

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.839 OF 2020

Jitendra Satish Jagtap] ...Applicant

Versus

State of Maharashtra] ... Respondent

Mr. Satyavrat Joshi for Applicant.
Mr. V. B. Konde-Deshmukh, APP for State.

CORAM :- PRITHVIRAJ K. CHAVAN, J.
DATE :- 05 APRIL, 2021

P. C. :-

1. This is an application under Section 439 of the Cr.P.C. moved by the Applicant who has been charge-sheeted by Sangli City Police Station in C.R.No.345 of 2019 for the offences punishable under Sections 408, 409 read with 34 of the Indian Penal Code.

2. The facts germane for deciding the application are as follows :

The Applicant is an employee of CMS Info System Company Limited, Kolhapur, as a Senior Custodian. CMS Info System Company Limited has entered into a contract with different banks to deposit cash amounts in various ATMs of the respective banks. The work of deposit of the cash amount in different ATMs of different banks was entrusted by the

company to the Applicant along with other co-accused namely Hitesh Patel and Akshay Patil. The company used to make an audit of the respective ATMs every month. On 31/08/2019, during an audit, a difference of Rs.20 Lakhs was noticed in the ATM of Axix Bank at Miraj and Kupwad MIDC. Therefore, FIR came to be registered against the Applicant, as according to the prosecution, the Applicant, along with other 2 co-accused, were entrusted with a dominion over the cash amount of which they committed a criminal breach of trust and that they had committed offences pursuant to their common intention shared by each of them. During audit, it, however, revealed that an amount of Rs.50,55,000/- (Rupees Fifty Lakhs Fifty Five Thousand Only) was short in the ATMs of Bank of Baroda and State Bank of India.

3. The Investigating Officer conducted investigation into the crime. Statements and supplementary statements of the witnesses came to be recorded. After the investigation, a charge-sheet has been filed in the Court of Chief Judicial Magistrate, Sangli.

4. Earlier applications for bail preferred by the Applicant came to be rejected by the learned Chief Judicial Magistrate and the learned Additional Sessions Judge.

5. Heard Mr. Satyavrat Joshi, learned Counsel for the Applicant and Mr. V. B. Konde-Deshmukh, learned APP for State.

6. At the outset, Mr. Joshi has drawn my attention to the fact that the FIR does not depict name of the Applicant. The FIR came to be registered on 17/07/2019. My attention is drawn to the statement of one Atul Subhash Jadhav, an auditor of the said company. In the statement before the police, he appears to have stated that co-accused Hitesh Patel had confessed before him (Atul Jadhav) that he had embezzled Rs.50,55,000/-. Similarly, one Amrut Bajrang Bharte, ATM in-charge of the company, has similarly stated before the police what has been stated by Atul Jadhav. According to learned Counsel Mr. Joshi, extra-judicial confession is inadmissible in evidence and therefore, it cannot be looked into to find nexus between the co-accused and the Applicant in respect of the offences alleged.

7. Eversince his arrest on 15/11/2019, the Applicant has been incarcerated and as such, it is submitted that he having roots in the society, no purpose would be served in detaining him till the trial is concluded.

8. Mr. V. B. Konde-Deshmukh, learned APP for State, however, objects release of the Applicant on bail by submitting that supplementary statement of informant Shivdutt Mhangore discloses role of the Applicant in the capacity of a Senior Custodian of the company who was responsible for deposit of the cash amount in different ATMs along with the co-accused. It is submitted that the Applicant and the other co-accused were working in tandem and each of the custodian were given half of the passwords which they were not supposed to disclose to any third person. That being so, how come such a huge amount had been embezzled ? He submits that it being a serious offence which provides an imprisonment for life, it would not be safe to enlarge the Applicant on bail.

9. Admittedly, a charge-sheet has already been filed against the Applicant and other accused and the Applicant is behind the bars since almost last 1.1/2 year. Secondly, his name does not figure in the FIR. Thirdly, the discovery panchanama under Section 27 of the Indian Evidence Act qua Hitesh Patel, though indicate that he, along with the Applicant and Akshay Patil, had embezzled the amount of Rs.50,55,000/- from the ATM, the investigating agency could recover nothing from the house of the Applicant during the search of his house. Photostat copy of

the panchanama to that effect is at pages 50 and 52 of the compilation. Mr. Konde-Deshmukh submitted that the Applicant has not been previously convicted in any similar offence. It is even not the case of the learned APP that further interrogation of the Applicant is essential in order to unearth the truth.

10. In order to attract the ingredients of criminal breach of trust by a banker or agent, the first condition is that there should be entrustment of the property of which accused is dutybound to account for, secondly, committal of criminal breach of trust. These ingredients are to be looked into during trial on merits and not at the stage of entertaining an application for bail.

11. The accused is said to be a man with a wife and a child who has roots in the society and in case of his release, he will not flee away from justice.

12. Having taken into consideration the aforesaid aspects, I am of the view that no fruitful purpose would be served in continuing the detention of the Applicant in judicial custody. Consequently, the following order is passed.

ORDER

- (i) Application is allowed.
- (ii) The Applicant be released on furnishing a P.R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties to the satisfaction of the learned Chief Judicial Magistrate, Sangli.
- (iii) The Applicant shall not, either directly or indirectly, tamper the prosecution evidence or influence its witnesses.
- (iv) The Applicant shall not leave the jurisdiction of Chief Judicial Magistrate, Sangli, without seeking prior permission.
- (vi) The Applicant shall surrender his passport in the Court of Chief Judicial Magistrate, Sangli, if any.
- (viii) If the Applicant commits two consecutive defaults in attending the Court, the prosecution is at liberty to apply for cancellation of bail.

13. Bail Application is accordingly disposed of.

(PRITHVIRAJ K. CHAVAN, J.)