IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 34 OF 2018

Ramesh Nandu Magar ...**Applicant**
Vs.
The State of Maharashtra ...**Respondent**

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Mr. Ajinkya Badar for Applicant
Ms. Veera Shinde -APP
Mr. Sonawane, PC, Vimantal Police Station, Pune.
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CORAM : SMT. SADHANA S. JADHAV, J.
DATE: JUNE 20, 2018

P.C.

1. Heard. This is an application filed under section 439 of the Criminal Procedure Code.

2. The Applicant herein is arrested on 31st August, 2017 in Crime No. 298 of 2017 registered at Kamothe Police Station for the offences punishable under Section 420, 409 r/w. 34 of the Indian Penal Code.

3. It is the case of the prosecution that on 25th July, 2017, the Bank Manager of the Bank of Maharashtra, Vishrantwadi Branch, Pune lodged a report at the police station alleging therein that the Bank of Maharashtra had opened a

counter at the Airport to facilitate the payment of custom duties. The procedure was that the custom officer would draw the challan and the amount which was accepted at the counter was to be deposited in the bank on the next date.

4. After the retirement of the earlier staff, the bank had appointed the present Applicant through Magic Money Sponsor Company. That one Gopal Kamble, was also appointed for the said job. Mr. Kamble happens to be the ex-employee of the Bank of Maharashtra. The salary of the present Applicant was Rs.5,000/-, whereas, the salary of Gopal Kamble was Rs.10,000/-. The duties allotted to them, were as follows:

Mr. Kamble was to work at the counter from 8.00 a.m. to 8.00 p.m.

Whereas, the present Applicant was to work at the counter from 8.00 p.m. to 8.00 a.m.

That on 15th of July, 2017, the Assistant Commissioner of Customs (Airport) had drawn the reconciliation statement and had noticed several lapses. It was noticed that the amount of Rs.14,60,758/- was deficit in the amount that was deposited by challans. The Applicant was summoned by the Bank. He evaded to appear before the Bank Authorities. Thereafter, the law was set into the motion. On the basis of the report, Crime No. 298 of 2017 registered at Kamothe Police Station for the offences punishable under Section

420, 409 r/w. 34 of the Indian Penal Code.

5. In the course of investigation, the supplementary statement of the complainant was recorded on 2nd September, 2017 and better particulars were given. Since they had undertaken the inquiry, it was revealed that there is more and more deficit. As on today, the deficit is more than Rs.4 crores.

6. The Applicant had never appeared before the bank authorities. Instead of appearing before the bank authorities, the Applicant had rushed to the Court and filed an anticipatory bail application under section 438 of the Criminal Procedure Code, which was rejected and, therefore, he had surrendered before the police.

7. In the course of investigation, the investigating agency had recorded the statement of Jeweller – Mayur Jhaverchand Dhamavat, who had disclosed that the Applicant was purchasing gold worth more than Rs.1,00,000/- per month and till date he had purchased gold worth Rs. 30 to 35 lakhs. It is further submitted by the prosecution that during the period of employment, the Applicant had purchased lands at Haveli and other places, which are as follows:

2800 sq. ft. of plot at Villag Shiraswadi,

3000 sq. ft. of plot at Mouje Kesnand in the name of his wife,

Land at Wadebollai in the name of his wife.

Flat No. 302 in Nirvan Jame in the joint name of his wife and himself.

Landed property at Mouje Wagholi

Another land and property at Mouje Lohgaon.

The Investigating Agency is taking efforts to attach the said properties. Some of the challans show that a penalty of Rs.5,000/- was imposed on the duty tax of Rs.25,000/- as per the RBI Regulations.

7. The learned APP has submitted that the Investigating Agency had recorded the statement of his brother Arun Magar, who had specifically disclosed that his brother i.e. the present Applicant was residing at the paternal aunt's house of his wife. In fact, the investigating agency had issued a notice under section 41A of Cr.P.C. to the Applicant but he had not co-operated.

8. It is pertinent to note that all the challans are signed by the present Applicant.

9. The learned APP submits that there is sufficient material to indicate that the Applicant had not deposited the amount which he has received at the counter.

10. The learned counsel for the Applicant vehemently submits that the co-accused Gopal Kamble has been enlarged on bail by the Sessions Court. That there is a material on record to show that Gopal Kamble used to visit the bank

daily to deposit the amount and, therefore, according to him, by virtue of doctrine of parity, the Applicant deserves to be enlarged on bail. It is submitted that the Applicant happens to be a businessman. His wife is running a tours and travel agency from the year 2012. Whereas, the Applicant is also running an agency which provides workers for any and every services. It is submitted that just because the Applicant has properties and he could buy gold worth more than Rs.35,00,000/-, it cannot be said that the source of income is the misappropriation at the Airport Counter. It is submitted that since the Applicant found the job respectful, he had accepted the job at Airport at a meagre salary of Rs.5,000/-

11. The charge-sheet includes the statement of account of the present Applicant which shows that his balance in the bank account was never less than Rs.5,00,000/-. There were regular withdrawals of Rs. 2,00,000/- at any point of time. The amount that has been misappropriated is public money. The charge-sheet contains the details of the money, which has been misappropriated. It is an economic offence and this Court cannot be oblivious of the ramifications it has on the society and the Banks.

12. Taking into consideration the papers of investigation, more particularly,

the fact that the explanation given by the Applicant does not appeal to a prudent judicial mind as it does not inspire confidence. It cannot be believed that the applicant would accept the job of Rs.5,000/- while running lucrative business (according to the learned counsel for the Applicant) such as tours and travels and supplies of labours and the fact that the Applicant had not offered any explanation to the bank authorities nor had responded to the notice under section 41A of Cr.P.C., this Court is of the opinion that the application filed by the Applicant deserves to be rejected.

The application being sans merits stands rejected.

[SMT. SADHANA S. JADHAV, J.]