**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**BAIL APPLICATION NO.339 OF 2020
WITH
CRIMINAL APPLICATION NO.1472/2020.**

Vikram s/o Laxmanrao Rachure = **APPLICANT**

VERSUS

The State of Maharashtra **= RESPONDENT/S**

…

Mr.RS Deshmukh, Sr.Counsel i/by DR Deshmukh, Advocate for Applicant;

Mr.SB Narwade,APP for Respondent-State.

WITH

BAIL APPLICATION NO.1311/2020

Eknath s/o Watuji Madavi = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT/S**

Mr.RN Dhorde, Sr.Counsel i/by DK Rajput, Advocate for Applicant;

Mr.SB Narwade,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

**RESERVED ON : 01/02/2021
PRONOUNCED ON : 08/04/2021**

PER COURT :-

1. Both the aforesaid Bail Applications have been filed by accused persons in connection with CR

No.109/2019 dated 19.07.2019, registered with Ramteerth police station District Nanded, for the offences punishable under Sections 420, 409, 465, 466, 468, 470, 471, 474, 477-A, 109, 120-B, 166, read with 34 of IPC. Both the applicants have filed these applications under Section 439 of Cr.P.C. for bail.

2. Heard learned Sr.Counsel S/Shri RS Deshmukh and RN Dhorde, instructed by respective Advocates for the applicants in respective Bail Applications and learned APP Shri SB Narwade appearing for Respondent-State.

3. At the outset, it can be said that Charge sheet has been filed in the matter and as regards the applicant – Eknath Madavi is concerned, it was initially filed under Section 299 of Cr.P.C. and thereafter a supplementary charge sheet has also been produced.

4. It has been vehemently submitted on behalf of the both the applicants by the learned Sr.Counsel that now the investigation is over and charge sheet is filed, therefore, physical custody of the applicants is not required for the purpose of investigation. The contents of the FIR as well as the statements and other documents with charge sheet would show that the Investigating Officer has seized all the necessary documents and, therefore, even for the purpose of seizure, the physical custody of the applicants is not required.

5. The learned Sr.Counsel, representing applicant – Vikram Rachure, has stated that the applicant was initially appointed as an Assistant Teacher and thereafter he was promoted to the post of Head Master of the school, viz. Ashok Primary School, Kundalwadi. He was also working as Secretary of Lok Shikshan Prasarak Mandal, Bijur Tq. Biloli, District Nanded (for short, the said society/Trust). Informant – Prashant Digraskar, was the Education Officer, attached to Zilla Parishad, Nanded. He submits that after receipt of various complaints from the teachers, working with the schools run by the said society, the Education Department had initiated an enquiry. After Enquiry Report was received, the FIR has been lodged. It has been reported in the Enquiry Report that the Society had never obtained prior permission from the Governmental for filling up the vacancies in the schools. The Society never followed the norms as per the Government Resolution dated 6.2.2012 in respect of issuance of an advertisement for filling up the vacancies. The Society never got sanction regarding Point Roll *(Bindu Namawali)* from the Assistant Commissioner. Requisite documents were never supplied by the Society regarding eligibility of the candidates while submitting the proposal for approval to the appointments. Two of the teachers were appointed without fulfilling the requisite educational qualifications. While obtaining individual approval to the appointment of the teachers, the Society has not verified their

Degrees and Certificates. If all these short-comings and lacunae, those were pointed out in the Enquiry Report, are considered, then, at the most, that would give rise to some action under relevant law, especially M.E.P.S. Act or other Civil laws and not criminal action. But, then, it has been contended further that as regards the four schools are concerned, they got their total intake sanction since 2012. But, then it was shown that it is running with full strength since prior to that and the appointments made prior to 2012, have been approved individually by forging the documents. It was also alleged that the amounts have been misappropriated by the present applicant and it is stated that certain amounts have not been given to the teachers though that amounts were received from the Government.

6. By way of Criminal Application No. 1472/2020, which was filed for production of additional documents, Bank receipts have been produced, showing that certain amounts have been paid to the concerned teachers. It was pointed out that prior permission was obtained from the Education department by letter dated 2.7.2019 for depositing the amounts, which was deducted from the salaries of the teachers. Further, another letter was given on 26.10.2017, which was also in respect of depositing the amount, deducted from the salary of the teachers, to be deposited in their accounts. Thereafter, the Education Officer has given permission by letter dated 2.11.2017. Perusal of

the letter dated 26.10.2017 given by the present applicant to the Education Officer (Primary) would show that it was, in fact, decided by the trust/society and the teachers that for various developmental activities of the school, certain amount should be deducted from the salary of the teachers. Though they had initially agreed to this, but later on, it appears that they had, with some ill-intention, made complaints and, therefore, by letter dated 26.10.2017, permission was sought to deposit the amount, which was deducted from the salaries of the teachers, to their accounts in installments. Certain installments have been paid and now the teachers have also given in writing that they have received the amounts and they have no objection to dispose of their complaints applications. When the main grievance of the teachers was about deduction of their salary and now they have got their amounts, the further physical custody of the applicant need not be continued with the jail authorities.

