

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1012 OF 2019

Gajraj Indramal Borana	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Anand S. Shalgaonkar, Advocate for the Applicant.
Smt. A. A. Takalkar, APP for the State/Respondent.
Mr. Sushil Bobade, API, Khadak Police station, present.

CORAM :SARANG V. KOTWAL, J.
DATE :09th OCTOBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.455 of 2017 registered with Khadak Police Station, Pune, on 16/11/2017 under sections 465, 467, 468, 471, 406 and 420 r/w. 34 of the Indian Penal Code. Subsequently, the provisions of Sections 3 and 4 of The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short MPID Act) are also applied. The applicant is arrested on 16/11/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The FIR is lodged by the Auditor appointed by Registrar of Co-operative societies in respect of audit of Co-operative Credit Society by the name Shree Panchmukhi Maruti Nagari Sahakari Patsanstha Maryadit, Pune. The informant conducted audit for the period between 01/04/2010 to 31/03/2013. His audit revealed that, one of the Directors and Secretary Pandurang Kapre, Manager Yogita Zanje and a member Rajesh Karpe committed misappropriation of amount of Rs.30,48,073/-. This amount was misappropriated through different fraudulent modes. In some cases, the share capital was withdrawn by making fraudulent entries in the record. Some amount was withdrawn by fraudulently closing the bank accounts of account holders and transferring those amounts in different accounts and then withdrawing them. After maturity of some fixed deposits, even after returning their amount, the receipts were forged and some further amounts were withdrawn. By these and other fraudulent modes of transaction, the aforesaid amount was misappropriated. The specific allegations against the applicant are that, between years 2011 and 2013 he withdrew about Rs.81000/-

from the Bank of Baroda, Subhash Nagar branch by operating credit society's account. The cheques were forged. Some forged loan accounts were opened in the name of three persons Harish Parihar, Rupesh Telisara and Bhartaram Choudhary. Similarly, the amounts which were collected for small investments were not actually deposited in the credit society, but were kept with himself. Thus, the allegations are that he misappropriated the amount to the tune of Rs.17,16,089/-. The charge-sheet contains various account details and statements of witnesses which corroborate the allegations in the FIR. The charge-sheet contains various documents in respect of those accounts, as well as, statements of witnesses in support of the allegations.

3. Heard Shri. Anand Shalgaonkar, learned counsel for the applicant and Smt. A. A. Takalkar, learned APP for the State.

4. Shri. Shalgaonkar submitted that the applicant has not committed any offence. He submitted that the investigation is already over and the charge-sheet is filed. The trial is likely to take a long time, even to commence. He submitted that, since the case is entirely depending upon the documentary evidence, the

applicant's further custody during the pendency of the trial is not warranted. Smt. Takalkar opposed this application. She submitted that there is sufficient material on record showing that the applicant had actually misappropriated the amount, as alleged in the FIR.

5. I have considered these submissions. In addition to the arguments on merits, Shri. Shalgaonkar pointed out to the averments in the charge-sheet which mention that, out of the total misappropriated amount alleged against the applicant i.e. Rs.17,16,089/-, Rs.4,19,915/- is already returned to the alleged victims and the balance amount of Rs.12,96,174/- is remaining. Shri. Shalgaonkar submitted that the applicant is willing to deposit that amount in the trial court to establish his bonafides.

6. I have considered the material in the charge-sheet. At this stage, undoubtedly, there is sufficient material against the applicant to support the allegations that he has misappropriated the amount of more than Rs.17 lakhs. However, more than Rs.4 lakhs are paid to the alleged victims. The applicant is already in custody for about a year, therefore, considering the applicant's

willingness to deposit the entire amount attributed against him, at this stage, bail can be granted to him. The applicant on his own voluntarily has made this submission, therefore, it can be favourably considered. Learned APP submitted that the applicant be directed to deposit some substantial initial amount if bail is to be granted only on this consideration. In view of this matter, since the charge-sheet is already filed and since the applicant has shown his willingness to deposit the amount which he allegedly has misappropriated, I am inclined to grant bail to the applicant on following terms.

7. Hence, the following order :

ORDER

- (i) The applicant shall deposit Rs.7,00,000/- (Rs. Seven Lakhs only) before his release on bail before the trial court.
- (ii) On such deposit, the applicant is directed to be released on bail in connection with C.R. No. 455 of 2017 registered with Khadak Police Station, Pune, on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

- (iii) The applicant shall deposit the balance amount out of the total amount of Rs.12,96,174/- in the trial court within four weeks from his release on bail.
- (iv) The trial court shall invest the deposited amount in Fixed Deposit to be renewed periodically as per requirements.
- (v) The trial court shall finally decide as to how that amount is to be utilized at the conclusion of the trial.
- (vi) If after his release on bail, the applicant does not deposit the balance amount as stated by the learned counsel for the applicant, the State of Maharashtra is at liberty to move an application for cancellation of bail.
- (vii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)