IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.321 OF 2020

Satyanarayan s/o Gowardhan Sarda,
Age 48 years, Occupation Business,
R/o Maganpura, Arihant Plazza,
Flat No.12, Near Balaji Temple,
Nanded Tq. And Dist. Nanded. **...Applicant**

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Police Station Loha Tq. Loha
Dist. Nanded. **...Respondent**

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Advocate for Applicant : Mr. P. S. Paranjape.
APP for Respondent-State : Mr. S. Y. Mahajan.

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CORAM : SMT.VIBHA KANKANWADI, J.

Date of Reserving The Order : 16-10-2020

Date of Pronouncing The Order : 05-11-2020

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.66 of 2019, registered with Loha Police Station Dist. Nanded, for the offences punishable under Section 420, 467, 468, 471 read with 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. P. S. Paranjape for the applicant and learned Additional Public Prosecutor Mr. S. Y. Mahajan for respondent- State.

3. It has been vehemently submitted on behalf of the applicant that, the applicant is a respectable businessman in Nanded and he has not criminal antecedents. One Sandeep Manikrao Kuldeepake has lodged First Information Report (FIR) with the Police Station contending that one Sunil Suryakant Pallewad and his father Suryakant Piraji Pallewad are the office bearers of institution by name Samta Magasvargiya Vikas Mahamandal, Savarmal Tq. Mukhed Dist. Nanded. It is a public trust and the said trust had presented four cheques which were honoured and there is cheating to the bank to the tune of Rs.85,00,000/-. It is submitted that, main accused involved in the crime are Sunil Pallewad and Suryakant Pallewad. They were arrested and they are still behind the bar. During the interrogation of these two arrested accused persons, the name of the present applicant has been taken as an abettor to the commission of the crime. In fact, the investigation is already complete and even the charge-sheet is filed. The allegations which are reflecting in the charge-sheet would show that, the

applicant had helped the main accused persons to commit the crime. But the charge-sheet does not say that, what was the role played by the present applicant. There was no direct transaction between the applicant and those two main accused persons. The applicant is accepting that he had business relationship with accused No.4 Anandkumar Ganeshram Mandan who is resident of Navi Mumbai, but beyond that there is no other role. The applicant appears to have been falsely implicated in the crime. The applicant is ready to abide by any terms of the bail as his custodial interrogation is not required. He undertakes to co-operate with the investigation. Learned Advocate appearing for the applicant has taken this Court to the important points in the charge-sheet and submitted that, in fact no specific role has been attributed. The Investigating Officer has come with a case that, the present applicant was seen with the two main accused persons in the Closed-circuit Television (CCTV) Footage of Bank of India, Branch At Loha for honouring the cheque in question. It might be a fact that the present applicant might have gone at the same time to the said branch when the two main accused persons had gone. Only on the basis of that evidence it cannot be said that, this applicant has hatched up the conspiracy with the two accused. Nothing is required to be seized from the present applicant. The present applicant was on interim bail in view of order dated 02-07-2019 and he has then co-operated with the investigation. He, therefore, prayed for grant of anticipatory bail to the applicant.

4. Per contra, the learned Additional Public Prosecutor strongly opposed the application and submitted that, the applicant is part of the conspiracy of the economic offence and the fraud is to the tune of Rs.1,47,50,000/-. Learned Additional Public Prosecutor submitted that, a different mode was adopted to commit the crime and certain transactions are tried to be made from the bank at Faridabad Hariyana, Gurugram Hariyana, Gurgaon Hariyana. Fabricated cheques have been used, and thereafter, huge amount has been withdrawn. Though the charge-sheet has been filed, yet the investigation is still going on in respect of the role played by the present applicant. Further the involvement of the present applicant can be seen that the amount that was siphoned, part of it i.e. Rs.10,00,000/- was given on the bank account of the present applicant. The CCTV Footage which has been collected by the Investigating Officer from the Branch at Loha shows that the present applicant had gone along with the two main accused persons to

honour the fraudulent cheques. Custodial interrogation of the applicant is definitely required.

