IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 BAIL APPLICATION NO. 896 OF 2020

HARIDAS VITTHAL DALVI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S. B. Talekar i/by M/s. Talekar and Associates
Mr. P. P. Chavan, Special Public Prosecutor for Resp.-State.

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CORAM : V. K. JADHAV, J.
DATED : 22ND SEPTEMBER, 2020

PER COURT :-

1. This is the successive application filed by the applicant seeking regular bail in connection with Crime No. 80 of 2015 registered with Kadim Police Station, Jalna for the offence punishable under Sections 409, 406, 420, 468, 471, 120-B, 109 read with 34 of IPC and under Sections 13(1)(c) and 13(2) of the Prevention of Corruption Act. This Court (Coram : N. W. Sambre, J.) vide order dated 09.01.2017, rejected his earlier application bearing Criminal Application No. 6814 of 2016 seeking regular bail. The applicant again sought for regular bail as well as temporary bail vide his applications Exhibits 264 and 288 in Special Case (ACB) No.

28 of 2015 as per the guidelines issued by the High Power Committee dated 11.05.2020 and onwards in the backdrop of outbreak of Covid-19, so also for the reason that after framing of charge in the year 2018, there has been no progress in the trial. The said applications below Exhibits 264 and 288 in Special Case (ACB) No. 28 of 2015 came to be rejected by the Additional Sessions Judge-1, Jalna vide common order dated 30.06.2020. Hence this application.

2. Bries facts of the case are as under:

a. The Lokshahir Annabhau Sathe Development Corporation Ltd. (for the sake of brevity "Corporation") was established by the State Government in the year 1995 for providing financial assistance to the persons belonging to Matang community for their upliftment. The corporation is also implementing the schemes for financial assistance introduced by the National Schedule Caste Finance Development Corporation (NSFDC). The sanctioned capital of the said corporation is Rs.300 crores.

b. The applicant was working as Deputy General Manager (Finance) with the said statutory Corporation. The applicant was required to disburse the amount to the respective regional offices, from whom, it is transferred to the district offices of Corporation for passing on benefits so as to achieve the object with which the Corporation was formed.

c. It is since noted that the funds to the tune of crores was siphoned off from the Corporation, the crime as above came to be registered and the present applicant came to be arrested on 01.04.2016.

3. Though cautioned that this Court is not sitting over the order passed by the brother Justice N. W. Sambre dated 09.01.2017 in Criminal Application No. 6814 of 2016 filed by the present applicant for bail, however, learned counsel for the applicant has pointed out the deficiencies in the said order so also raised various grounds which, according to the learned counsel for the applicant, were not considered while rejecting the earlier application.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the alleged crime. There are no specific allegations against the present applicant. There is no incriminating material against the present applicant in the charge sheet. Learned counsel submits that not a single witness has pointed about involvement of the applicant in the alleged commission of crime. Further, name of the applicant does not appear in the FIR. Moreover, in the Departmental Enquiry, the applicant has been exonerated. It is the prosecution story that the Chairman and the Managing Director are the loan sanctioning authorities and as such, the then Chairman Mr. Ramesh Kadam and the then Managing Director Mr. Bawane disbursed the alleged loan amount to the regional office and the regional office further transferred the said amount to the district office. The actual misappropriation of funds/amount took place at the district office. Learned counsel submits that even both the co-accused, namely, Madhukar Vaidya and Ashok Khandare did not attribute any role to the present applicant in the alleged crime.

5. Learned counsel for the applicant further submits that the applicant is implicated in the alleged crime only on the ground that he has transferred the funds/amount from the head office to the regional office without there being any requisition. Learned counsel submits that as a matter of fact, there is no question of requisition being made to the Deputy General Manager (Finance). The duty chart would clearly indicate that the only responsibility of the Deputy General Manager (Finance) is to transfer funds as per directions of the Chairman and the Managing Director and to maintain transparent record of the same. Learned counsel submits that funds were transferred to the regional office by the applicant by online mode i.e. from Government account to Government account under sanction of the Chairman and the Managing Director of the Corporation and as such, no irregularities were committed by the applicant. The applicant had informed about the said transfer of funds to the concerned banks by separate orders so also the applicant has maintained record of transfer of said funds to the regional office in the cash book. Learned counsel submits

that thus, the transfer of the said funds was made in a transparent manner. Learned counsel submits that the funds received by the regional office were forwarded to the respective district offices only after receiving sanction from the Managing Director and the Chairman of the Corporation as as such, there was no role of the present applicant in the capacity of the Deputy General Manager (Finance) in the said process except to transfer the said fund from the head office to the regional office.

