# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# NAGPUR BENCH, NAGPUR

## Criminal Application [ABA] No.254 of 2018

*Laxman Chhagan Hajare*
*vs.*
*State of Maharashtra, through P.S.O. Risod, District Washim*

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*Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.* — *Court's or Judge's Orders*

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*Shri S.G. Bundele, Advocate for the Applicant.*
*Shri M.K. Pathan, A.P.P. for the Non-Applicant/State.*

**CORAM : S.B. SHUKRE, J.**
**DATE : 19th APRIL, 2018.**

Heard.

Issue notice to the non-applicant/State.

The learned A.P.P. waives notice on behalf of the State and files on record the reply of the prosecution.

Perused the reply of the prosecution and also the case diary. It is seen that this applicant being a Manager of one Sant Amardas Urban Co-operative Society has committed defalcation of huge amounts belonging to the Society. For this purpose, mis-utilizing the authority given to him, this applicant along with the co-accused Ratnakar Tayde withdrew huge sums of money from the account of the Society maintained with the ICICI Bank and misappropriated those amounts for his own purposes and that he even deposited those sums of money in his personal account. It is also alleged that various acts of forgery have been committed by this applicant and the co-accused in order to achieve their dishonest intention of misappropriating the funds of the Society.

On going through the case diary, I find that there is sufficient material, at this stage, to substantiate the allegations so made against this applicant. It is submitted by the learned Counsel for the applicant that the audit report does not implicate this applicant in any manner. The audit report may not be pointing out in a specific manner any accusatory finger at this applicant, but the audit report also points towards the involvement of this applicant in the over all act of defalcation of the Society's funds to a considerable extent. The investigation so far made by the Investigating Officer has revealed now a particular role played by this applicant in misappropriating the huge sums of money belonging to the Society. Therefore, I am of the view that, at this stage, a detailed investigation is required, which would not be possible if the anticipatory bail is granted to this applicant.

According to the learned Counsel for the applicant, no offence punishable under Section 467 of Indian Penal Code is *prima facie* made out and the other offences barring the offence punishable under Section 409 of Indian Penal Code prescribe punishments of various periods not beyond seven years of imprisonment and, therefore, the applicant should be granted anticipatory bail. He also submits that Section 409 applies to public servants or bankers and this applicant not being a banker as per Section 22 of the Banking Regulations Act, 1949, Section 409 of Indian Penal Code would also not be made out against this applicant. The argument cannot be accepted. Section 409 applies to not only bankers but also to all those person, who are agents of the bankers. It would be preposterous to say, as the learned Counsel for the applicant would like this Court to say that an employee does not act as an agent of his master or principal. Even otherwise, the capacity as a banker has got nothing to do with Section 409 of Indian Penal Code. What is required as one of the essential conditions for application of this section is that the accused should be involved one way or the other in carrying on business as a banker. There is a lot of difference being a banker and carrying on a business of a banker. A Manager of the Society, who accepts funds from the members for the purpose of investments and promises payment of interest thereon would be a person, who accepts the funds for the purpose of carrying on to the business of a banker. Therefore, from this view point also, the role of this applicant, a Manager of the Society, has been nothing but of a person who *prima facie* committed various acts with dishonest criminal intention while doing the business as a banker.

In the result, I am of the view that this is not a fit case for grant of anticipatory bail. The application is rejected.

**JUDGE**

**sandesh*