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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2463 OF 2015

Ramesh Nagnath Kadam ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr. Nitin V. Pradhan i/b Ms. Shubhada Khot, Sanjeev Kadam, Ameeta Kuttikrishnan, and Mr. P. Raut amd Suman Prasad for Applicant.
Mr. Pravin Chavan, Special P.P. with Ms. S.S. Kaushik, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 27th January 2016.

P.C.

1 This an application under Section 439 of the Code of Criminal Procedure for release of the applicant on bail in CR No.336 of 2015 registered with Dahisar Police Station, Mumbai under Sections 406, 408, 409, 420, 465, 467, 468, 471, 384, 120-B read with Section 34 of the Indian Penal Code and Sections 7, 13(1)(c) of the Prevention of Corruption Act, 1988.

2 It is the prosecution case, that Dr. Sudhakar Bhalerao, the member of the Legislative Assembly asked a Legislative Assembly Question (LAQ) on 22.12.2014, on the floors of the Assembly about the misappropriation and defalcation of the funds given by the State Government to the Sahitya Ratna Lokshahir Annabhau Sathe Development Corporation (for the sake of brevity, the said “Corporation”). The applicant was appointed as a Chairman of the said Corporation on 13.8.2012 and was removed from the said post by the Government on 22.12.2014. On the said LAQ the concerned Minister for Social Justice Department gave assurance to the members of the Legislative Assembly that the said allegations would be enquired into through the State CID. Accordingly, after following due procedure the Director General of Police, Maharashtra State appointed an enquiry officer from the State Crime Investigation Department of the rank Deputy Superintendent of Police to conduct enquiry in view of the assurance given by the concerned Minister as stated above. The concerned officer, so appointed conducted enquiry into the said allegations and it was revealed that there was misappropriation and/or defalcation of the huge funds of the Corporation to the tune of Rs.147 Crores. In pursuance of the said report submitted by the concerned officer, the present FIR is registered against the applicant and other accused persons. After lodgment of the first information report by the enquiry officer under the directions of competent authority, the present Investigating Officer has been appointed to investigate the crime. That after completion of the investigation, the chargesheet as against the applicant is filed on 16.10.2015 before the Court of competent jurisdiction.

3 Heard Mr. Nitin Pradhan, the learned Counsel appearing for the applicant and Mr. Pravin Chavan, the learned Special P.P. for the State at length and also perused the relevant documents produced before me.

4 It is to be placed on record that the learned Counsel for the applicant, without adverting to the merits i.e. the evidence available on record against the applicant, has raised four grounds for the release of the applicant on bail, which can briefly be stated as under:

(i) That the present crime i.e. CR No.336 of 2015 is registered against the applicant with malafide intention at the behest of the State Government. That with a view to defeat the order dated 15^{th} July 2015 passed by the Division Bench of this Court in Writ Petition No.6724 of 2015 thereby granting interim relief in favour of the applicant i.e. the removal of the applicant from the Chairmanship of the Corporation was stayed, the present CR is lodged on 18.7.2015.

(ii) The first information report lodged by an officer of the State Crime Investigation Department and is being investigated by the officer of the State CID is bad in law, as the offence under the Prevention of Corruption Act has to be investigated by the Anti-Corruption Bureau only. That the Anti-Corruption Bureau was already seized of the matter, a questionery dated 3.7.2015 in that enquiry was already sent to the applicant and in the midst of the said process, the State CID usurped the investigation and therefore the investigation carried out by the State CID is bad in law. That the evidence collected by the State CID is also illegal and non-est.

(iii) The Corporation being a Company formed under the Companies Act by the Government, three special enactments which are in force namely the Companies Act, 2013, the Maharashtra Co-Operative Societies Act, 1963 and the Prevention of Corruption Act, 1988 have not been followed before the registration of the offence. That before coming to the conclusion at the time of lodgment of the first information report that an amount of Rs.147 Crores has been defalcated, the report of the Comptroller and Auditor Gneral of India and or any other competent authority giving a finding of alleged defalcation has actually taken place ought to have been called for, and therefore in the absence of the same, the conclusion reached by the concerned officer is not tenable.