6. Learned counsel for the applicant submits that the charge sheet reveals that the funds transferred between 12.05.2014 to 15.12.2014 from the head office were misappropriated and during the said period the applicant was holding the post for less than two months and one Mandake was given the charge of Deputy General Manager (Finance) vide order dated 31.07.2014. Learned counsel submits that only 23% of the amount was transferred when the applicant was holding the post at the head office for two months. Thereafter, as many as five transactions were undertaken by him, but he is not made accused in the

alleged crime. Learned counsel submits that nothing revealed in the CDR details of the accused against the applicant and the applicant was not connected to any co-accused at any point of time. The applicant has been made a scapegoat by the prosecution for the reasons best known to them whereas similarly placed persons are not made accused in the alleged crime. Learned counsel submits that there is neither any recovery at the instance of the applicant nor any fear of tampering of evidence by the applicant since all the documents and evidences are presently in police custody. The applicant has cooperated with the investigation and he is readily available for trial. There is no criminal history. Further detention of the applicant is not necessary. Learned counsel submits that though charge has been framed, there are no chances of disposal of the case within a reasonable period. Learned counsel thus submits that the applicant may be released on bail.

7. Learned APP has raised preliminary objection that the earlier application filed by the applicant for regular bail came to rejected by this Court after considering the merits of

the case and since then, there is no change in circumstance. Learned APP submits that there is a strong *prima facie* case against the applicant. Learned APP submits that the applicant had not followed the prescribed procedure for disbursement of funds to the regional or district offices and by signing cheques in favour of respective offices, the applicant had facilitated the other co-accused to commit the crime in question. Learned APP submits that there is sufficient material to infer conspiracy and motive on the part of the applicant. If the applicant is released on bail, he may create hurdles in fair trial by pressurizing the prosecution witnesses. Learned APP submits that the application is liable to be rejected.

8. By order dated 09.01.2017 in Criminal Application No. 6814 of 2016 filed by the present applicant for bail in connection with the present crime, this Court (Coram : N. W. Sambre, J.), after considering the merits of the submissions, in para no. 12 of the order it has recorded that “no case for grant of bail is made out. Criminal Application fails, same stands rejected”. I have repeatedly asked learned counsel for

the applicant as to the change in circumstance, however, learned counsel for the applicant could not satisfy on the point of change in circumstance. On the other hand, learned counsel for the applicant has pointed out the deficiencies in the order dated 09.01.2017 passed by the brother Justice N. W. Sambre in Criminal Application No. 6814 of 2016. There is no reason to entertain this application only on the ground that different counsel is representing the applicant before different Coram.

9. On perusal of the allegations made in the complaint, the charge sheet, the memo of application, annexures thereto so also the order passed by this court (Coram : N.W. Sambre, J.) on 09.01.2017 rejecting the earlier application of the applicant for bail, *prima facie* there is evidence that the accused had acted in connivance with the other accused persons and committed misappropriation of the funds of Sahityaratna Lokshahir Annabhau Sathe Development Corporation. The applicant-accused conspired and diverted the funds of the said Corporation for his personal use and benefit. This is a serious economic offence. It further appears

that the prescribed procedure for disbursement of the funds to the regional and district offices has not been followed by the applicant with some ulterior motive. Thus, the act of the applicant in signing cheques in favour of the respective offices has further facilitated the other co-accused to commit the crime. *Prima facie* there is material to infer about hatching of conspiracy and motive on the part of the applicant for siphoning off the funds of the Corporation.

10. It further appears that the entire stakes in the said Corporation, where the applicant was working as Deputy General Manager (Finance), are controlled by the State Government and there is prescribed procedure adopted for disbursement of the funds to the beneficiaries through regional and district offices after complying with the necessary formalities and approval of the Board of Directors of the Corporation. It further appears that the applicant was instrumental not only in disbursement of the funds from the head office of the Corporation without any approved list of beneficiaries, to the concerned district and regional offices, but the applicant had also diverted funds from another place

to the offices at Jalna, Parbhani, etc. There is no such sanction brought on record or authorization in favour of the present applicant to order diversion or sanction of the funds in favour of the district offices or regional offices from where the amount was siphoned off. *Prima facie,* these acts on the part of the applicant were with an intention to facilitate the co-accused to siphon off the funds of the Corporation which were meant for beneficiaries belong to backward class community. The applicant had *prima facie* acted contrary to the established procedure for diversion/disbursement of the funds, facilitating thereby the co-accused persons to embezzle huge public money to the tune of Rupees eight crores out of the Corporation funds. Considering all these aspects and since there is no change in circumstance as such after rejection of the earlier bail application, I do not find any justifiable ground to release the applicant on bail. The bail application is accordingly rejected.

11. The applicant is in jail in connection with the present crime since 1.4.2016. In view of the same, the trial court is hereby directed to dispose off the case expeditiously in a

time bound manner, on priority basis, by day to day hearing if possible, within a reasonable time after the normal court functioning begins.

(V. K. JADHAV, J.)

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