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

CRIMINAL APPLICATION [BA] NO. 338/2020.
LD-VC-CRIMINAL APPLICATION [BA] NO. 33/2020.

Amit Chandrashekhar Bhagwat
-**VERSUS-**
State of Maharashtra.

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

Shri S.P. Dharmadhikari, Senior Advocate with Shri A.A. Dhawas, Advocate for the Applicant.
Shri N.B. Jawade, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

CLOSED FOR ORDERS : 22.06.2020.

ORDERS PRONOUNCED ON : 26.06.2020.

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicant – Amit Bhagwat has moved for regular bail in terms of Section 439 of the Code of Criminal Procedure, in connection with the offence registered at Lakadganj Police Station vide Crime No. 405/2019 relating to offence punishable under Sections 406, 409, 417, 419, 420, 465, 466, 467, 468, 469, 471, 472, 474, 120 (B) read with Section 34 of the Indian Penal Code. Initially on apprehending to be arrested in aforesaid crime, the

applicant had approached to the Court of Sessions for grant of pre-arrest bail, but, he could not succeed. Though he has filed anticipatory bail application before this Court, the same was withdrawn. During the course of time on 13.11.2019, the applicant came to be arrested in the concerned crime and is behind bars since then.

3. The applicant had approached to the Court of Sessions for grant of regular bail. However, the said application was rejected on 09.03.2020. In this situation, the applicant is before this Court for regular bail urging to exercise judicial discretion in his favour.

4. Heard Shri S.P. Dharmadhikari, learned Senior Counsel for the applicant and Shri N.B. Jawade, learned A.P.P. for the non-applicant – State, and gone through the available record, reply filed by the State along with certain documents, which are presumably part of the charge sheet.

5. The applicant has claimed bail on usual grounds like innocence, false implication, inadequacy of evidence, having permanent place of residence and ready to abide by the conditions. In addition to that, the learned Senior Counsel has submitted that there are some more reasons on which the applicant is entitled for grant of regular bail. It is his submission

that the applicant has already faced custodial interrogation and is in jail for more than 7 months. The case is solely based on documentary evidence which have been already seized by the investigating agency, and therefore, there is no room to tamper with the prosecution evidence. It is submitted that already investigation is complete and charge sheet as well as supplementary charge sheet has been filed. Moreover, the bail is also claimed on the ground of parity by showing the instance of release of co-accused - Bank Manager Anagha Bhusari and one clerk by this Court vide order dated 12.06.2020. It is argued that the co-accused Anagha Busari was the main accused, however, having regard to the facts and circumstances of the case, she was already enlarged on bail, therefore, the applicant deserves equal treatment in all fairness.

6. Per contra, learned A.P.P. has straneously opposed the bail application. It is his submission that the applicant has conspired with Bank Manager Anagha Bhusari, main accused Mangesh Jagtap and accordingly siphoned huge amount. There are several documents to indicate prima facie involvement of the applicant in the questioned offence. The applicant was hand in glove with the co-accused and by preparing false and forged documents has obtained monetary gain which he utilized for

foreign trips and enjoying luxury of 5 Star hotel.

7. Learned A.P.P. invited my attention to some documents and particularly, bank account extract of the applicant to demonstrate that, the applicant in connivance with the main accused Mangesh Jagtap and Anagha Bhusari, had managed to gain lakhs of rupees. It is argued that the applicant was a mere student, therefore, it is not possible, rather financially impossible for him to enjoy luxuries, which he had availed. It is submitted that the applicant not only prepared false and forged documents for his own loan transaction, but, had also deceived his family members and obtained vexatious loans in their names. Lastly, it is argued that the investigation is recently handed over to the Economic Offence Wing (EOW), who are still carrying further investigation. To conclude, it is stated that the role of parity would not apply as the role of Anagha Bhusari was distinct and she was released on gender basis.

