

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
BAIL APPLICATION NO. 809 OF 2020**

Akshaykumar Pradeep Patil. ... Applicant

V/s.

State of Maharashtra. ... Respondents.

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Mr. Ganesh Gole i/b. Mr. Ateet Shiroadkar, advocate for applicant.

Ms. P.P. Shinde, APP for State.

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**CORAM : SMT. SADHANA S. JADHAV.**

**DATE : APRIL 30, 2021.**

**(Through Video Conferencing)**

**P.C.**

1            Heard the learned Counsel for the applicant and the learned APP for State.

2            This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 26/10/2019 in Crime No. 345 of 2019 registered at Sangli City Police Station, Sangli for offence punishable under section 408, 409 read with section 34 of the Indian Penal Code.

3           On 27/7/2019 one Shivdutta Mhangore lodged a report at the police station alleging therein that he is working as branch manager in C.M.S. Info Systems, Kolhapur, which is engaged in depositing cash in ATM machines of various banks. There is a monthly audit of the accounts. It is alleged that on 25/7/2019 Auditor Mr. Atul Jadhav realised that amount of Rs. 50,55,000/- is not traceable in the audit and it was missing from 5 ATM machines out of 34. The co-accused in the present case are Hitesh Patel and Jitendra Jagtap. Upon enquiry accused No. 1 Hitesh Patel had given in writing before the complainant and auditor that he had utilised the said misappropriated amount for household purpose and for medical purpose. The investigation is completed and charge-sheet is filed.

4           It is true that the present applicant was assisting the accused No. 1 in the job of depositing said amounts in 12 ATM machines and 5 ATM machines, in which there was misappropriation,. Jitendra Jagtap was also assigned the same job. This Court vide order dated 5<sup>th</sup> April, 2021 has granted bail to the co-accused Jitendra Jagtap mainly on the ground that the name of the accused was not reflected in the first information report. However, the name of the present

applicant is reflected in the first information report.

5            Learned Counsel for the applicant submits that in fact, in the course of investigation, statement of auditor of the company was recorded and he had stated before the police that the co-accused Hitesh Patel had confessed before him that he had embezzled Rs. 50,50,000/- for his personal use. That Hitesh Patel happens to be Chief Custodian of the said amount. Learned Counsel submits that although the extra judicial confession of Hitesh Patel may not be admissible at this stage, however, it needs to be taken into consideration that the applicant is being arraigned as an accused only because he was assigned the role of an assistant to Hitesh Patel. The applicant is shown as the second custodian. The statement of account of Sudhaben Hitesh Patel of Bank of Baroda shows that huge amounts were deposited in her account. It is a clear indicator that the applicant is not beneficiary of the said amount. An undertaking was also taken from Hitesh Patel and Jitendra Jagtap stating that they would be responsible for the safe custody of any property handed over to him by the company and in the event of damage to the company or misappropriation while in custody, he would be responsible for the

same and the company will be at liberty to recover loss or damage

6           The applicant has not given any undertaking to CMS Info Systems Company. Prima facie, it appears that there is no incriminating material against the applicant to warrant further incarceration. The applicant was appointed by one Unmatched Systems Private Limited and not by CMS Info Systems company, in which there is misappropriation. The appointment letter of the present applicant in CMS Info System Pvt. Ltd. does not find place in the compilation of charge-sheet. He therefore, deserves grant of bail. However, it is made clear that the observations in the present application would not entitle the co-accused Hitesh Patel for seeking enlargement on bail as Hitesh Patel was appointed by CMS Info Systems Pvt. Ltd. In view of this above discussion, the applicant deserves enlargement on bail.

7           Hence, following order is passed :

**ORDER**

(i)           The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or more solvent sureties in the like amount.

(iii) The application is disposed of accordingly.

**(SMT. SADHANA S. JADHAV, J)**