(iv) Even otherwise the applicant is entitled for bail as contemplated under the provisions of Section 437 as the offence charged with does not prescribe the maximum punishment of life or death and therefore the applicant is entitled for the benefit of the first part of the Section 437 prior to the word “but” appearing in the said Section before sub-section (1)(i).

5 The learned Counsel for the applicant while canvasing the point No.4(i) mentioned hereinabove, submitted that the applicant was appointed as the Chairman of the Sahitya Ratna Lokshahir Annabhau Sathe Development Corporation on 13.8.2012 and was removed on 12.12.2014 after the new Government came into power. The learned Counsel submitted that the applicant thereafter preferred a Writ Petition bearing No.6724 of 2015 and the Division Bench of this Court was pleased to grant ad-interim relief in favour of the applicant. That by way of ad-interim relief, the Division Bench directed that till the disposal of the said petition, no appointment shall be made in the post occupied by the petitioner without the leave of the Court. That while removing the applicant from the post of chairman, no reasoning of whatsoever nature was given by the

Government which was contrary to the ratio laid down by the Division Bench of this Court in its judgment dated 8.5.2015 passed in Writ Petition No.326 of 2015. He submitted that as the applicant was protected by this Court by an ad-interim relief, with a view to defeat the order passed by this Court, the present crime bearing no.336 of 2015 came to be lodged against the applicant and the applicant was arrested on 17.8.2015. He therefore submitted that the said action of lodging of FIR by the concerned Officer of the State CID is with malafide and hence bad in law.

6 While repelling the contention of the applicant, the learned Special P.P. pointed out that the lodgment of the FIR is an outcome of the preliminary enauiry which preceded thereto. He submitted that on 22.12.2014 a question was raised on the floors of the Assembly about misappropriation and/or defalcation of huge funds of the Government which were given to the said Corporation. That the applicant was the Chairman of the said Corporation, from 13.8.2012 to 12.12.2014 and during that period the said defalcation/misappropriation of the Government funds had taken place. That while answering the question put forth by the member of the Legislative Assembly, the concerned Minister of Social Justice Department assured to the members of the Legislative Assembly that an enquiry will be conducted through the State CID and appropriate report will be called therein. That in pursuance of the said assurance, the Principal Secretary of the Social Justice and Special Aid Department informed the said fact to the Director General of Police, Maharashtra State by its letter dated 19.1.2015 and directed that the enquiry be conducted through the Crime Investigation Department, CID and to submit a report within a period of 30 days to the Government. That on 24.2.2015 the Director General of Police further directed the State CID to conduct an enquiry into the aforesaid aspect. That after adopting necessary procedure, Shri Sanjeev Ghadge, Deputy Superintendent of Police, State Crime Investigation Department was appointed as an inquiry officer to enquire into the allegations made by the concerned member of the Legislative Assembly on 22.12.2014. The said Officer recorded statements of various concerned persons in the preliminary enquiry. That the said officer came to the conclusion that there is misappropriation of huge amounts in the said Corporation during the tenure of the applicant as its Chairman. The said officer completed his enquiry on 11.7.2015 and on 14.7.2015 he submitted his report to the Additional Director General, State CID through the Superintendent of Police, CID. That on 14.7.2015 the Additional Director General of Police, State CID submitted its report to the Director General of Police, Maharashtra State. That on 17.7.2015, the Director General of

Police directed the Additional Director General of Police, State CID to register the crime in pursuance of the said enquiry report and to bring the fact of the same to the notice of the Chairman of the Legislative Assembly. The learned Special PP therefore submitted that the State Government did not show any haste in conducting the said preliminary enquiry and subsequently lodging the FIR. He further submitted that the process of conducting enquiry was going on for a pretty long period and after completion of the enquiry, the said crime is registered. He submitted that the crime so registered is not to frustrate the order of the High Court. That there are no malafide at the instance of the State CID or the State Government, neither there is any pressure from the State Government on the CID. He further submitted that as per the Investigating Agency on 15.7.2015, the Writ Petition was not on board and the same was moved by the petitioner for ad-interim relief. He submitted that after hearing the concerned parties, the Hon'ble Division Bench of this Court was pleased to direct that no appointment shall be made in the post occupied by the petitioner without the leave of the Court. That does not mean that prior to it preliminary enquiry was not conducted. As the Investigating Agency was not aware of the said hearing, it did not get an opportunity to point out the aforestated facts, as the said Writ Petition was moved before the Court for urgent orders.

