IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**BAIL APPLICATION NO.912 OF 2020**

Pawandeepsingh Mahendrasingh Kohli,
Age 37 years, Occupation Business,
R/o Plot No.278, N-3, CIDCO,
Aurangabad. **...Applicant**

**VERSUS**

The State of Maharashtra. **...Respondent**

**.....**

Advocate for Applicant : Mr. Joydeep Chatterji
APP for Respondent : Mr. A. M. Phule

**.....**

**CORAM : SMT.VIBHA KANKANWADI, J.**
**DATE : 29-04-2021.**

**ORDER :**

1. Present applicant was arrested on 15-04-2016, in connection with Crime No.80 of 2015, registered on 23-04-2015 at Kadim Jalna Police Station, Jalna, for offence initially under Sections 408, 409 read with 34 of the Indian Penal Code, however when the charge-sheet was filed on 20-11-2015 it was under Section 409, 406, 420, 468, 471, 120-B, 109 read with 34 of the Indian Penal Code and under Sections 13 (1) (c) read with 13 (2) of the Prevention of Corruption Act, 1988. This is the second bail application before this Court under Section 439 of Code of Criminal Procedure. His earlier Bail Application No.1273 of

2018 was rejected by this Court on 31-01-2019.

2. Heard learned Advocate Mr. Joydeep chateerji for applicant and learned Additional Public Prosecutor Mr. A. M. Phule for respondent-State.

3. In order to cut short it can be said that when it was asked to he learned Advocate appearing for the applicant as to what is the change in the circumstance since his earlier Bail Application No.1273 of 2018 was rejected by this Court on 31-01-2019 ; the learned Advocate for the applicant submitted that since the trial has not commenced and there is absolutely no progress except framing of charge and it would take longtime for him to stand the trial, he has approached once again. Further he is not a public servant and, therefore, offences under the Prevention of Corruption Act, 1988 are not attributed to him. The allegation against him are that he had helped the main accused in misappropriating amount of Rs.35.50 Lakhs, however the applicant is innocent. The record is voluminous and many witnesses would be examined. Substantial period has been undergone since his arrest i.e. 4 years and 4 months, which is extending up to one half of the maximum period of imprisonment which can be specified, therefore he is eligible to be released on bail

under Section 436-A of Code of Criminal Procedure.

4. Per contra, the learned Additional Public Prosecutor strongly opposed the application and submitted that the present application itself is not maintainable as there is no change in the circumstance. When his earlier bail application was rejected on 31-01-2019, at that time this Court had perused the entire charge-sheet. Now due to pandemic situation the work of recording evidence is in slow speed, however after the resumption of the normalcy, the act of recording of evidence would be resumed. There is huge misappropriation of the amount and this Court has considered as to how the present applicant had helped the main accused persons by forging documents and cheating the Government, has misappropriated the Government amount which was in fact meant for poor persons from Scheduled Caste communities. The co-accused are in fact the government servants and government authorities. Such financial scam has been made at different places by them and, therefore, many cases are pending against those persons. In fact the amount misappropriated is associated with financial corporations and by the act of these persons there is wrongful loss to Sahityaratna Lokshahir Anna Bhau Sathe Development Corporation, Mumbai to the extent of

Rs.10,84,87,787=26 Ps. till 30-05-2016 and, therefore, this fact was considered by this Court taking into consideration the economic offence that has been committed. Out of that entire booty the clear transaction involving the present applicant is to the tune of Rs.35,57,886/-, but the act of the present applicant to help co-accused has resulted in wrongful loss of the Government in crores of rupees, therefore he does not deserve any kind of sympathy.

5. At the outset, this Court agrees with the submissions by learned Additional Public Prosecutor. Perusal of the record that has been produced, it is to be noted that the role attributed to the present applicant is that he has helped co-accused by preparing false documents. The direct entry of receipt of the amount to the tune of Rs.35,57,886/- is in the name of present applicant. Charge appears to have been framed by the learned Trial Judge on 07-08-2018 which runs in many pages and includes the charge against the present applicant and his involvement with the other co-accused in cheating the Government and misappropriating the amount in crores of rupees. This Court has passed detailed order on 31-01-2019 as to why the Court is not inclined to grant bail to the present applicant. Now there is no basic change in the circumstance except

the fact that the trial has not get commenced. No doubt as regards provisions of Section 436-A of the Code of Criminal Procedure is concerned it says that,

> "Where a person has, during the period of investigation, inquiry or trial of an offence under under any law undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties. "

However, it is having two provisos, first proviso says that,

> "The Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties."

Therefore, though the first part of the section uses word "Shall", the proviso makes a provision and gives discretion to the Court to release such person on bail. The reasons are being recorded now as to why he cannot be released on bail. No doubt the applicant has a Constitutional right under Article 21 of the Constitution of India to have speedy trial but it can be said herein that the delay, if any, is caused for start of the case is not due to anybodies interventions.

When huge public money has been misappropriated which is in fact in crores of rupees, case is not made out to grant leniency by giving benefit of Section 436-A of Code of Criminal Procedure. The case is not only a financial offence but the deeper aspect that is required to be considered is that the said money was meant for poor members of the Scheduled Castes. The purpose with which the corporation by name Sahityaratna Lokshahir Anna Bhau Sathe Vikas Mahamandal Maryadit was established was to uplift the living of people from 'Matang' community (Fraction of Scheduled Caste) who are below poverty line, to bring them in the social stream by giving them financial, educational aid. The corporation gets its funds from State Government as well as Central Government. The company or the corporation is run by public servants and when with such loud intention and object if the corporation was established then the money received in the corporation ought to have gone to the eligible candidates. But the allegation against all the accused is that they conspired with each other and with the help of the forged documents which were prepared by the present applicant, huge money has been misappropriated. Therefore, taking into consideration the manner in which the offence has been committed and also for the reasons already stated while rejecting his earlier bail application, the applicant does not deserve sympathy. At the most directions can be given to the Trial Court to expedite the trial and to dispose of the case within a period of one year after the normalcy resumes. With these directions, application stands rejected.

6. Registrar (Judicial) to inform the order to the concerned Trial Judge.

**(SMT. VIBHA KANKANWADI)**
**JUDGE**

*vjg/-*