IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.793 OF 2021

Anil Vasant Desai .... Applicant

versus

State of Maharashtra .... Respondent

…....

- Mr.Umesh Mankapure, Advocate for Applicant.
- Mr.S.H. Yadav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 19th MARCH, 2021

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.444/2020 registered with Sangli City Police Station, Sangli, on 21/11/2020 under sections 420, 406, 409, 464, 467, 468, 471 r/w 34 of the Indian Penal Code.

2. The FIR is lodged by one Amarsingh Vasantrao Chavan. He was working as Electric Engineer with Sangli Miraj Kupwad Municipal Corporation. He has referred to the procedure of paying bills of Maharashtra State Electricity Distribution

Corporation Company Ltd. The Municipal Corporation has street lights and building for which the bills are required to be paid. The procedure is that the meter reading are taken in registers. Then some forms are filled and they are submitted to the accounting department. An audit is conducted of bills and consolidated cheques of all the consumer numbers pertaining to the Municipal Corporation are prepared for payment. The cheques are deposited in the bill collection section at Vasantrao Chougule Nagar Sahakari Patsanstha, Maruti Chowk Gaobhag, Sangli and M.D. Pawar People's Cooperative Bank Ltd. Miraj. There were two consumer numbers of the Municipal Corporation. It was found that though the payments were made every month, there was always some due amount shown in those accounts. Therefore further enquiry was conducted. As per the practice, the cheques along with list of consumer numbers of the Municipal Corporation used to be given to one Dnyaneshwar Sadashiv Patil for actually depositing them in the bank. The amounts mentions in the cheques were not the actual amounts credited in the consumer account numbers of the Municipal

Corporation. The amounts were diverted to the consumer numbers of private individuals. The FIR mentions that till filing of the FIR, the fraud amount was to the tune of more than Rs.31,00,000/-. On this basis, FIR is lodged.

3. Heard Mr.Umesh Mankapure, learned counsel for the Applicant and Mr.S.H. Yadav, learned APP for the State.

4. Learned counsel for the Applicant submitted that the present Applicant is a branch manager of Vasantrao Chougule Nagar Sahakari Patsanstha. The learned counsel for the Applicant submitted that the manager has overall control of the transactions conducted in the bank. However it is impossible for him to keep watch and inspect every single entry made by different clerks in different registers. There could not be any vicarious liability under the Indian Penal Code. There is no direct involvement of the present Applicant. There is nothing to show that he is a beneficiary.

5. Learned APP opposed this application and he submitted that it was the Applicant's duty to have overall control over the functioning of the bank and if the fraud is committed in the bank, he cannot escape his liability. Learned APP submitted that there was transaction between the main accused Dnyaneshwar and one of the clerks of that bank. However, learned APP fairly concedes that as of today, nothing is revealed to show that the Applicant in any manner was a beneficiary of this fraud. Learned APP also states on instructions that when the Applicant was on interim protection granted by the Sessions Court, he has attended the police station and has cooperated with the investigation.

6. I have considered these submissions. Apparently, the fraud was committed in the branch of the present Applicant. But the entries made in the record and misuse of the deposited amount was done by the clerk working in the bank. The investigating agency will have to show that the Applicant was aware of the fraud committed by the clerk. Though it is correct

that as a manager he supposed to have control over all the transactions in the bank, but as rightly submitted by the learned counsel for the Applicant, it was practically impossible for him to verify the entries made by clerks working in the respective departments. It is also significant to note that after sufficient investigation, the investigating agency is not able to to point out that the Applicant was beneficiary in any manner. Therefore at this stage, the Applicant's custodial interrogation is unjustified. He can be protected by an order of anticipatory bail.

7. Hence, the following order :

O R D E R

(i) In the event of his arrest in connection with C.R.No.444/2020 registered with Sangli City Police Station, Sangli, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

(ii) If in case, in future, the investigating agency has concrete material against the present Applicant showing his complicity, they are at liberty make an application for cancellation of this order.

(iii) The Applicant shall attend the concerned Police Station as and when called and shall cooperate with the investigation.

(iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)