IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.99 OF 2018

SARIKA DATTATRAYA KALE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Gaurav Parkar, Advocate for the Appellant.

Ms.Sharmila Kaushik, APP for the Respondent – State.

Mr.Abhay Dongare, Assistant Commissioner of Police, Crime Branch, present.

CORAM : SADHANA S. JADHAV &
A. M. BADAR, JJ.

DATE : 21st JUNE 2019

<u>JUDGMENT</u> : (PER : A.M.BADAR, J.)

1 By this appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellant/accused is challenging the order dated 7th September

2017 passed below Exhibit 79, thereby rejecting the application moved by the appellant/accused for releasing him on bail in Special Case No.39 of 2016 arising out of Crime No.222 of 2015 registered with Sadar Bazaar Police Station, Solapur, for offences punishable under Sections 408, 409, 420, 467, 468, 471, 120B reda with 34 of the Indian Penal Code as well as Section 13(1)(c) of the Prevention of Corruption Act and under Sections 3(2)(v) and 3(2)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard the learned counsel appearing for the appellant/accused. He argued that the appellant/accused is in custody as an under trial prisoner for a period of about 4 years. Co-accused Aamir Mehboob Tamboli was released on bail by the learned Sessions Judge, Solapur, vide order dated 16th January 2016, and condition imposed on him to deposit an amount of Rs.50 lakh for his release has been relaxed by the learned Division Bench of this court vide order dated 26th September 2017 in Criminal Appeal No.639 of 2017. The learned counsel for the

appellant/accused submitted that pre-trial custodial detention of the appellant/accused after filing of the charge-sheet is unjustified and unwarranted. According to the learned counsel for the appellant/accused, by series of judgments, the Hon'ble Apex Court has laid down the law that ordinarily persons accused of any offence at the stage of trial should be enlarged on bail, as object of bail is primarily to secure the attendance of the accused at the trial. Grant of bail is the rule and refusal is the exception. To buttress this contention, he placed reliance on judgments of the Hon'ble Apex Court in the matter of **State of Kerala vs. Raneef**[1] and **Surinder Singh vs. State of Punjab**[2]. He also placed reliance on judgment of the learned Single Judge of this court in the matter of **Chhagan Chandrakant Bhujbal vs. Assistant Director, Directorate of Enforcement and Others**[3].

3 The learned APP opposed the application by contending that the offence is serious. She placed on record report submitted by the Assistant Police Commissioner, Crime Branch,

1 AIR 2011 SC 340
2 AIR 2005 SC 3669
3 2018(3) RCR (Crimnal) 125

Solapur, addressed to the Office of the Assistant Public Prosecutor, Mumbai.

4 We have considered the submissions so advanced and perused the material made available.

5 On earlier occasion, appellant/accused Sarika Kale had preferred an application for releasing her on bail vide Criminal Bail Application No.909 of 2016. Said application along with application of the co-accused came to be decided by common order by this court on 21st July 2016. The application moved by the appellant/accused came to be rejected vide this order. From the date of rejection of the said application, there are no changes in circumstances. Rather, with passage of time, further investigation of the offence has revealed that amount of misappropriation has been increased to Rs.7,15,05,907/-.

6 Huge financial scam came to be unearthed because of query made by RTI activists named – Tupsaminder to the Office of

the Social Welfare Department. Simultaneously some complaints are also stated to have been received by the Mohol Police Station in respect of misappropriation in the scheme of scholarship, warranting explanation from co-accused Manisha Phule, who at the relevant time was holding the post of Assistant Commissioner. According to the prosecution case, this financial scam in the scheme of scholarship is the outcome of conspiracy by accused persons including incumbents holding the post of the Assistant Commissioners for the period from 2011 till filing of the FIR.

7 Perusal of the papers of investigation shows that the scheme for providing scholarship for the students belonging to Scheduled Castes and Scheduled Tribes, Nomadic Tribes, Vimukta Jati and Special Backward Class came to be formulated by the State. It appears to be the joint venture of the State Government as well as the Central Government. The State Government used to contribute funds for providing scholarship to special backward class students and students belonging to Vimukta Jati and Nomadic Tribes categories. The scheme is for reimbursement for

tuition fees as well as payment of scholarship to the students belonging to backward class of the society. The scheme is known as “e-scholarship” and it was being implemented from the academic year 2011-2012. As per the scheme, students of the backward class were supposed to make online applications to concerned colleges/educational institutions. Educational institutions were to verify those applications by getting hard copies of applications as well as supporting documents. Under the signatures of the head of those colleges/educational institutions, list of eligible students was to be forwarded to the Social Welfare Department by using Login ID of the Principal/ Head of the college. It is seen that the State Government had hired services of “Mastek Company” for implementing the e-scholarship scheme. Lists received from the educational institutions were supposed to be examined by Inspectors attached to the Social Welfare Department and on scrutiny of such proposals, scholarship used to be sanctioned by the Assistant Commissioner. Approved list of beneficiaries was then required to be sent to concerned institutions. Simultaneously, lists of eligible students and institutions were required to be submitted to the Treasury for sanction of the amount to be paid to the beneficiaries of the scheme. Thereafter, on receipt of the amount from the Treasury, with covering letter signed by the Assistant Commissioner, the list of eligible students and institutions was used to be sent to the concerned bank for effecting payment by ECS/ Nifty/RTGS. The amount of tuition fees used to be paid to the educational institution, whereas the amount of scholarship used to be paid to the concerned student of backward class. This is how the scheme of e-Scholarship Payment was used to be implemented. As seen from the statement of Ajit Dixit, Project Manager as well as from the papers of investigation. For this work the Mastek Company had deputed its three employees to the office of the Assistant Commissioner, Social Welfare Department. Applicant-Sarika Kale is one of such employees apart from other two employees named-Sunita Salunke and Sonali Pandey.

