

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.894 OF 2021

Hemant Prabhakar Jadhav

Applicant

versus

The State of Maharashtra

Respondent

Mr.Shyamrishi Pathak for applicant.

Mr.Y.M.Nakhwa, APP, for Respondent-State.

Mr.VRane, P.S.I., N.M.Joshi Marg Police Station, Mumbai.

CORAM : PRAKASH D. NAIK, J.

DATE : 19th March 2021

PC :

1. This is an application for bail in connection with CR No.137 of 2018 registered with N.M.Joshi Marg Police Station for offence punishable under Section 409 of Indian Penal Code. The FIR was lodged on 15th September 2018.

2. The case of the prosecution is that the applicant was working as Cash Officer with State Bank of India. He was the head of cash department. The cash of the bank used to be in his custody. The amount received during the course of the day was tallied and deposited in safe vault of the bank. This was being done by the applicant. He was assisted by other staff members. On 12th September 2018 the applicant submitted an application for leave. On 13th September 2018 the bank was closed on account of holiday. Leave was sanctioned. The applicant and other staff members transferred the cash in the ID of the bank. Since the applicant had

applied for leave, other staff member was handed over the charge as joint custodian. On 14th September 2018 the complainant who was working as Assistant Accountant and Cash had visited the bank. The amount of Rs.1,09,12,700/- was transferred from vault from time to time to ID. In the evening the staff of the bank noticed deficit in the amount. On verification it was found that there was deficiency of amount of Rs.40.20 lakh cash from the bank. The information was provided to the head office. The applicant did not join the duty on 15th September 2018. It was revealed that the applicant had not deposited amount of Rs.40.20 lakh into the bank account and misappropriated the same. Supplementary statement of the complainant was recorded on 17th September 2018. In the said statement it was stated that misappropriated amount is Rs.43.50 lakh. The FIR was registered and investigation proceeded. Statements of witnesses were recorded. The applicant was arrested on 15th September 2018. On completing investigation charge sheet was filed.

3. The applicant preferred application for bail before the Court of learned Metropolitan Magistrate. The said application was allowed vide order dated 29th November 2018. While allowing the said application learned Magistrate had observed that the applicant was in custody from 15th September 2018. Charge sheet is filed. The offence is triable by the Magistrate. Trial will take its own time. No previous record of any crime is reported against applicant. The applicant is employee of State Bank of India. No possibility of fleeing away. No doubt huge property is involved but that cannot be a ground. The applicant was directed to be released on bail on executing PR bond in the sum of Rs.50,000/-.

4. The prosecution preferred an application for cancellation of bail before the Court of Sessions which was numbered as Miscellaneous Application No.1840 of 2019. The State had contended that applicant was arrested on 15th September 2018 and he was produced before the Trial Court. He was remanded to police custody. Charge sheet was filed on 17th November 2018. The Magistrate ought not to have released the applicant on bail for offence u/s 409 of IPC as punishment prescribed for the said offence may extend to life imprisonment. The said application was preferred on 19th July 2019. Apparently the applicant was on bail for a period of about nine months. The application was apparently preferred belatedly.

5. Learned Sessions Judge cancelled bail granted to the applicant vide order dated 13th August 2019. The applicant had thereafter preferred Criminal Writ Petition No.4198 of 2019 before this Court challenging the order dated 13th August 2019. The said application was allowed to be withdrawn. It was directed by order dated 21st August 2019 that if the applicant surrenders on 27th August 2019, learned Magistrate to decide the application on its own merits uninfluenced by withdrawal of the said petition. The applicant preferred application for bail before the Court of learned Metropolitan Magistrate. The said application was rejected by order dated 29th August 2019. The applicant thereafter preferred application for bail before Sessions Court, which is also rejected by order dated 19th October 2019.

6. The applicant then preferred application for bail in accordance with Section 437(6) of Cr.P.C. The said application was rejected by

order dated 29th February 2020. The applicant has relied upon roznama and contended that there is no progress in trial. The applicant is in custody for substantial period of time. Further detention of the applicant is not necessary.

7. The applicant was working as cashier with State Bank of India. He was arrested on 15th September 2018. On completing investigation charge sheet was filed. Learned Magistrate granted bail to the applicant by order dated 29th November 2018. It is pertinent to note that application for cancellation of bail was preferred before Sessions Court after a period of about nine months on the ground that punishment prescribed for offence u/s 409 of IPC is up to imprisonment for life and that learned Magistrate ought not to have granted bail to the applicant. It was also contended that prosecution was not heard while granting bail. Bail granted to the applicant was thereafter cancelled after a period of about nine months. The applicant then surrendered and even thereafter for substantial period time, the applicant is in custody. Charge sheet is filed. The trial has not commenced. There are no chances of applicant fleeing from justice. Further detention of the applicant is not necessary. Hence, bail can be granted to the applicant.

8. Hence, I pass following order :

ORDER

- (i) Bail Application No.894 of 2021 is allowed;
- (ii) The applicant is directed to be released on bail in C.R.No.137 of 2018 registered with N.M.Joshi Marg Police Station, Mumbai, on executing PR bond in the sum of Rs.30,000/- with one or more sureties in the like amount;

- (iii) The applicant shall report concerned Police Station once in a month on every first Saturday between 11 am and 01 pm till further order;
- (iv) The applicant shall attend the Trial Court on every date of hearing unless exempted by the Court;
- (v) The applicant is permitted to furnish provisional cash bail security in the sum of Rs.30,000/- for a period of eight weeks;
- (vi) The application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

MST