8. The entire episode as emerges from the police paper relates to financial fraud in the Nationalized Bank namely Andhra Bank. The informant Mr. Anand Tupe took charge as Branch Manager at Itwari Branch of Andhra Bank. He received a complaint from one Dharmendra Pande, informing that though he had not applied or availed housing loan to the tune of Rs.35 lakhs,

the same was shown to be outstanding in his name. It is the grievance of Mr.Dharmendra Pande that when he went to purchase a mobile phone on finance, while assessing his credentials in Credit Information Bureau India Limited [CIBIL] it was revealed that he had obtained loan of Rs.35 lakhs from Itwari Branch of Andhra Bank, out of which an amount of Rs.34.72 lakhs was outstanding. Since Mr.Pande, has never availed the loan, he rushed to the Bank and on ascertaining the disbursement of loan amount in his name, he had given a complaint in writing. The Bank initiated preliminary enquiry and found that co-accused Mangesh Jagtap in connivance with the Branch Manager Mrs. Bhusari had misused the documents of Mr.Pande and misappropriated an amount of Rs. 35 lakhs. It was also transpired that various bogus loan cases were made in which Banks was duped for crores of rupees.

9. After receipt of the said complaint, the then Branch Manager Mr. Anand Tupe lodged report with Lakadganj Police Station on 11.07.2019. Initial investigation was carried out by the said police, who recorded statement of relevant persons and seized sizeable documents from the Bank. It was transpired that near about 69 bogus loan cases have been prepared and total fraud was to the tune of Rs. 9.73 Crores. It was a modus to use the

document of innocent persons and to create fabricated loan papers in their name. Mr. Dharmendra Pande, at whose instance the fraud was unearthed was one of the person whose documents were misused for availing loan in his name.

10. The applicant Amit Bhagwat is not related to the Bank, meaning thereby he was not a Bank employee. It is the prosecution case that the applicant in connivance with the main accused Mr. Mangesh Jagtap has obtained 7 loans either in his name or in the name of his family members by producing forged documents and accordingly siphoned huge amount to the extent of Rs.1.15 Crores.

11. Learned A.P.P. has invited my attention to "C" chart showing total 7 loan transactions relating to the applicant /accused. It is tried to impress that different kind of loans like Housing Loan, Vehicle Loan, Business Loan and Cash Credit Facility was availed in the name of the applicant and his relatives by producing false documents.

12. Learned A.P.P. also took me through the account extract of the applicant to show that there were cross entries which shows nexus of applicant with co-accused Mr. Mangesh Jagtap and Mrs.Anagha Bhusari. In short, it is his submission that the applicant was one of the conspirator and all of them have jointly

siphoned the money on the basis of false and fabricated documents.

13. It is a fact that initial report was lodged by the Branch Manager Anand Tupe unrevealing the fradulent bank transactions. No doubt, FIR does not bear name of the applicant, however, it cannot be expected at initial stage. As per prosecution case 69 bogus loan cases were prepared in the name of different persons to dupe the bank. Dharmendra Pande is one of the person who brought to notice the irregularities by stating that his papers were misused. The learned counsel for the applicant has submitted that the applicant is also one of the victim whose papers were misused by co-accused Mr.Jagtap, with which the applicant has no concern, nor he was financially benefited.

14. Chart “C” which is part of the charge sheet bears reference of 7 loan transactions relating to applicant. It reveals that 3 loans namely Housing loan, Vehicle loan and Business loan was obtained in the name of the applicant to the tune of Rs.20 lakhs, 5 lakhs and 5 lakhs respectively. However, the chart indicates that housing loan amount of Rs. 20 lakhs was disbursed and credited in the account of one Latika Bhagwat, who was informed to be grand mother of the applicant. Moreover, there is an endorsement that said entry is suspicious. The remaining

amount of Rs. 10 lakhs was credited in the account of the main accused Mangesh Jagtap. The chart indicates that housing loan of Rs. 20 lakhs was availed in the name of applicant's uncle Dhanraj Bhagwat, however, the said loan amount was disbursed in the account of the main accused Mangesh Jagtap. Likewise, the case of applicant's brother Abhishekh Bhagwat, in whose name housing loan of Rs.35 lakhs was availed and the amount was disbursed in the account of the co-accused Amol Kumbhare. Business loan of Rs. 10 lakhs was availed in the name of A.B. Enterprises, run by the applicant but, the amount was disbursed in the account of main accused Mangesh Jagtap. Besides this, there is reference of cash credit facility of Rs. 10 lakhs each from which time to time amount was withdrawn.

