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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.239 OF 2017

Kalyan Madanlal Agrawal,
Age : 70 years, Occ. Business
R/o Near Station Road, Dondaicha,
Tq. Sindkheda, Dist. Dhule

..APPLICANT

VERSUS

1. The State of Maharashtra
Through P.I., Dondaicha police station,
Dist. Dhule

2. The Superintendent of Police
Dhule, Dist. Dhule

..RESPONDENTS

Mr N.L. Chaudhari, Advocate for applicant;
Mr V.S. Badakh, Addl. Public Prosecutor for respondents

CORAM : N.W. SAMBRE, J.

DATE : 31st January, 2017

ORAL ORDER

By this application under Section 438 of the Code of Criminal Procedure, the applicant, former Director of Dadasaheb Rawal Co-operative Bank, Dondaicha, seeks his release on bail, in connection with C.R. No.5 of 2010, registered with Dondaicha police station, Dist. Dhule, for offences punishable under Sections 403, 406, 409, 420, 465, 468, 471, 477-A, 120-B read with Section 34 of the Indian Penal Code.

2. According to Mr Chaudhari, learned Counsel appearing on behalf of the applicant, apart from parity with that of the case of other Director, namely, Shabbirbhai Mohammadbhai Kadiyani, who was ordered to be

(2)

released by this Court on 8th December, 2016, in Criminal Application No.4540 of 2016, the applicant is neither a beneficiary of loan nor has advanced any loan being member of the Loan Committee to any of his relatives, friends, etc. Mr Chaudhari then would urge that the said co-operative bank of which the applicant was Director, has already merged with Nagpur Nagari Sahakari Bank way back and in this background, there is no necessity of custodial interrogation of the applicant in the alleged crime. He would then urge that the investigation *qua* the other accused is already over and upon an inquiry conducted by the co-operative authorities against the applicant, nothing incriminating was noticed, which order was up-held up-to this Court in a writ petition.

3. Per contra, learned Addl. Public Prosecutor opposed the application on the ground that the applicant has avoided investigation for last six years. According to him, the applicant being a member of the Loan Committee, had advanced loan without there being sufficient security *qua* repayment of such loan amount and prayed for rejection of the application.

4. What could be gathered from the record is, the case of the applicant appears to be similar to that of the other co-accused, namely, Shabbirbhai Mohammadbhai Kadiyani, who was ordered to be released by this Court on pre-arrest bail on 8th December, 2016, in Criminal Application No.4540 of 2016. In paragraph 5 of the grounds, a categorical statement is made by the applicant, that being a member of the Loan Committee, he had neither advanced any loan to any of his relatives nor is having any financial

(3)

interest in any of the loan transactions. Apart therefrom, the fact remains that the co-operative authorities have not found involvement of the applicant in commission of any of the illegalities or material irregularities, *qua* working of the said Bank.

5. So far as contention of the learned Addl. Public Prosecutor, that the applicant has avoided investigation for last six years is concerned, it is worth to mention that in spite of the fact that the applicant was not arrested for last six years, no action under Sections 82 and 83 of the Code of Criminal Procedure for declaring him as absconding is initiated. In my opinion, the Investigating Officer owns an explanation for the same.

6. In the above background and the fact that the said co-operative Bank of which the present applicant was Director is merged with another co-operative Bank, in my opinion, custodial interrogation is not warranted. In view thereof, Criminal Application needs to be allowed. Hence, following order :-

In the event of arrest of the applicant, in connection with C.R. No.5 of 2010, registered with Dondaicha police station, Dist. Dhule, for offences punishable under Sections 403, 406, 409, 420, 465, 468, 471, 477-A, 120-B read with Section 34 of the Indian Penal Code, he be released on bail, on furnishing P.R. Bond of Rs.15,000/- with one or two sureties for the like amount.

(4)

The applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or to the Court.

The applicant shall attend the Investigating Officer on 8th and 9th February, 2017, between 10.00 a.m. and 12 noon and thereafter as and when called.

The applicant shall not tamper with the prosecution evidence.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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