IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 635 OF 2021

Sharif Mohd. s/o Peer Mohd. Applicant

Versus

The State of Maharashtra Respondent

Mr. A.D. Ade, Advocate for the applicant.
Mr. G.O. Wattamwar, APP for respondent/State.
Mr. V.S. Kadam, Advocate for informant.

WITH
BAIL APPLICATION NO. 653 OF 2021

Vimaladevi Surendrasingh Choudhary Applicant

Versus

The State of Maharashtra Respondent

Mr. S.B. Ghatol Patil, Advocate for the applicant.
Mr. G.O. Wattamwar, APP for respondent/State.
Mr. V.S. Kadam, Advocate for informant.

WITH
BAIL APPLICATION NO. 800 OF 2021

1. Galabuji Mukisa Robert
s/o Galabuji Fred

2. Ivy/Aayvi Bonuke
d/o Kenedi naybuto Applicants

Versus

The State of Maharashtra Respondent

Mr. B.K. Patil, Advocate for the applicants.
Mr. G.O. Wattamwar, APP for respondent/State.
Mr. V.S. Kadam, Advocate for informant.

WITH
BAIL APPLICATION NO. 801 OF 2021

Priya w/o Pravin Malvade Applicant

Versus

The State of Maharashtra Respondent

Mr. A.K. Bhosale, Advocate for the applicant.
Mr. G.O. Wattamwar, APP for respondent/State.
Mr. V.S. Kadam, Advocate for informant.

WITH
BAIL APPLICATION NO. 802 OF 2021

Rumanyika Ronald Kitasimbwa Andrew Applicant

Versus

The State of Maharashtra Respondent

Mr. B.K. Patil, Advocate for the applicant.
Mr. G.O. Wattamwar, APP for respondent/State.
Mr. V.S. Kadam, Advocate for informant.

WITH
BAIL APPLICATION NO. 809 OF 2021

Diksha w/o Milind Patil Applicant

Versus

The State of Maharashtra Respondent

Mr. P.M. Nagargoje, Advocate for the applicant.
Mr. G.O. Wattamwar, APP for respondent/State.

Mr. V.S. Kadam, Advocate for informant.

CORAM : M.G. Sewlikar, J.

RESERVED ON : 1st December, 2021.
PRONOUNCED ON : 23rd December, 2021.

PER COURT :

1. All these applications are being disposed of by common order as they arise out of the same offence.

2. All these applications are under Section 439 of the Code of Criminal Procedure for releasing the applicants on bail in connection with Crime No. 0012/2021 registered with Vazirabad Police Station, Dist. Nanded for the offences punishable under Sections 420, 467, 468, 469, 471, 120(B) of the Indian Penal Code and under Sections 43, 66, 66(C), 66(D) of Information and Technology Act.

3. Facts in brief are that informant is working as Chief Executive Officer in Shankar Nagri Sahakari Bank Ltd., New Mondha, Nanded. It is alleged in the First Information Report that in order to provide Real Time Gross Settlement (R.T.G.S.) and National

Electronic Funds Transfer (N.E.F.T.), the Shankar Nagri Sahakari Bank ("SNSB" for short) had taken sub-membership of IDBI bank. For that purpose, on 1st December, 2020, SNSB opened bank account bearing No. 0500102000018957 in IDBI bank. Since then, these two facilities were activated.

4. It is further alleged that on 28th December, 2020, one Ranjan Mandle approached Shri Balasaheb Kalyankar, the Fund Manager of SNSB and apprised him that bank account of SNSB in IDBI bank was having balance of only Rs.6,000/-. Shri Kalyankar was requested to deposit funds. Therefore, he deposited Rs.Five Crore in the account of SNSB in IDBI bank. Thereafter, in the evening again, Shri Ranjan Mandle asked SNSB to deposit funds in the bank. Since fund was deposited in the morning and again fund was asked to be deposited in the evening, this aroused suspicion in the mind of the Fund Manager of SNSB. Therefore, on 29th December, 2020, account statement of SNSB in IDBI bank was sought for. On 31st December, 2020 in the evening, account statement was furnished. On perusal of said account statement, it was revealed that some wrong and doubtful RTGS debit entries were made. Therefore, IDBI bank was informed that some of these debit

entries were not corresponding in the CBS software and the IDBI bank was requested to cross check those entries and get back to SNSB. On receipt of these entries from IDBI bank, it was revealed that during the period from 17th December, 2020 to 2nd January, 2021, an amount of Rs. 14,46,05,347/- was withdrawn by someone and thereby SNSB was cheated. There were total 3000 entries out of which, 289 entries were doubtful.