7 After taking into consideration the rival submissions, I am of the considered view that there are no malafide at the instance of the State CID in lodging the FIR. The chronology of the events submitted by the Special P.P. is self-eloquent. It appears to me that it is only a coincidence and/or conjuncture that the said two events i.e. passing of order dated 15.7.2015 and the lodgment of FIR on 18.7.2015 occurred in proximity. That after conducting a detailed preliminary enquiry when the complicity of the applicant in the misappropriation of the huge amount was revealed, the present crime is registered. I do not find that the present crime is registered with any malafide at the instance of the State Government or any other concerned. I am also of the view that the preliminary enquiry was rightly conducted by the concerned officer. Even otherwise the said Civil Writ Petition No.6724 of 2015 has been filed by the applicant thereby challenging his removal from the said Corporation by the Government by its order dated 12.12.2014 and the acts of omission and/or commission which have attracted the criminal liability against the applicant, as contemplated under the provisions of IPC and/or any other statute has no direct nexus with the lodgment of the FIR dated 18.7.2015 bearing no.336 of 2015. I am therefore of the considered opinion that there are no malafide involved in registration of the crime against the applicant. It is now a matter of record that after conducting investigation in the said crime, the Police have found material in the form of statements of the witnesses and other evidence against the applicant which supports the finding recorded by the Investigating Officer and therefore the chargesheet has been filed against the applicant in the present crime. Apart from the aforestated contention, the application has not produced any other material to substantiate his contention for malafide. It appears to me that the said contention of the applicant is his own figment of imagination. I therefore hold that there is no substance in the contention of the applicant that has been raised in the aforestated point no.(i) of paragraph no.4.

8 With reference to the point no.(ii) of paragraph no.4, the learned Counsel for the applicant submitted that the present FIR is lodged by an officer of the State CID and is being investigated by the officer of the State CID which according to him is bad in law. He submitted that the offence under the Prevention of Corruption Act has to be investigated by the Anti-Corruption Bureau only, which is a specialised agency in investigating the crime pertaining to the allegation of corruption by a public servant. He further contended that the Anti-Corruption Bureau was already conducting an enquiry on the basis of complaint received by it. A questionery in that enquiry was already sent by the Anti-Corruption Bureau to the applicant and in the midst of the said process, the State CID usurped it and therefore the investigation carried out by the State CID is bad in law. He further contended that the evidence so collected by the State CID is non-est. The learned Counsel for the applicant submitted that as a matter of fact on the basis of complaint made by the Ex-Member of Legislative Assembly Shri Laxman Dhoble and others to the Anti-Corruption Bureau, the Anti-Corruption Bureau had issued a questionery dated 3.7.2015 to the applicant. That the questions asked in the said questionery are directly releated and/or arising out of the transaction involved in the present crime. That the applicant was not given an opportunity to put forth his case and to have any say in the said enquiry and before that the State CID usurped it from the Anti-Corruption Bureau by registering the present crime on 18.7.2015. He submitted that in view of the provisions of the ACB Manual, before lodging the FIR for an offence under the Prevention of Corruption Act, an open enquiry ought to have been carried out and an opportunity of being heard was to be given to the applicant and then only the crime under the provisions of Prevention of Corruption Act ought to have been registered. He also drew my attention to the CBI Manual which has similar provisions. He further submitted that the offence under the provisions of Prevention of Corruption Act has to be investigated by the Anti-Corruption Bureau and cannot be otherwise. That even an officer who is specially empowered by the State to investigate the crime under the Prevention of Corruption Act has to report the progress of the said offence to the Anti-Corruption Bureau Authority and not his own higher Authority. He submitted that in the present case, the Investigating Officer is reporting to the higher authority under the State CID and not to the Anti-Corruption Bureau. In support of his contention, he relied on the judgment in the case of H.N. Rishbud Vs. State of Delhi reported in AIR 1955 SC 196, and in particular paragraph No.8 of the said judgment. He also relied on the judgment in the case of P. Sirajuddin, Etc Vs. State of Madras reported in 1970(1) SCC 595 and in particular paragraph No.17 of the said judgment. By relying on the said two decisions of the Supreme Court, the learned Counsel for the applicant contended that before lodging FIR, the preliminary enquiry ought to have been conducted into the allegations by the responsible officer and he ought to have been given an opportunity of being heard in the matter.