15. Prima facie the chart indicates that there was no disbursement either of the loan amount in the account of the applicant accused. Mostly entire loan amount was disbursed and credited in the account of main accused Mangesh Jagtap. The learned Senior Counsel for the applicant has submitted that if the applicant was one of the conspirator, than there was no reason to credit the loan amount in the name of co accused. It is his attempt to show that the applicant was never benefited from either of the transaction, but, he was instrumentled by the co-accused.

16. Contextually, it is appropriate to deal with the submissions of learned A.P.P. regarding financial benefits availed by the applicant. In this regard, learned A.P.P. took me through extract of account of the applicant. He has drawn my attention to few entries to show that there were transfer of amount in between the applicant and Angha Bhusari and vice versa. However, he is unable to demonstrate that the huge loan amount disbursed in the account of Mangesh Jagtap or Amol Kumbhare was reverted in the applicant's account.

17. During the course of investigation, police have recorded statement of relatives of applicant in whose name loans were fradulently availed. Dhananjay Bhagwat is uncle of applicant in whose name housing loan of Rs. 20 lakhs was availed and the amount was credited in the account of the main accused Mangesh Jagtap. It is alleged that the applicant misused the documents of his uncle Dhananjay Bhagwat and Brother Abhishekh's on one or the other pretext and the same were used for preparing loan cases. However, the statement of Dhananjay does not bear any reference of applicant obtaining documents from him under one or other pretext. Dhananjay stated that he has handed over the documents to his brother Chandrashekhar for obtaining insurance policy. Likewise, brother of applicant – Abhishekh has also not stated in

his statement that he has entrusted his documents to the applicant.

18. Learned A.P.P. lays stress on the foreign trips/ visits of applicant along with main accused Mangesh Jagtap and enjoying luxury of 5 star hotel namely - Raddison Blu by spending lakhs of rupees. It is his submission that applicant is merely a student by occupation and therefore, 13 foreign trips by air and luxurious stay in 5 star hotel itself indicates that he had gained lakhs of rupees in the fradulent transaction. In support of said contention, he took me through some documents to show that the applicant had Air travel to London on 13 occasions along with the main accused and also stayed in 5 star hotel of which the bill amount was to the tune of Rs.36 lakhs.

19. The learned Senior Counsel appearing for the applicant was quick enough to respond that, main accused Jagtap was family friend of the applicant. For this purpose he took me through the statement of applicant's father Chandrashekhar Bhagwat. It is his statement that father of main accused Mangesh Jagtap was his co-employee in the service. His son (applicant) and Mangesh were good friends. It is explained that the applicant was desirous to get job abroad and in that connection he had been to London with Mangesh Jagtap. Besides that it is explained that Mangesh Jagtap on and often used to stay at Radisson Blu hotel

where he spent huge amount. The applicant being his friend was staying with Mangesh Jagtap in the hotel at his costs. The documents prima facie show the Air travel as alleged, but, the letter from the hotel shows that the room was perhaps booked in the name of Mangesh Jagtap.

20. Huge expenses on Air travel and hotel even if presumed to be true, but, it cannot directly connect applicants involvement in the bank fraud, but, would only assist to draw certain inferences. However, it cannot be considered as a material evidence connecting the fradulent loan transactions. It is well settled that detailed examination of the evidence and elaborate documentation of the merits should be avoided at the time of deciding the application for grant of bail. Prima facie, the Court has to look to the quality of evidence while assessing the entitlement of the applicant to be released on bail. No doubt, each case has to be considered on its own facts and circumstances and on its own merits.