7. Reliance has been placed by the learned Sr.Counsel on the decision in the case of *P.Chadambaram Vs. Directorate of Enforcement – 2019 DGSL (S) 1555,* wherein it has been observed thus, -

> "21. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of

bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial."

8. Learned Sr.Counsel, representing the applicant in Bail Application No.1311/2020,

submitted that the applicant as serving as Education Officer. He was transferred to Nanded on 31.10.2011 and was working there till 10.12.2014. Thereafter, he was transferred to Bhandara. He retired on 30.11.2017. He is not the party to any of the mis-deeds those were committed by the Society. In the Enquiry Report, certain allegations have been made against him, which may amount to dereliction of duties, if at all. However, it will not give rise to any criminal action against him. Now, when it is stated by the Investigating Officer that certain documents are not available, charges have been levelled that this applicant has destroyed those documents. This is unimaginable. It can be seen that Right to Education Act came into force in 2009 and made it obligatory on the part of the Government. The four schools, which were run and managed by the said Society, were granted recognition by the State Government on 30.5.2012. By following due procedure, the School at Bijur was also recognized and thereafter another school, viz. Satya Saibaba Primary School, Biloli Dist. Nanded was opened and recognition was granted to it. The entire procedure, as contemplated under the Act, has been followed and complied with. Grant of recognition is by the higher authorities and not by this applicant. After considering the necessary documents, i.e. Attendance Register of the students and facilities available, directions were given to open the school. The applicant has discharged his duties. The applicant is presently 61 and not keeping his good health. He suffered COVID-19 in jail itself and, therefore, when his further custody is not required for the purpose of investigation and the trial would take a long time to conclude, this applicant deserves to be released on bail.

9. On two occasions, the Investigating Officer has filed affidavits in reply in Bail Application No.339/2020 itself by deponent – Subhash s/o Kondiba Kendre, Police Sub-Inspector attached to Economic Offences Wing, Nanded. Perusal of his affidavit would show that the informant has reported that the Head Master of Ashok Primary School, Kundalwadi (i.e. applicant Vikram Rajure) has illegally deducted an amount of Rs.22,32,596/- from the salaries of the teachers of the School. When the enquiry was conducted, he deposited an amount of Rs.15,22,286/- in the Bank accounts of the teachers. Many complaints were received against him and as regards mis-appropriation is concerned, Criminal Writ Petition No.1756/2018 was filed seeking an enquiry and for taking criminal action against the erring office-bearers of the society. As regards the criminal action/case is concerned, it was allowed to go further and no stay was granted by this Court. It is stated that Lok Shikshan Prasarak Mandal, Bijur district Nanded has a chequered history. The Society was registered in the year 1981 and at that time it was running four schools viz. - 1) Satya Sai Baba Primary School, Biloli, Dist. Nanded; 2) Ashok Primary School,

Kundalwadi, Tq. Biloli, Dist.Nanded; 3) Primary School at Bijur, Dist. Nanded; and 4) Trishala Devi Primary School, Kundalwadi/Dattanagar, Nanded. All these schools were granted recognition somewhere during 1988 and 1989. However, these schools came to be closed down in the year 1991 by the Education department due to Scholarship scam, which was stated to have been committed by father of the applicant – Vikram Rachure. Thereafter, the Society was taken over by Archana Birajdar as President and Rajaram Birajdar as Secretary on 22.3.2011; yet applicant – Vikram Rachure, illegally managed to start and run these four schools without any legal recognition/permission from the concerned Education department. He showed himself to be Secretary and co-accused Vishwas Rachure as president. They had appointed 32 teachers including the four Head Masters illegally. In fact, the officials of the Education department of the Zilla Parishad are also involved in this scam and they are arrayed as accused. The Education officer – Eknath Madavi is one of them. Initially, when the report was lodged, applicant – Vikram Rachure deposited Rs.15,22,286/- in the bank accounts of the concerned teachers/officials. However, the investigation revealed that Vikram Rachure has misappropriated an amount of Rs.1,06,03,777/- in his capacity as Head Master of Ashok Primary School, Kundalwadi. Further, he was responsible for the misappropriation of Rs. 4,66,63,093/- in respect of the schools run by the said Society. Several teachers were affected as there was illegal deduction from their salaries, who later on made complaints with the Education department.