9 As far as the powers to investigate the crime under the Prevention of Corruption Act is concerned, the learned Counsel relied on the following decisions:

1] The state of Madhya Pradesh Vs. Mubarak Ali reported in AIR 1959 SC 707

2] Munnalal Vs. State of UP reported in AIR 1964 SC 28.

3] Muni Lal Vs. Delhi Administration 1971 (2) SCC 48

4] State of Haryana & Ors, Vs. Bhajanlal & Ors reported in 1992 Suppl (1) SCC 335

5] Divine Retreat Centre Vs. State of Kerala reported in (2008) 3 SCC 542.

He therefore submitted that the investigation carried out by the State CID for the offences under Prevention of Corruption Act is null and void.

10 The learned Special PP in reply to the said contention submitted that the Section 17 of the Prevention of Corruption Act, 1988 deals with the “person” authorise to investigate and not the “agency”. He further submitted that in view of sub-section (c) of Section 17 the present Investigating Officer has been appointed and entrusted with all powers to investigate the allegations under the Prevention of Corruption Act which are in addition to the crime committed under the provisions of IPC. He drew my attention to the order dated 26.9.2008 passed by the Home Department, Government of Maharashtra whereby the powers to investigate the crime under the provisions of Prevention of Corruption Act are also given to all Inspectors of the Police in the Economic Offences Wing, Crime Branch, in the State of Maharashtra for the purpose of proviso to Section 17. He further submitted that in view of Section 28 of the Prevention of Corruption Act, the provisions of the said Act are in addition to and not in derogation of any other law for the time being in force. He submitted that in the present crime, the main offence is under the provisions of the IPC and the provisions of Prevention of Corruption Act are also added as the applicant is a public servant. He submitted that in view of Section 17(c) of the Prevention of Corruption Act, the officer of the State CID has power and authority to investigate the present crime.

11 I find substance in the aforesaid submission of the learned Special PP. It is to be noted here that in the present crime before its registration, a pertinent question was raised on the floors of the Assembly, with reference to the misappropriation and/or defalcation which had taken place of the funds provided by the Government of Maharashtra to the said Corporation and in pursuance of the same, the State Government had decided to direct the State CID to enquire into the said aspect. That after the report of enquiry was submitted by the concerned officer, the FIR in the present case is lodge. It is to be noted here that in the absence of any specific provision under Cr. P.C. that, only the Anti-Corruption Bureau i.e. "agency" will investigate, according to me any "person" authorised to investigate as contemplated under Section 17 of Prevention of Corruption Act can investigate a crime pertaining to the Prevention of Corruption Act. In the present case I find that the investigation officer has been duly and properly appointed by following the provisions of law and there is no legal infirmity in it.

12 As far as the argument advanced by the learned Counsel for the applicant that, before registration of offence, the provisions of the ACB Manual are not followed by the Investigating Officer at the first and/or at the later stage, is concerned, the learned Special PP in response to it placed reliance on the judgment of Division Bench of this Court reported in the case of Govind P. Chaudhari Vs. R.D. Tyagi & Ors reported in (1990) 2 BCR 431 and submitted that those are the guidelines for the officer and staff members of the Anti-Corruption Bureau and/or to the State CID in view of the State CID Manual and the same has no force of law. The Division Bench of this Court has held that, the provisions of Bombay Police Act has no statutory sanction, but are merely the guidelines issued to the police officers for efficient and proper administration and maintenance of public order. He therefore submitted that the applicant being an accused cannot insist upon to apply the same to him as a matter of right. As far as power to investigate the crime under the provisions of Prevention of Corruption Act by an officer empowered under Section 17 (old Section-5 of Prevention of Corruption Act, 1947) is concerned, he relied on the following decisions of the Supreme Court:

1] Union of India Vs. I.C. Lala reported in AIR 1973 SC 2204.