8 Perusal of the police report addressed to the Assistant Public Prosecutor vide letter dated 20th June 2019 signed by the

Assistant Police Commissioner, Criminal branch, Solapur, shows that as on today, the amount of misappropriation is to the tune of Rs.7,15,05,907/-. This misappropriated amount went to total 105 ineligible beneficiaries. This report further shows that several ineligible beneficiaries who are arrayed as accused are still absconding.

9 It is seen that co-accused Manisha Phule and Deepak Ghate, Assistant Commissioners, have disclosed their Login ID password to appellant/main accused Sarika Kale though they were trained to handle the computer work in the training imparted by the Masket Company. It appears that excel sheet containing names of beneficiaries came to be edited after bills were sanctioned by the Treasury. It is seen that there are several beneficiaries. Excel sheet is containing various details of the beneficiaries including details of their bank accounts. Financial institutions are also beneficiaries as tuition fees of backward class students is required to be reimbursed to those educational institutions. After editing the relevant column in the excel sheet,

abbreviation of names similar to the names educational institutions came to be typed on the excel sheet apart from changing account numbers of such beneficiaries. Such edited list appears to have been sent to the concerned bank under the signatures of co-accused - Manisha Phule and Deepak Ghate, Assistant Commissioners. It appears that both these co-accused have not verified and tallied the bills submitted to the Treasury with such list sent to the bank for disbursement of the amount to the beneficiaries. It is seen that the amount which went to the bank accounts of Shri Sant Tukaram Electric, Shri Sant Ekhanath Electric and Shri Shhardha Engineering Works came to be misappropriated largely by co-accused Amir Mehboob Tamboli and on behalf of that, accused statement came to be made that he is willing to deposit the amount of 1.71 crores and on such statement, he is directed to be released on bail by the Sessions Judge.

10 So far as appellant - Sarika Kale is concerned, she is reported to be behind bar since about four years. She is the

kingpin in this scam who has played lead role in cheating the State by engaging in conspiracy in a planned manner. The offence alleged against her is serious. While considering whether the appellant is entitled for bail or not, the enormity of charge, the nature of accusation, role played by the accused in the crime in question, the severity of punishment if the conviction is awarded and available of the accused for undergoing sentence, are the relevant considerations apart from the nature and gravity of the circumstances in which the crime is committed. In the case in hand, an amount of more than Rs.Seven crores is siphoned from the coffers of the State. This amount was meant for student of backward class in order to enable them to pursue further studies. This economic offence must have ruined educational career of several students belonging to backward class category. Reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of **Sanjay Chandra vs. Central Bureau of Investigation**[4]. No doubt the observations made therein are binding on this court but the circumstances of the present case does not warrant enlargement of appellant Sarika on bail

4 (2012) 1 Supreme Court Cases 40

because the offence is not merely an economic offence, but it has destroyed social fabric and upliftment of the student belonging to the reserved categories. In fact, the gole of the Constitution is frustrated by conspiring in a planned manner. Mastermind behind this scam appears to be appellant Sarika Kale. She is main beneficiary of the financial scam.

11 All these aspects were already considered by this court while rejecting the application for bail moved by the appellant/accused before this court.

12 We have carefully perused the judgments relied by the learned counsel for the appellant/accused. In the matter of **State of Kerala vs. Raneef (supra),** the role attributed to the respondent was that he treated one of the injured assailants by suturing his wound on the back after applying local anesthesia, at a place 45 kilometers away from the place of the incident. Considering his role in the alleged crime, order granting bail to him was upheld by the Honourable Apex Court. In the matter of

Surinder Singh vs. State of Punjab (supra) the Honourable Apex Court has considered guidelines laid down by the Hon'ble Punjab and Haryana High Court in the case of **Dharampal vs. State of Haryana**[5] and held that those guidelines should not be understood as an invariable rule to be observed with mathematical precision. The judgment in the matter of **Chhagan Chandrakant Bhujbal (supra)** proceeded on the facts of that case and reference of the appellant therein in scheduled offences so also declaring the relevant provisions of the Prevention of Money Laundering Act, 2002, to be unconstitutional by the Honourable Apex Court, were the issues considered by the learned Single Judge of this court. Such is not the case in hand. As mentioned in foregoing paragraphs, the case in hand is that of a fraud played by the appellant/accused on Constitution by depriving students of the backward class from the benefits extended to them by the State for prosecuting their studies.

13 In the light of foregoing discussion, we find no merit in the instant appeal. The impugned order of the learned trial court

5 2000 (1) CLR 74

cannot be faulted with. Therefore, the order :

<u>ORDER</u>

The appeal is dismissed.

(A. M. BADAR, J.) **(SADHANA S. JADHAV, J.)**