IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO.183 OF 2016

Smt. Swagatika Mohanty ... Applicant

V/s

State ... Respondent

Shri S.S. Kantak, Senior Advocate with Shri Abhijit Gosavi, Advocate for the Applicant.
Shri S.R. Rivankar, Public Prosecutor for the Respondent.

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 Smt. Swagatika Mohanty, who was the clerk at the relevant time with the Bank of Baroda, Anjuna Branch and has since been placed under suspension. The applicant had initially approached the learned Sessions Judge for bail, which was rejected on 5/08/2016. Another application filed by the applicant has been rejected on 22/08/2016, inter alia, on the ground that the offence is an 'economic

offence', and the investigation is at a preliminary stage. 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 Kantak, the learned Senior Counsel for the applicant and Shri Rivankar, the learned Public Prosecutor for the respondent/State. I have gone through the impugned order and the case diary.

6. It is submitted by Shri Kantak, the learned Senior Counsel for the applicant that the offence cannot be termed as an 'economic offence'. The learned Senior Counsel submitted that an economic offence presupposes that it affects the national economy as a whole, such as an offence of smuggling or counterfeit currency or FEMA, etc. He submits that the offence under

the Prevention of Corruption Act would not be made out as there is neither a demand nor acceptance of illegal gratification for showing any favour. It is submitted that the applicant is under suspension and has no access to the Bank record and, as such, there is no possibility of any tampering nor there are any such instances pointed out. It is submitted that the evidence is in the form of Bank record and the continued incarceration of the applicant in jail, is not necessary for the purposes of investigation. The learned Senior Counsel pointed out that the bail is a rule and in the absence of any circumstances pointing out the possibility of misuse of the liberty, the applicant is entitled for bail. The learned Senior Counsel has submitted that the ultimate authority to sanction the transfer of amount was with the Branch Manager and not with the present applicant, who was working as a clerk. He submitted that on the say of the Branch Manager the applicant had only posted the amount and thus the applicant cannot be said to be a party to any conspiracy as alleged.

7. On the contrary, the learned Public Prosecutor has pointed out the findings in the internal inquiry report of the Bank which are referred to in para 11(a) to 11(f) of the reply. In para 12 of the reply, it is pointed out that during the inquiry conducted by the Bank, the applicant has claimed that she has made the above entries as per the instructions of the Branch Manager Shri Udit Narayan. It is further pointed out that the applicant has transferred an amount of Rs.15.00 lakhs from the account of 'Anjuna Communidade', without any valid documents or vouchers by using the password of Manager Mr. Wadkar, Anjuna Branch, who was not present on the relevant date. It is submitted that investigation is still in progress. 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.

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. Prima facie, it appears that the applicant as a clerk has posted the entries. The entries made by the applicant as disclosed in the internal inquiry report of the Bank have been set out in para 11 of the reply which clearly show that there is prima facie case made out by the prosecution against the applicant of her involvement. The learned Senior Counsel for the applicant submitted that the verification of the specimen signature is not part of the responsibility of the applicant as a clerk. This is disputed on behalf of the respondent/State. It is submitted that a scanned/soft copy of the specimen signature of the customer is available on the desktop and while making the posting/initial entry of the cheque or any other instrument a clerk has to tally the specimen signature with the signature appearing on the cheque/instrument. Prima facie, at this stage, it cannot be accepted that the verification of the specimen signature would

not be the part of the responsibility of a clerk, who makes the initial entry/posting, although the ultimate sanction of payment is by the Branch Manager. The applicant has come with a case that the said entries were made by her on the say of the Branch Manager. The prosecution claims that there is a larger conspiracy between the accused including the applicant.

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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