2] State Inspector of Police, Visakhapatnam Vs. Surya Sankaram Karri reported in AIR 2006 SCW 4576.

3] C. Rangaswamaiah & Ors. Vs. Karnataka Lokayukta & Ors reported in AIR 1998 SC 2496.

The learned Special PP submitted that the present Investigating Officer is duly authorised by the Government as contemplated under Section 17 of the Prevention of Corruption Act and therefore there is no question about his authority to investigate the present crime wherein the provisions of the Prevention of Corruption Act are also applied.

13 After taking into consideration the aforestated decisions of the Supreme Court, it is clear that there is no dispute about the fact that the present Investigating Officer has been duly appointed in conformity with Section 17 of the Prevention of Corruption Act, 1998. That the other legal formalities under the said Act are satisfied for entrustment of duties for investigation under the Act. It is to be further noted here that the intention behind conducting the preliminary enquiry is that no one should be put to the harassment of a criminal trial unless there are good and substantial reasons for holding it. In the present case, as stated in the forgoing paragraphs, the concerned authority after conducting a detailed preliminary enquiry into the affairs of the said Corporation has reached to the conclusion that there is defalcation and/or misappropriation of huge Government funds during the tenure of the present applicant as its Chairman. It is the settled position of law by a catana of judgments that even if there are some irregularities in the investigation, the same does not get vitiate. The applicant in the present case has utterly failed to make out any case, of prejudice caused to him or miscarriage of justice which has occurred. In the circumstances, according to me the contention of the applicant that the preliminary enquiry was not conducted as per the ACB Manual by the concerned Officer has no substance in it.

14 This leads me to deal with the other point raised by the applicant in the application that, the State CID has usurped the enquiry which was being conducted by the Anti-Corruption Bureau. The record discloses that on the basis of complaint made by the Ex-MLA Shri Laxman

Dhoble and other citizens with respect to the affairs of the said Corporation, thereby making specific allegation that the applicant herein has committed misappropriation and/or defalcation of huge amounts of the said Corporation, the Anti-Corruption Bureau was conducting an enquiry. It is in pursuance of the said enquiry the aforestated questionery dated 3.7.2015 was given by the said Agency to the applicant. The record further discloses that after the lodgment of the present crime bearing no.336 of 2015 dated 18.7.2015, the Anti-Corruption Bureau itself has forwarded the papers of the discrete enquiry and verification documents to the present Investigating Agency by its communication dated 30.7.2015. It clearly appears that the Anti-Corruption Bureau on its own has taken the said decision and I do not find any usurpation by the present Investigating Agency in taking over the said enquiry which was being conducted by the Anti-Corruption Bureau.

Even otherwise it is the trite position of law that an accused does not have any right to chose the Investigating Agency and/or mode of investigation. A useful reference can be made here to the celebrated judgment of the Apex Court in the case of Union of India & Anr. Vs. W.N. Chadha reported in AIR 1993 SC 1082 and in particular paragraph Nos.89 and 92 of the said judgment which reads as under:

89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under S.173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but where the occasion for its attraction exists at all.

… …. ….. ….. …..

92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.

That the Supreme Court in the case of Narmada Bai & Ors. Vs. State of Gujarat reported in 2011 ALL SCR 1339 has held that, it is trite law that the accused persons do not have a say in the matter of appointment of an Investigating Agency. That the accused persons cannot choose as to which Investigating Agency must investigate the alleged offence committed by them.

