advocate for the Applicant.
Shri S.R. Rivankar, 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 Naresh Vasant Naik, who is one of the account holders in whose account various amounts were transferred and have thereafter been withdrawn.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 there is prima facie case of the involvement of the applicant in the offence alleged and the investigation is in progress. 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 Teles, the learned Counsel for the applicant and Shri Rivankar, the learned Public Prosecutor for the respondents/State. I have gone through the impugned order and the case diary.

6. This court has rejected the applications filed by the Branch Manager and the Clerk of the Bank as well as two account holders namely Suraj Gawas and Mohammad Ali Daulati. The contentions made on behalf of the applicant stand slightly on a different footing than the applicants Mohammad Ali Daulati and Suraj Gawas. The applicant was issued with a notice dated 7/03/2016 by the Senior Branch Manager of Anjuna Branch informing the applicant that his account

has been wrongly credited with certain amounts for which the applicant must have received a confirming message on his registered mobile. The applicant was further informed that he had received the money without any authority. The amounts received in the account of the applicant are as under :

SB Account No.04880100007081

1.08.07.15	375000
2.06.08.15	490000
3.17.08.15	450000
4.04.09.15	1500000
Total (SB)	2815000

OD Account No.0488040000058

1.03.10.15	600000
2.12.01.16	150000
Total (OD)	750000
Total Amount	3565000

The applicant was asked to deposit the money within three days from the receipt of the notice.

7. The applicant has issued a reply to the said

notice on 14/03/2016 in which the applicant states that on receipt of the notice from the Bank he had met the Branch Manager Mr. Udit Narayan. The applicant further claims that Mr. Udit Narayan told him that he (Mr. Udit Narayan) is entirely responsible and liable for misappropriating the said funds and the Branch Manager also gave an affidavit cum declaration dated 11/03/2016 admitting all the facts. A copy of the affidavit cum declaration signed by the Branch Manager is enclosed. On the basis of the aforesaid circumstances, it is submitted by Shri Teles, the learned Counsel for the applicant that the applicant has no role to play in the alleged cheating and misappropriation. He submitted that the applicant was unaware of the entries made in his account and, therefore, the case of the applicant stands on a different footing.

8. On the contrary, it is submitted by the learned Public Prosecutor that the applicant was

aware of the amounts transferred to his account and the applicant has withdrawn the amount from his account, particulars of which are set out in para 13 of the reply. He, therefore, submits that the case of the applicant does not stand on a better footing than those of the other account holders who are the co-accused. He states that the investigation is in progress and considering the magnitude of the offence and the huge public money involved, the applicant is not entitled for bail. The learned 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.

9. 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."

10. 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.

11. 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. Thus, prima facie, it cannot be accepted that the applicant was unaware of the transfer of the amount totaling to Rs.28,15,000.00 to his saving bank account and Rs.7,50,000.00 to the OD account. This is because the applicant had withdrawn the amounts as under:

(i) On 03/08/2015 Rs.4,00,000/- cash withdrawn from his account no.01/7081.

(ii) On 13/10/2015 Rs.6,00,000/- cash withdrawn from his account no.01/7081.

(iii) On 11/08/2015 Rs.3,50,000/- Amount paid in clearing in account No.01/7081.

(iv) On 17/08/2015 Rs.3,50,000/- RTGS.

(v) On 11/08/2015 Rs.3,50,000/- Amount paid in clearing in account No.01/7081.

The aforesaid dates interpolate with the dates on which various amounts are credited to the account of the applicant and thus prima facie it cannot be accepted that the applicant was not aware of the transfer of the said amounts. That apart, the applicant did not take action against the Bank nor has reported the matter to the police.

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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