10. In second affidavit in reply filed in Criminal Application No.1472/2020, the Investigating Officer states that again he has taken accounts from the Bank Manager, where the salaries of the teachers have been credited. It would reveal that total amount of Rs.58,98,072/- has been deposited into the respective accounts of some of the teachers out of list of 58 mentioned in the Criminal Application. Still huge amount is outstanding from him. There is vast difference between the record that was called from the Education Officer, which states that only an amount of Rs.26,30,000/- is deposited in the account of respective teachers. Therefore, taking into consideration the magnitude of the offence, its gravity and cheating to the Government itself, the applicants deserve no sympathy.

11. Learned APP, based on the said affidavits in reply of the Investigating Officer, referred to above, submitted that applicant/accused – Eknath Madavi was absconding till 13.3.2020. After his anticipatory bail application was rejected by the Hon’ble Apex Court and directions were given to this applicant to appear before the police within two weeks, he has surrendered himself before the police. Under such circumstance, possibility of he getting absconding again, after release on bail,

cannot be ruled out. The charge sheet would show as to how the bogus appointments were made that too without seeking any proper sanction therefor from the Government. There were illegal deductions from the salaries of the teachers. Both these applicants-accused were responsible for such illegalities and fraud and, therefore, both the Bail Applications filed by the respective applicants-accused be rejected.

12. At the outset, it can be seen that the FIR came to be lodged after the enquiry was held. The Education department was continuously receiving the complaints about the illegal deductions made by applicant Vikram Rachure from the salaries of the teachers. The Enquiry Reports have been made part of the FIR. So also, along with the FIR, the other complaints made by the teachers were also annexed. It appears that at the time of initial report, certain documents were not made available; still it was found that there were irregularities and it has been stated in the FIR that in the Enquiry report of Enquiry Officer Shri GH Nomulwar, it was found that applicant – Vikram Rachure has illegally deducted an amount of Rs.34,39,621/- in respect of the school viz. Primary School at Bijur. Further, in respect of the School viz. Satya Sai Baba Primary School at Biloli, Dist. Nanded, the deduction was to the tune of Rs.44,00,303/-; From Ashok Primary School, Kundalwadi, Tq.Biloli, illegal deduction was to the tune of Rs. 22,32,596/-. But, when it was noted by the

concerned authorities of the Schools, it appears that applicant – Vikram Rachure has deposited an amount of Rs.15,22,286/- in the Accounts of the concerned teachers. Thereafter, the are two supplementary statements of the Informant and it appears that as and when those documents could be revealed and falsity of the same is stated to have been ascertained, the misappropriation amount has gone up. The second supplementary statement of the informant states that taking into consideration the communication between applicant – Vikram Rachure; Vishwas Rachure and Member – Balaji Vishwanath Surnar; though they were not the office-bearers of the society between 23.3.2011 to 19.11.2015, they made those communications and prepared the forged documents; sought sanction of the school on the basis of those forged documents and thus cheated the Government to the extent of Rs.3,46,74,502/-. Now, the applicant – Vikram Rachure wants to use the deposits made by him or by the Society in the accounts of the concerned teachers, as a ground to grant bail in his favour. However, it has to be co-related to the allegation that he was never office-bearer of the society; yet it is stated that he got the sanction of the schools; because it is stated that these schools were earlier closed by the Government due to Scholarship scam and keeping that thing and instance in dark, further recognition appears to have been obtained on the basis of the forged documents. Whether the deposits made in the accounts of the teachers can be considered as an implied sign of accepting the guilt would be considered by the Trial Court. But, certainly that deposits of amount in the accounts of the teachers cannot be a ground for granting bail to him. In other words, applicant – Vikram Rachure cannot get advantage of the act and action of he depositing the amounts in the accounts of the teachers. Further, there is no such document now produced by him, stating that all the teachers have received all the amounts in their accounts which were illegally deducted from their salaries. The fact remains that there was illegal deductions. Now he is also coming with a case, as it appears from the communication dated 26.10.2017, that it was decided that for various developmental activities, all the teachers would contribute and there would be deductions from their salaries. The applicant has not produced any such document on record in the form of Resolution or otherwise. Secondly, why the employees/teachers would agree to forgo payment of their salary for developmental activities of the Society. If it is voluntarily, then also, it could not have been made applicable each one of them. Further, there appears to be no such fact nor it is pleaded by him as to for how many days or months that amount was agreed to be deducted from their salaries. It cannot be for an indefinite period. Photo copies of two teachers, as a sample, were tried to be tendered across the Bar, in respect of which, it is stated that said teachers have received the deducted amounts. An important point to be noted is that, even if we consider the photo copy; yet there is absolutely no date mentioned in the communication. It is also silent on the points as to how much amount has been deducted and how much amount has been received by them. Therefore, whatever documents are tried to be tendered are very vague and advantage of the same cannot be given to applicant – Vikram Rachure. As aforesaid, the Investigating Officer has clearly stated that after the investigation, now the misappropriation amount has gone up to Rs.4,66,63,093/-. When running of the school itself is on the basis of some illegal acts then the amount that was received from the Government towards the grants will have to be added in the miss-appropriation amount. It is huge economic offence that is committed.