5. At the outset, it is required to be seen that, the manner in which the offence is stated to have been committed. The story appears to be too long, however it can be summarized that the original accused No.1 Sunil Pallewad and accused No.2 Suraykant Pallewad are the Chairman and Secretary of the institution called Samta Magasvargiya Vikas Mahamandal, Savarmal Tq. Mukhed Dist. Nanded. The said institution has a current account with Bank of India, Loha Branch. The Chairman Sunil presented a cheque on 30-04-2019 which was stated to have been drawn on the joint account of one Kiran Narang and Gaurav Narang drawn on Bank of India, Faridabad Branch for Rs.62,50,000/-. That cheque came to be honoured. Thereafter, accused No.1 had presented a cheque on 04-05-2019 drawn on the savings account of one Batakhdevi Anilkumar holding account with Bank of India, Gurugram branch Haryana to the tune of Rs.85,00,000/-. Both these cheques were in the name of Samta Magasvargiya Vikas Mandal, Savarmal Tq. Mukhed. The second cheque was also honoured. However on 09-05-2019 Bank of India, Old Railway Road, Gurgaon sent Electronic Mail to Loha

Branch stating that, the said Batakhdevi Anilkumar has lodged complaint stating that, amount of Rs.85,00,000/- has been unauthorizedly withdrawn from her account. The cheque number against which the said withdrawal has been shown was in fact in her possession and she had not given it to anybody. When a inquiry was made with accused No.1 and 2 by the bank, they could not get any satisfactory reply and it was then transpired that both the cheques were forged. The prosecution has further come with a case that, during the course of investigation with the accused No.1 and 2, they told about the distribution of the amount. It was also stated by them that, accused No.3 and 4 i.e. present applicant as accused No.3 and Anandkumar Mandan as accused No.4 had prepared those cheques and gave it to Sunil Pallewad for encashment.

6. As regards the role attributed to the present applicant is that amount of Rs.10,00,000/- are stated to have been transferred to the account of the present applicant, and the connection has been established that those Rs.10,00,000/- are from the said amount that was withdrawn by encashing the two cheques. That distribution is through various bank accounts. In respect of the said cheques the Investigating officer states that, inquiry with the present applicant

was not satisfactory, he has not co-operated with the investigation. This appears to be in view of the fact that, interim protection was given to the applicant and during that interim protection he has not co-operated with the investigation. Further connection with the crime of the present applicant is that, he was seen with accused No.1 and 2 in Loha Branch of the Bank as per the CCTV Footage. Said Anandkumar Mandan is stated to be still absconding. The charge-sheet shows the RTGS (Real-Time Gross Settlement) documents in respect of the transfer of the amounts, the specimen signatures of the real account holders from whose account the amount has been withdrawn, and it appears that those specimen signatures with the admitted signatures have been sent for Handwriting Experts opinion. Definitely the amount that has been involved is huge amount. The manner in which the offence has been committed is also required to be considered. From a small village of Maharashtra State in Nanded District, the magnitude has gone in Hariyana State.

7. In *Y. S. Jagan Mohan Reddy v. Central Bureau of Investigation, reported in (2013) 7 SCC 439*, the Hon'ble Supreme Court has observed that,

> *"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The*

> *economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country.*
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> *35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/ State and other similar considerations."*

8. In *Siddharam Satlingapa Mhetre v. State of Maharashtra, reported in (2011) 1 SCC 694*, the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It has been observed that,

> *"The nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. The Court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her."*

The above said observation has been again referred in case of *P. Chidambaram v. Directorate of Enforcement, reported in (2019) 9 Supreme Court*

Cases 24, and further it has been observed that,

> *"78. Power under Section 438 of CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain, it was held that in economic offences, the accused is not entitled to anticipatory bail."*

9. At this stage, from the evidence that has been carried out and the contents of the charge-sheet, it can be seen that there appears to be involvement of the present applicant whose custodial interrogation is definitely required. Further the amount which has been defrauded and misappropriated is the public money from the Bank, and the entire banking procedure has been utilized with such an expertise that, when there was withdrawal it appears that it was not even noticed by the bank officials. Therefore, taking into consideration all the aspects no case is made out to exercise the discretion under Section 438 of the Code of Criminal Procedure to grant the anticipatory bail to the applicant. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-