

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

CRIMINAL APPLICATION (ABA) NO. 722 OF 2020

(Ashfaq Hussain s/o Irfan Hussain ..vs.. State of Maharashtra, through PSO, PS Ramdaspath, Akola
)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Anil Mardikar, Senior Counsel assisted by Mr. Ved Deshpande,
Counsel for the applicant,
Mrs. Kalyani Deshpande, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 26-11-2020

Hearing was conducted through video conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicant is apprehending arrest in Crime M-75/2014 registered with Police Station Ramdaspath, District Akola for offences punishable under Sections 406, 420, 467, 468, 471 and 120-B read with Section 34 of the Indian Penal Code.

3. The crime is registered pursuant to the direction issued by the learned Magistrate in exercise of powers under Section 156(3) of the Criminal Procedure Code.

4. The complainant is Renuka Mata Multi State Urban Co-operative Credit Society, Ahmednagar. Accused 1 and 2 are the employees of the said society

and accused 3 i.e. the present applicant is an account holder.

5. The gist of the prosecution case is that the accused entered into a criminal conspiracy to defraud the society, pursuant to which criminal conspiracy, all the accused, with a shared common intention, ensured that Rs.1,49,97,000/- (Rupees One Crore Forty Nine Lac Ninety Seven Thousand) is withdrawn from the account of the society vide seven cheques issued on 04-9-2013 and 05-9-2013 and deposited in the account of the present applicant.

6. There is ample material on record to show that the amount of Rs.1,49,97,000/- (Rupees One Crore Forty Nine Lac Ninety Seven Thousand) is received by the present applicant in his account.

7. It appears that it was contended on behalf of the applicant that the amount was received as loan, which contention is seriously disputed by the co-operative society. In view of the defence, the learned Senior Counsel Mr. Anil Mardikar was pin-pointedly asked by this Court to bring to the notice of the Court any material to suggest that the present applicant applied for loan, that the loan was sanctioned before the transfer of the huge amount in the account of the applicant. No material is brought to my notice to suggest that the

amount was transferred in the account of the present applicant in view of sanctioned loan.

8. Perusal of the material made available for my perusal clearly brings into focus a strong link between the applicant and the crime. The allegations are extremely serious and if the charge culminates in conviction, the sentence may possibly be life. The allegation is breach of trust and use of forged and fabricated documents to defraud the credit society. In this view of the matter, it would not be possible to exercise discretion in favour of the applicant.

9. Mr. Anil Mardikar points out that even according to the Investigating Officer, the applicant was not arrested since he was undergoing treatment for Bone Cancer. This Court asked the learned Additional Public Prosecutor Mrs. Kalyani Deshpande to seek instructions from the Investigating Officer and the response is that the applicant was not then arrested since he was hospitalized and/or undergoing treatment at Mumbai Hospital. However, the instructions received by the learned Additional Public Prosecutor are that the Investigating Officer needs the custody of the applicant. Be that as it may, it is ultimately the discretion of the Investigating Officer whether to arrest the applicant or to be satisfied with interrogation *dehors* custody. Rejection of the application would not in any way fetter the

discretion of the Investigating Officer. However, if the applicant is arrested, the Investigating Officer shall ensure that in case of any health problem, adequate medical treatment is received by the applicant.

10. Considering the *modus operandi* of the crime, no case is made out for grant of pre-arrest protection and the application is dismissed.

JUDGE

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