13. In *P.Chidambaram's case (supra)*, in the aforesaid paragraph, it is stated that the precedent of another case alone will not be the basis for either grant or refusal of bail and ultimate consideration would depend on the facts of the case. Therefore, the facts of the present case, being different and there is huge financial loss caused to the State exchequer, the observations in said Judgment, in which a reference is made to para No.39 in the case of *Sanjay Chandra Vs. CBI – (2012) 1 SCC 40,* will have to be considered. The observations made in para 39 of *Sanjay Chandra's case (supra)* read thus, -

> "38. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on

> two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration."

Further, in the said paragraph in the case of *P.Chidambaram (supra),* the Hon'ble Apex Court observed thus, -

> ". The said case (i.e. Subhash Chandra's case) was a case of financial irregularities and in the said circumstance this Court in addition to taking note of the deep-rooted planning in causing huge financial loss, the scope of consideration relating to bail has been taken into consideration in the background of the term of sentence being seven years if convicted and in that regard it has been held that in determining the grant or otherwise of bail, the seriousness of the charge and severity of the punishment should be taken into consideration."

Therefore, when it appears that the present applicant – Vikram Rachure, is the main person, who in his duel capacity as Head Master of the School as well as Secretary of the Society, has committed all those acts of taking sanction to the schools on the basis of the forged documents; running the said schools since many years, thereby playing with the future of the students, who would be taking education therein; recruiting several persons as teachers without fulfilling the requisite criterion and the relevant Rules Regulations and laws; receiving grants from the Government; effecting illegal deductions from the salaries of the teachers, no sympathy can be shown to him. No case is made out to grant bail to applicant – Vikram Rachure.

14. Now, turning towards Bail Application filed by applicant – Eknath Madavi, the aforementioned legal position in the case of *Sanjay Chandra and P.Chidambaram (cites supra)*, would be applicable. Further as regards the position of this applicant is concerned, he was, in fact, Education Officer, who should know as to what are the criterion to accord sanction to the school. He was a Government Officer and was responsible to protect the Government funds. Though the documents were forged and were placed before him, it cannot be said that his entire office could not have verified, ascertained or known as to whether those documents are forged or not. Mere apparent documents, those were produced by the said school are not required to be perused and scrutinized.

But, they should be cross-checked minutely with due diligence with his own office records. It appears that such cross-checking has not been done. Another fact, that is brought to the notice of this Court is, there is one more offence registered against this applicant – Eknath Madavi, bearing CR No.80/2019 registered with Vazirabad Police Station, Nanded for the offences punishable under Sections 420, 409, 120-B, 201, 176 read with 34 of IPC and Section 8 of the Maharashtra Ordinance No.8/2004. It also appears that individual sanction/approval to the appointments of many teachers of Satya Sai Baba Primary School; Biloli, have been granted by him on 30.4.2014; 23.5.2014 and 26.5.2014, which was in his tenure. Further, as regards the school at Kundalwadi, run by the same society of which applicant – Vikram Rachure is Secretary, had been granted recognition by this applicant between 26.5.2014 to 25.11.2014. Similarly for the school being Primary School at Bijur, it is between 29.3.2014 to 13.5.2014. All these acts have been done without there being any proper and legal sanction. It has been further stated by the Investigating Officer that in the Writ Petition filed by one RK Mudholkar before this Court being WP No.5981/2013, it was prayed for an enquiry in respect of 129 sanctions which were accorded illegally (i.e. individual sanction to teachers by the present applicant) and in view of that, three-members committee was appointed and its report was given wherein this applicant has been held to have been responsible/guilty by the said

Committee. Another point to be noted is about conduct of this applicant. It is stated that he was absconding till his anticipatory bail application came to be rejected by the Hon'ble Apex Court and he was directed to surrender before the police within two weeks. Possibility of he getting absconding once again cannot be ruled out. Merely because now he is 61 years old and has retired will not give him any advantage. He has also not made out any case to grant bail in his favour on merits. Hence, following order, -

ORDER

i. Bail Application No.339/2020 and Bail Application No.1311/2020 are rejected;

ii. Criminal Application No. 1472/2020 moved for production of documents stands allowed.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV