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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1883 OF 2015**

1. Rajendra Govindrao Kunde	
2. Shriram Chandrabhan More	...Applicants
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPLICATION NO.1042 OF 2015
IN
CRIMINAL BAIL APPLICATION NO.1883 OF 2015**

Shree Ganesh Sahakari Sanstha Bank Limited	
Through its Chief Executive Officer	...Applicant/Intervener

IN THE MATTER BETWEEN

Rajendra Govindrao Kunde and Anr.	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr.Niranjan Mundargi i/b Mr.V.R.Sutaria, for the Applicants

Mr.Arfan Sait, A.P.P for the Respondent-State

Mr.A.B.Tajane, for the Intervener.

API – A.P.Mahere, EOW, Nashik Rural.

***CORAM : REVATI MOHITE DERE, J.
DATE : 20th APRIL, 2016***

P.C. :

1. Heard learned Counsel for the applicants, the learned A.P.P and learned counsel for the intervener.
2. By this application, the applicants seek their enlargement on bail in connection with C.R. No. 190 of 2013, registered with the Pimpalgaon Baswant Police Station, Nashik, for the alleged offences punishable under Sections 403, 406, 409, 420, 465, 468, 471, 120B of the Indian Penal Code.
3. The applicant no.1 was the passing officer and clerk of 'Shree Ganesh Sahakari Sanstha Bank Limited, Nashik' at the relevant time and applicant no.2 was the counter clerk working in the same bank. There are 6 accused in the present case; Sanjay Suryakant Kadam, who was the Manager of the said bank, the present applicants - Rajendra Govindrao Kunde, Shriram Chandrabhan More, who were the passing officer and counter clerk of the said bank and 3 other lady officers i.e. Sunita Gyaneshwar Wagh, Minaji Rambhau Nyaharkar @Meenakshi Sanjay Tope and Rupali Shankarrao Mogal @Rupali Sandeep Bhavar, who were

working as cashiers, at the relevant time in the said bank, when the alleged offences were committed. The fraud alleged is for the period, 2nd April, 2012 to 24th October, 2013. It is alleged by the complainant, who is the Chief Executive Officer of the Bank, that in the enquiry, which was conducted it transpired that the present applicants along with other co-accused had prepared forged and bogus fixed deposit receipts and on the basis of the said forged fixed deposit receipts had raised loans and withdrawn the amounts. It is alleged that the present applicants and other co-accused had committed a fraud of Rs.2,09,10,000/-. Pursuant to the enquiry, the aforesaid FIR was registered as against the applicants and 4 other co-accused.

4. Learned Counsel for the applicants submitted that the applicants were arrested in connection with the said offence on 25th November, 2014 and have been in custody since then. He submitted that 3 lady officers who were cashiers in the bank viz., Sunita Gyaneshwar Wagh, Minaji Rambhau Nyaharkar @Meenakshi Sanjay Tope and Rupali Shankarrao Mogal @Rupali Sandeep Bhavar have been enlarged on bail by the Sessions Court. He relied on para 6 of the letter dated 7th December,

2013, sent by the Chief Executive Officer of the Bank to the Police Officer, Pimpalgaon Baswant Police Station, Nashik. According to him, it is alleged that the said documents were signed by the aforesaid 3 cashiers and the Manager. He has tendered the affidavits and additional affidavits of the family members of the applicants. He submitted that the family members of the applicants in the said affidavits and additional affidavits have stated that they are ready and willing to maintain the properties which were allegedly purchased from the monies received by the applicants, from the said fraud, till the disposal of the criminal case.

5. Learned APP vehemently opposed the bail application. He submitted that the applicants are responsible for the fraud and as a result of the said fraud, the bank had incurred a loss of more than Rs.2 crore. He relied on the judgment of the Apex Court in the case of ***Central Bureau of Investigation v/s V.Vijay Sai Reddy¹, in particular paras 9 and 28 of the said judgment.*** He submitted that considering the nature of allegations as against the applicants, this is not a fit case to enlarge the applicants on bail.

6. Learned Counsel for the intervener i.e. original complainant

¹ 2013 Cri.L.J.3016

also vehemently opposed the bail application. He submitted that this Court ought to direct the applicants to deposit the money before enlarging the applicants on bail, so as to secure the interest of the bank. He submitted that because of the fraud committed by the applicants and others, the bank has come to a standstill and that pursuant to the said fraud, the RBI was constrained to issue various directions and frame Rules. He relied on the Judgment of the Apex Court in the case of ***Nimmagadda Prasad v/s Central Bureau of Investigation***², in particular paras. 24 and 25 of the said judgment, which read thus:-

“24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “*reasonable grounds for believing*” instead of “*the evidence*” which

² (2013) 7 SCC 466

means the court dealing with the grant of bail can only satisfy itself as to 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. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

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 deep-rooted 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.”

7. Learned Counsel for the applicant in support of his submission has also relied on the Judgment of the Apex Court in the case of ***Sanjay Chandra v/s Central Bureau of Investigation***³ and in particular paras 14 to 16 of the said judgment and paras 28 and 32 of the judgment relied upon by the learned APP in the case of ***Central Bureau of Investigation v/s V.Vijay Sai Reddy***.

3 AIR 2012 SCC 830

8. Perused the papers. It appears that the present applicants along with other co-accused had during the period from 2nd April, 2012 to 24th October, 2013 misused the stationery of the bank and had prepared forged fixed deposit receipts and on the basis of the said forged fixed deposit receipts, had withdrawn various amounts. Also perused the letter dated 7th December, 2013 sent by the Chief Executive Officer of Shree Ganesh Sahakari Sanstha Bank Limited, Nashik to the Police Officer, Pimpalgaon Baswant Police Station, Nashik. In the said letter, there are allegations as against the Manager of the said Bank, the present 2 applicants and the 3 lady cashiers. It is stated in para 6 of the said letter, that all the accused had in connivance with each other misused the stationery of the bank and had prepared forged and fabricated fixed deposit receipts and that accused no.1 – Sanjay Kadam had signed the said documents as a Manager and the other co-accused persons viz., Sunita Gyaneshwar Wagh, Minaji Rambhau Nyaharkar @Meenakshi Sanjay Tope and Rupali Shankarrao Mogal @Rupali Sandeep Bhavar had signed on the said fixed deposit receipts. It is further stated that Sanjay Kadam, the Manager had signed his own loan document. It is not disputed that the 3 lady co-accused have been enlarged on bail. It is informed by the learned APP that the said 3 lady co-accused

have been enlarged on bail, as one of them was pregnant and or on other grounds. It is also not disputed that the said orders enlarging the 3 co-accused i.e. cashiers, have not been challenged by the prosecution. The applicant no.1's father Govind Jairam Kunde has filed an affidavit dated 27th March, 2016 and an additional affidavit dated 13rd April, 2016. In the additional affidavit dated 13rd April, 2016, Govind Kunde, the father of the applicant no.1 - Rajendra Govindrao Kunde has stated that he is ready and willing to maintain land bearing C.T.S. No.275, Hissa No.2 valuing Rs.93,92,820/-, without creating any 3rd party rights over the said property, till the disposal of the criminal case. As far as applicant no.2 is concerned, an affidavit is filed by the father of Shriram Chandrabhan More i.e. Chandrabhan T. More, and his 2 brothers viz. Nanasaheb More and Rajaram More. The said affidavits are dated 27th March, 2016 and 15th April, 2016 respectively. The father and brothers of Shriram Chandrabhan More i.e. Applicant No.2 have stated that they own immovable property i.e. land bearing C.T.S. Nos.66/1, 66/2 and 9/2 totally admeasuring 2 Hectors 32 R and that the Government valuation of the said property is stated to Rs.26,75,840/- and the market value is stated to be Rs.75,00,000/-. It is stated that the loan of Rs.13,00,000/- which was taken on plot bearing

C.T.S. No.9/2 and the loan regarding C.T.S.Nos.66/2 and 66/3 have been repaid in full. It is stated in para 4 of the said affidavit dated 15th April, 2016 that they are ready and willing to maintain the said properties, without creating any third party rights over the said properties, till the disposal of the criminal case. The said affidavits are taken on record. It is also informed that the bank has started proceedings for attachment of the said property, which were allegedly purchased from the amounts misappropriated by the applicants. Investigation is complete and charge-sheet is filed. The applicants have been in custody since November, 2014 and the possibility of the trial commencing in the immediate near future appears to be bleak. The applicants have roots in the society and there is no possibility of the applicants absconding. There also appears to be no possibility of the applicants tampering with the records. Neither, the learned APP nor the learned Counsel for the Intervener have expressed this apprehension.

9. Perused the Judgment relied upon by the learned counsel for the Intervener. The said case which is relied upon by him is clearly distinguishable inasmuch as, investigation was in progress at the time when

the application for bail was rejected by the Apex Court. Infact, in the case of ***Sanjay Chandra v/s Central Bureau of Investigation***, the Apex Court in paras 14 to 16 and 26 has observed out as under :-

- “14. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be

deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

15. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention

of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating the scales of justice”. The provisions of Cr.PC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual. This Court, in *Kalyan Chandra Sarkar v. Rajesh Ranjan* (2005) 2 SCC 42: (AIR 2005 SC 921), observed that “under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorised by law. But even persons accused

of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so.”

16. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. In the case of *State of Rajasthan v. Balchand*, (1977) 4 SCC 308: (AIR 1977 SC 2447), this Court opined:

- “2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative.
3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on

bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight.”

26. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case. There are seventeen accused persons. Statements of witnesses run to several hundred pages and the documents on which reliance is placed by the prosecution, are voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that the accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge

loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet. This Court, in *State of Kerala v. Raneef (2011) 1 SCC 784: (AIR 2011 SC 340)*, has stated:

- “15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dickens’s novel *A Tale of Two Cities*, who forgot his profession and even his name in the Bastille.”

10. Considering the aforesaid, the application is allowed and the applicants are enlarged on bail on the following terms and conditions :

ORDER

- (i) The Applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.1,00,000/- each with two or more sureties in the like amount;
- (ii) The applicants shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m, till the conclusion of the trial;
- (iii) The applicants shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicants shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicants shall not leave Nashik District, without the prior permission of the trial Court ;

(vi) The applicants shall co-operate in the conduct of the trial ;

(vii) An undertaking to the aforesaid clauses ii) to vi), shall be filed by the Applicant, in the Trial Court, within two weeks after his release;

(viii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicants' bail .

11. The Application is allowed in the aforesaid terms and is accordingly disposed of.

12. It is made clear, that the observations made herein are confined to the role of the present applicants and the main accused shall not claim any parity. It is also made clear that the observations made herein, are

prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

13. In view of the disposal of the Bail Application No.1883 of 2015, the Intervention Application being Criminal Application No.1042 of 2015 does not survive and the same is also disposed of

14. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.