5. It is further alleged that SNSB realised that security system of SNSB was hacked and amount of Rs.14,46,05,347/-was withdrawn. In this manner, SNSB bank was duped with this huge amount and therefore, First Information Report was lodged on the basis of which offences as aforesaid came to be registered.

6. Heard Shri A.D. Ade, learned counsel for applicant in Bail Application No. 635/2021, Shri S.B. Ghatol Patil, learned counsel for applicant in Bail Application No. 653/2021, Shri B.K. Patil, learned counsel for applicants in Bail Application No. 800/2021 and Bail Application No. 802/2021, Shri A.K. Bhosale, learned counsel for applicant in Bail Application No. 801/2021 and Mr. P.M. Nagargoje in Bail Application No. 809/2021. Heard Shri Wattamwar,

learned APP for the State and Shri V.S. Kadam, learned counsel for the informant.

7. All the learned counsel for applicants submitted that there is no evidence to show that applicants had cracked the security system of SNSB. They submitted that theft of Rs.14,46,05,347/- has been committed by hacking the security system of SNSB. They submitted that the officer of SNSB had addressed a letter to the Investigating Officer stating therein that because of the negligence of SNSB officers, the fraudsters could commit theft of such a huge amount. Investigating Officer has not arrested those officers who are responsible for this theft. Applicants are not the persons who have been benefited. They submitted that the amount alleged to be withdrawn by the applicants is a paltry sum having regard to the theft of huge amount of Rs. 14,46,05,347/-. They submitted that applicants had no knowledge of deposit of this amount in their account. Therefore, they are not responsible for the alleged theft of such a huge amount. They submitted that offence punishable under Section 420 of the Indian Penal Code is punishable with imprisonment for seven years and applicants are behind bars for more than a year. Therefore, they may be released on bail.

8. Learned APP Shri Wattamwar and learned counsel Shri Kadam submitted that applicants are the beneficiaries of the amount withdrawn from the accounts of customers of SNSB. They submitted that applicants and other accused had hatched a conspiracy to withdraw amount from the customers of SNSB and pursuant to that conspiracy, applicants allowed this amount to be deposited in their account. They, therefore, submitted that applications of all the applicants deserve to be rejected.

9. During investigation it was found that accused Shruti Devdhar had withdrawn amount of Rs. 2,08,902/- from the account of Shadulla Kirana Stores in SNSB and it was transferred in the account of applicant Priya Malode and in the account of Galabuji Robert. It was revealed that Diksha Patil had withdrawn amount of Rs. 4,99,490/- from the account of S.J. Poultry Centre bearing No. 200504180000031 maintained with SNSB. This amount was withdrawn by applicant Diksha Patil between 17th December, 2020 and 24th December, 2020. Applicant Vimaladevi received an amunt of Rs. 4,90,600/- from her son Vikas Choudhary. Vikas Choudhary had withdrawn this amount from the account of Sai Traders bearing No. 201004180001110 on 19th December, 2020. An amount of

Rs.99,300/- was transferred by accused Shruti Devdhar in the account of IVY Bonuke during the period from 21st December, 2020 to 25th December, 2020. Amount of Rs. 1,38,500/- was transferred by accused Shruti Devdhar in the account of Gulabuji Robert.

10. Allegations against applicant Sharif Mohd. Are that applicant Sharif Mohd. in collusion with accused Namit and Patwa and Bhavit @ Rahul withdrew amount of Rs. 4,92,893/- from the account of Ajinkya Traders bearing No. 200504180000357 and deposited the amount in the account of Namit Patwa bearing No. 156375845213. This amount was withdrawn by Namit and Bhavit on 28th December, 2020 with the help of accused Sharif Mohd.

11. So far as applicant Rumanyika is concerned, she did not receive any amount from anyone but she was arrested on the basis of conversation she had with accused Sakala Shamisho.

12. To understand as to how the crime was committed, the officer from Cyber Crime Branch was asked to remain present. He submitted a report to the Investigating Officer, Economic Offence Wing, Nanded. He has submitted in the report that during

investigation it was found that there was a major flaw in the server of SNSB Head Office. RTGS/NEFT entries used to be posted from various branches to SNSB server in head office were stored in a file in xml (Extended Markup Level) format. From security angle, this xml file should have only two attributes enabled namely Read and Execute. But it had one more attribute enabled and that was Write. This was huge laxity on the part of SNSB as this file was easily tampered and 287 RTGS and NEFT entries were posted into this file and they were posted to the server of IDBI Bank. The list of fake account holders is with the Investigating Officer.