15 From the ratio laid down by the Supreme Court, it is thus clear that, the thrust of the applicant that the investigation into the allegations in a crime against him, “must” be done by a particular or specific Investigating Agency is dehors of any legal basis. As held by the Supreme Court the accused cannot demand the investigation by a specific, suitable or likable agency to him. In view of this clear principle laid down by the Supreme Court, I find that the authorities cited by the learned Counsel for the applicant stated above are not applicable in view of the facts of the present case.

16 The learned Counsel for the applicant then would contend that the investigation in the present crime is illegally carried out as the Government cannot choose an Investigating Agency. That the applicant cannot be treated separately than other three political leaders who are similarly situated and are being enquired by the Anti-Corruption Bureau. That the applicant cannot be made scapegoat of the rivalry as the applicant is now in Opposition. As stated hereinabove, according to me there is no illegality at all of whatsoever nature in conducting the investigation of the present crime. The investigation has emanated from the statement made by the respected Minister on the floors of the Assembly and in a parliamentary democratic system, the government has right to direct a particular officer to investigate a particular crime by entrusting necessary powers under the law to him. It is further to be noted here that the applicant cannot claim parity in illegality. It is the settled principle that the parity in illegality cannot be claimed. If other three political leaders as alleged by the applicant are being protected by the Government, the applicant cannot claim an equity in it even if there is sufficient and substantial material in the form of evidence against him showing his clear complicity in the present crime. As per the record the said Corporation is a Government owned/funded Company. The people of the State have direct interest in it and therefore to protect the interest of the public at large the Government has powers to appoint a specific investigation Agency or person duly authorised under the law. In my view, the said submission needs no further discussion on it and the reliance placed by the applicant on the decision of the Privy Council reported in AIR (32) 1945 Privy Council 18 in the case of Emperor Vs. Khwaja Nazir Ahmad, is according to me is totally misplaced.

17 The learned Counsel for the applicant in furtherance of the aforesaid contention would contend that the consequences of the act without jurisdiction has been dealt with by the Constitution Bench of the Supreme Court in the case of A.R. Antulay Vs. R.S. Nayak and Another reported in (1988) 2 SCC 602. He submitted that in the said case the

Supreme Court has set aside the judgment of the Five Judges' Bench delivered by the said Court while doing the right. He submitted that in the said case the Supreme Court has categorically held that the legal wrong that has been caused to the appellant therein should be remedied and right be done and in doing so let no further injury be caused to the public purpose. The learned Counsel for the applicant submitted that in this case also since inception the Investigating Agency has collected the evidence without any authority of law, legal wrong has been caused to the applicant which has to be remedied by releasing the applicant on bail.

As far as the contention of the learned Counsel for the applicant that the investigation in the present case is bad in law and without authority of law and therefore the arrest itself is bad in law is concerned, according to me is not correct. After reading the judgment in the case of A.R. Antulay (supra), I find that the reliance placed by the applicant on the said authority is misplaced. As stated earlier, in my considered view there is no illegality at all at the behest of the Investigating Agency and/or Investigating Officer in investigating the present crime. The Investigating Officer in the present crime has been duly authorised under Section 17 of the Prevention of Corruption Act. That the provisions of the Prevention of Corruption Act are added to the main crime as the applicant being a public servant. In the present case the evidence on record shows that the applicant has not only committed an act of omission or commission as contemplated under the provisions of Prevention of Corruption Act, but has also committed a serious crime as contemplated under the provisions of the I.P.C. I therefore find that no legal wrong has been caused to the applicant which is required to be remedied.

18 With reference to point No.(iii) of paragraph No.4 the learned Counsel for the applicant submitted that the said Corporation being a Company formed under the Companies Act by the Government, the Investigating Agency ought to have called for report from the Office of the Comptroller and Auditor General of India (for short 'CAG') before arriving at the conclusion that an amount of Rs.147 Crores has been defalcated. He submitted that in the absence of the report from the CAG the conclusion reached by the Investigating Officer about figure of 147 crores is only a surmise or conjuncture. He submitted that not only the provisions of the Companies Act, but the provisions of Maharashtra Co-Operative Societies Act, 1960, and the Prevention of Corruption Act inter alia have also been violated by the Investigating Agency. He submitted that for arriving at the conclusion that there was indeed some defalcation and/or misappropriation of the funds of the Government, the Investigating Agency ought to have waited till the audit of the said Corporation is completed and till the authority comes to the conclusion that there was misappropriation of the amount and without which the inference which has been drawn by the Investigating Agency is bad in law.