21. The learned Senior Counsel for the applicant has relied on the decision of the Hon'ble Supreme Court in case of **P. Chidambaram .vrs. Directorate of Enforcement (2019 SCC Online SC 1549)** to reiterate the trite principle that the grant of bail is the rule and refusal is an exception. The principles on which bail is to

be granted or refused are well settled in the course of time. Ultimately the factual aspect based on case to case would take the precedence. However, to re-captulate these broad principles reference can be made to the observations of the Hon'ble Supreme Court in case of **P. Chidambaram .vrs. Central Bureau of Investigation (2019 SCC Online SC 1380)**, the same are as under.

> *"22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or thewitnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv)character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide Prahlad Singh Bhati v.*

> *NCT, Delhi and another (2001) 4 SCC 280).There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits..."*

The consideration as made in the above noted case and enunciation in that regard in various decisions spells that there cannot be a straight jacket formula to decide bail applications. Ordinarily it is necessary for the Court to consider many circumstances, the nature of accusation and the severity of punishment, reasonable apprehension of tampering, chances of abscondence, character of evidence, role of applicant accused, gravity of offence, its social impact, etc.

22. This case relates to financial banking fraud. Allegedly 69 bogus loan cases were prepared to siphon the public money. During the course of investigation, police have seized the relevant loan files and related documents. In other words, the case is document based and they are mostly in the custody of the prosecuting agency. Therefore, it cannot be said that the applicant, if released on bail would tamper with the material evidence. There is nothing to show that grant of bail would adversely affect the prosecution case, particularly when the

investigation is complete.

23. Admittedly investigation is completed and charge sheet as well as supplementary charge sheet has been filed. It is informed that the main accused Mangesh Jagtap has been arrested and is behind bars. Learned A.P.P. has submitted that initially investigation was conducted by the police officials of Lakadganj Police Station, however, recently, the investigation is made over to EOW, who are still making further investigation. However, reply-affidavit indicates that the investigation was handed over to EOW long back on 14.12.2019 i.e. prior to the filing of the charge sheet on 30.01.2020.

24. It is submitted that the investigation is still underway, therefore, the applicant may interfere with the same, if he is enlarged on bail. As stated above, admittedly, charge sheet and supplementary charge sheet has been filed. The investigation was undertaken by EOW prior to 6 months and thereafter supplementary charge sheet has been filed. No doubt police have right to carry further investigation in terms of Section 173[8] of the Code of Criminal Procedure. Rather it is their unfettered right. However, under pretext of further investigation is going on, the valuable right of liberty cannot be curtailed for indefinite period. The further investigation may go on as permissible under law, but,

that cannot be a reason to freeze the things.

25. The learned Senior Counsel for the applicant apart from merits, has agitated a right of applicant to get bail on the principle of parity. In this regard bail order dated 12.06.2020, relating to co accused Bank Manager Anaga Bhusari and one clerk was pressed into service. It is submitted that all the submissions opposing this bail application were duly considered by this Court, and thereafter co-accused were released. It is pointed out that the allegations against Branch Manager Angha Bhusari were regarding financial fraud to the tune of Rs. 9 Crores, whilst the allegations against the applicant relates to fraud to the tune of Rs. 1.15 Crores only. Therefore, it is submitted that applicants alleged role being of lesser degree rule of parity would squarely apply.

26. Learned A.P.P. tried to distinguish the applicant's case on facts and also submitted that the Branch Manager Mrs. Bhusari being lady, discretion was used in her favour. The entire reading of bail order no where discloses that gender advantage was considered by this Court while releasing Mrs. Bhusari on bail. By and large the case papers indicate that role of Mrs. Angha Bhusari was more grave, as she has alleged role in all 69 loan proposal/cases. Prima facie the nexus of applicant with Mangesh Jagtap is evidence, but, his connivance has to be proved by way of

leading evidence. Having regard to the role of the applicant which is of a lesser magnitude then that of the Branch Manager. I do not see any reason to deny the rule of parity.