13. Perusal of charge-sheet reveals that 287 transactions worth Rs. 14,46,05,347/- were carried. It is true that there was negligence on the part of the officers of SNSB. They had availed service of IDBI for providing facility of RTGS/NEFT to their customers. For that purpose, they had made a request to IDBI bank and had opened one account too. xml file from security angle ought to have only two attributes enabled namely Read and Execute. But there was one more attribute enabled and that was Write. As per Cyber Cell Crime, this file could be easily tampered. It appears that the Investigating Officer has not conducted any investigation as to

who enabled this third attribute because of which the fraudsters could have had access to the software of SNSB.

14. All the learned counsel for applicants submitted that the applicants were not responsible for this fraud because they were only the recipients of amount. Merely because they received the amount does not mean that they are also the conspirators. It is true that applicants are the recipients of the amount. In computer language, they are called sleeper cells. It is the usual experience that on account of online transactions, some people get wrong credit. Merely getting a wrong credit does not attribute culpability because those who do not deal with online transactions do not regularly check their accounts. Even those who do online transactions may not check everyday their account to find out the transaction made in their account. It may not be done on daily basis. Therefore, mere receiving amount cannot be a circumstance to show the culpability of the recipient but if the recipient withdraws the amount especially on the day on which the recipient has received the amount, it shows his or her culpability. A person having online facility enabled in his account can easily make out whether it is a wrong credit or not. If it is a wrong credit, a prudent person will immediately inform the bank

about the wrong credit. But once the amount is withdrawn, knowing fully well that it is a wrong credit, it shows the culpability of the account holder.

15. In the case at hand, accused Shruti Devdhar has transferred the amount to the account of applicant Priya and applicant Galabuji. Similarly, applicant Sharif Mohd. withdrew amount from the account of Ajinkya Traders and transferred it to the account of Namit Patwa. Accused Diksha Patil also withdrew amount from the account of S.J. Poultry Centre in collusion with her friend whose name is still not known and the amount was transferred in her account in HDFC Bank, Yavatmal. The date of transfer was 17th December, 2020 and she withdrew the amount between 17th December, 2020 and 24th December, 2020. So far as applicant Vimladevi is concerned, prosecution story is that her son Vikas Choudhary withdrew the amount and transferred it to the account of Vimladevi. Vimladevi did not withdraw any amount from the account of customers of SNSB. She had no reason to doubt the genuineness of the amount received in her account. The amount was transferred by her son in her account. Therefore, culpability cannot be attributed to applicant Vimladevi. So far as applicant Rumanyika is concerned,

she was arrested only on the basis of conversation she had made with accused Sakala. Said conversation or WhatsApp chat is not placed on record. Therefore, there is no prima facie evidence against applicant Rumanyika.

16. In this view of the matter, I am inclined to release applicant Vimladevi and Rumanyika. Hence the following order :

ORDER

i) Bail Applications No. 653/2021 and 802/2021 are allowed.

ii) Vimladevi Surendrasingh Choudhary, applicant in Bail Application No. 653/2021 be released on PR Bond of Rs. 75,000/- (Rs. Seventy Five Thousand) with one solvent surety in the like amount in connection with Crime No. 0012/2021 registered with Vazirabad Police Station, Dist. Nanded, for the offences punishable under Sections 420, 467, 468, 469, 471, 120(B) of Indian Penal Code and under Section 43, 66, 66(C), 66(D) of Information and Technology Act on following conditions :

a) She shall deposit her passport with the concerned police station.

b) She shall not leave the country without the permission of the concerned police station.

c) She shall not leave the jurisdiction of the concerned Court without the permission of the concerned Court.

d) She shall give her mobile number to the concerned police station and if she changes her mobile number, the new number shall be provided to the concerned police station.

iii) Rumanyika Ronald Kitasimbwa Andrew, applicant in Bail Application No. 802/2021 be released on PR Bond of Rs. 75,000/- (Rs. Seventy Five Thousand) with one solvent surety in the like amount in connection with Crime No. 0012/2021 registered with Vazirabad Police Station, Dist. Nanded, for the offences punishable under Sections 420, 467, 468, 469, 471, 120(B) of Indian Penal Code and under Section 43, 66, 66(C), 66(D) of Information and Technology Act on following conditions :

a) She shall deposit her passport with the concerned police station.

b) She shall not leave the country without the permission of the concerned police station.

c) She shall not leave the jurisdiction of the concerned Court without the permission of the concerned Court.

d) She shall give her mobile number to the concerned police station and if she changes her mobile number, the new number shall be provided to the concerned police station.

iv) Bail Applications No. 635/2021, 800/2021, 801/2021 and 809/2021 are rejected.

v) If trial does not get concluded within nine months, the parties can apply for fresh bail.

vi) It is clarified that the observations made in the above order are restricted to the decision of these applications only and the Trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge

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