The learned Special PP on the other hand by relying on various decisions of the Supreme Court and this Court submitted that the Investigating Officer is not precluded from investigating the crime where the complicity of the accused is apparent under the provisions of the IPC.

19 It is true that there is no restriction under the IPC to get report from the Office of the Comptroller and Auditor General of India before filing the FIR in a case of Government owned Company. That there are no overlapping provisions in the Companies Act and Indian Penal Code/Criminal Procedure Code which prohibits the Police from registering an offence and investigating into the same when it is prima facie apparent that an offence of cognizable nature has been committed by the accused. Therefore the contention of the learned Counsel for the applicant that the Police ought to have waited till the report of the CAG and any other competent authority cannot be accepted. There are no provisions in the Companies Act which limits and/or restrict the powers of Police to investigate under Cr.P.C. In the present case, the concerned Officer after conducting preliminary enquiry has come to the conclusion that the applicant is involved in misappropriation and/or defalcation of the huge amount and thereafter the present crime has been registered. Even otherwise when it is apparent from the statements of the witnesses and record in support thereof that the accused has committed crime as contemplated under the provisions of Section 406, 409 or any other related provisions including Section 467, the Investigating Agency need not wait for the report from the concerned authorities such as CAG, the auditor under the M.C.S. Act etc. In the present case not calling for the report from the CAG by the Investigating Agency has not caused any prejudice to the applicant which would result into miscarriage of justice and therefore according to me the said submission is dehors of any merits.

20 With reference to point No.(iv), of para No.4 the learned Counsel for the applicant submitted that even otherwise the applicant is entitled for bail under Section 437 of the Cr. P.C. He submitted that the section itself prescribes that, when any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court Sessions, he may be released on bail, but, such person shall not be released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. The learned Counsel while emphasizing the word “but” as stated in Section 437 submitted that his client is charged with offence to which neither life imprisonment nor death penalty is prescribed under any of the provisions and therefore as a matter of right his client may be released on bail.

21 At the outset it is to be noted here that the Section 409 and 467 of the IPC are charged against the applicant in the present crime prescribes for maximum punishment for life and therefore the contention of the applicant cannot be accepted. Secondly it is to be noted that the present application is filed under Section 439 of Cr.P.C. and not under Section 437(1) of the Cr. P.C. therefore in my considered view the said contention of the applicant is fallacious.

The learned Counsel for the applicant while further canvasing his point with reference to Section 437 of Cr. PC, submitted that the further incarceration of the applicant is no more required as the chargesheet as against the applicant is filed on 16.10.2015 and 7.11.2015. That after filing of the chargesheet, two months have passed and till date the applicant has already undergone jail custody of about five months. That his bank accounts are also frozen. He submitted that the statements of the witnesses as contemplated under Section 164 of Cr. P.C. have already been recorded and therefore there is no question of tampering with any witnesses. He submitted that the documents pertaining to the present crime have already been seized by the Investigating Officer from the Office of Joshaba Consumer Society. That the applicant has co-operated with the Investigating Officer during the course of investigation. He thereafter contended that the allegation of misappropriation is not tenable as the applicant did not illegally disbursed the said amount to any person stealthily and the amounts so disbursed to the needy persons, were in the presence of MLAs and MPs and because of the allegations made against the applicant, a serious prejudice has been caused to him. The learned Counsel further relied on the following three decisions of the Supreme Court namely-

1] Sanjay Chandra Vs. Central Bureau of Investigation reported in (2012) 1 SCC 40.

2] State of Rajasthan, JaipurVs. Balchand alias Baliay reported in (1977) 4 SCC 308.

3] Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh reported in (1978) 1 SCC 240..