27. Learned Senior Counsel submitted that this Court while releasing co-accused on bail has expressed that there is possibility of involvement of the accused in financial fraud. Prima facie there is material to hold that role of those accused was beyond mere negligence and it also indicates active connivance with the co-accused for disbursement of the loan in illegal manner. According to him though this Court prima facie formed an opinion of involvement of accused, still co-accused were held entitled for bail for certain reasons. The relevant portion of order passed in Criminal Application No.212/2020 on 12.06.2020, is as follows.

> *"11. ......But, it cannot be ignored that while considering the question of grant or refusal of bail to the accused it is not only the material showing prima faice involvement of the accused that assumes significance, but the other significant aspect would be the possibility of the accused avoiding the course of justice or adversely affecting the prosecution, if they were to beset at liberty by allowing their applications for grant of bail. In the present case, there is no dispute about the*

fact that the charge sheet has been already submitted and supplementary charge sheet has also been submitted. According to learned APP,further investigation is being undertaken by the Economic Offences Wing, which was initially hampered due to the investigation being carried out by the local police authorities. Be that as it may, as of now charge sheet and supplementary charge sheet are already on record. There is no dispute about the fact that the charge sheet and supplementary charge sheet run into thousands of pages and the prosecution, as of today, intends to examine about 58 witnesses, thereby indicating that the trial would take its own time. There can be no doubt about the fact that although the documents on record do indicate prima facie involvement of the applicants in the offences in question, they would still have to be proved by the prosecution during the course of trial."

28. Admittedly, the investigation is complete and charge sheet has been filed. Learned A.P.P. himself has clarified in his submission that charge sheet runs into near about 3500 pages. The prosecution intends to examine near about 58 witness, apart from other material if collected during the course of further

investigation, as argued. The applicant was arrested on 13.11.2019 and after facing custodial interrogation, he is behind bars for the period of more than 7 months. The applicant is young person of 26 years of age. The case is thoroughly based on documents, which are in the custody of the prosecution. The trial will certainly take longer time for its conclusion. Nothing is shown to indicate that release of applicant would put impediment in the smooth trial or in the course of law. More particularly there is no material to show that the applicant through others have been approaching the witnesses so as to influence them. One of the main object of bail is to sercure the attendance of the accused at the trial. Imposition of certain conditions will ensure applicants presence for trial.

29. It is made clear that the above observations are purely drawn on prima facie basis only for the purpose of deciding this bail applicant, which will have no impact on the merits of the trial. In the circumstances, this is a fit case to exercise judicial discretion and to release the applicant/accused on bail by putting certain conditions. Hence the following order.

(i) The applicant/accused Amit Chandrashekhar Bhagwat is released on bail on his furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rs.One lakh), with one solvent surety in the like amount.

(ii) The applicant/accused shall deposit his Passport with the Investigating Authority within a period of one week from his release, subject to final outcome of the trial.

(iii) The applicant/accused shall provide his residential address with documentary proof and his cell phone number to the Investigating officer and shall not change the same without prior written intimation to the Investigating Officer.

(iv) The applicant/accused shall not enter the premises of the concerned Bank, unless permitted by this Court.

(v) The applicant/accused shall report to the Economic Offence Wing on every alternate Monday in between 10 a.m. to 1 p.m. till the conclusion of the trial.

(vi) The applicant/accused shall not tamper with the prosecution evidence in any manner and shall cooperate with the prosecuting agency.

(vii) The applicant/accused shall attend each and every date of hearing of the case before the trial Court.

(viii) Breach of either of these conditions will give rise to State Government to move for cancellation of bail.

30. Criminal Application is accordingly allowed and

disposed of.

31. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

Rgd.