The learned APP on the other hand submitted that in the present case maximum punishment is life imprisonment and as mentioned under sub-section (i) of Section 437, “reasonable grounds for believing” means good evidence available on record. He submitted that in the present case there is more than sufficient evidence to show the complicity of the applicant in the crime. He submitted that the applicant is the mastermind and the main perpetrator of the present crime and therefore sub-section (i) of Section 437 is attracted in the present case and therefore the applicant cannot be released on bail.

22 It is the settled legal principle that each and every case for granting bail has to be considered on its own merits after evaluating the evidence on record. That the applicant as a matter of right cannot claim bail under Section 437 of Cr. P.C., as according to him the maximum punishment is not life and/or death in the present crime. As a matter of fact as stated hereinabove, in the present crime Sections 409 and 467 are applied which prescribe the maximum punishment of life. A useful reference at this stage can be made to the decision of the Supreme Court, in the case of Gucharan Singh Vs. State (Delhi Administration) reported in (1978) 1 SCC 118 wherein it has been held that, the principle underlying Section 437 is, therefore, towards granting of bail except in, cases where there appear to be reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life and also when there are other valid reasons to justify the refusal of bail. In view of the same, the applicant as a matter of right cannot claim bail under Section 437 of Cr. P.C. The Constitution Bench of the Supreme Court in the case of Gurubksh Singh Sibba & Ors. Vs. State of Punjab reported in (1980) 2 SCC 565 has further held that, the larger interest of the public or State is also to be taken into consideration while granting bail to the accused. While dealing with the inter relation of Section 437 and 439 of Cr. P.C., the Supreme Court has held that, the Judges have to decide the case as it come before them and on the basis of facts involved in each case. Thus, it is clear that grant or refusal of bail necessarily depends on the facts and circumstances of each case.

23 The learned Special PP submitted that in the present case the applicant was appointed as the Chairman of the said Corporation on 13.8.2012 and was removed on 12.12.2014. That it was revealed during the course of preliminary enquiry that an amount of Rs.147 Crores have been misappropriated and/or defalcated by the applicant and other co-accused persons. He submitted that the investigation in the present crime is not completed and is still being carried out. That there are total 15 accused persons as of today and the chargesheet has been filed against six accused persons. That three accused persons have approached the High Court by way of anticipatory bail and they have been protected by way of interim relief. That four accused persons are absconding till date. He has further submitted that as far as the two other accused persons are concerned, the evidence collected so far shows their complicity in the crime, however, as the Investigating Agency is in the process of verification of evidence, the said two persons have not been named as accused till date. He further submitted that there is every possibility of more accused persons being involved in the present crime. He further submitted that the applicant is also involved in six other crimes registered in the State of Maharashtra, of similar nature and the State CID has taken over the investigation of the said crimes also. He submitted that the evidence on record shows that the amount of embezzlement revealed in the present crime is to the tune of Rs.312 Crores and the said figure may enhance till the completion of investigation. He further submitted that when the applicant was absconding in the intervening period, he came to be arrested from Hotel Hayat Regency from Pune. That the applicant was staying at the said hotel in the name of Kamleshbhai Mewada. That the applicant also obtained a fake driving licence in the same name from the RTO at Gujarat. That the photo of the applicant was printed on the said driving licence. The photo copy of the said driving licence is annexed to the present application at page no.585.

24 After taking into consideration the enormous gravity of the offence, serious allegations levelled against the applicant who has been charged with misappropriation and/or defalcation of huge Government funds, and the reasonable apprehension expressed by the prosecution that the witnesses will be tampered with by the applicant as he wileds substantial influence, monetarily and otherwise also to tamper with evidence and the larger interest of public or State require detention of the applicant, the applicant cannot be released on bail either under Section 437 or Section 439 of the Cr. P.C. It is further to be noted here that as per the prosecution the investigation is at a crucial stage and if the applicant is released on bail, there is every possibility that he may flee from the ends of justice and shall tamper with the evidence.

25 Thus after taking into consideration the deliberation hereinabove and answers given to the grounds raised by the applicant, I see no merits in the present application and the same is accordingly dismissed.

(A.S. GADKARI, J.)