IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 980 OF 2019

Ganesh Tukaram Inkar ..Applicant

v/s.

The State of Maharashtra ..Respondent

Mr. S.B.Talekar i/b. Talekar & Associates for the Applicant.
Mr. S.V.Gavand, APP for the Respondent-State.

CORAM : ANUJA PRABHUDESSAI, J.
DATED : JULY 17, 2021.

P.C.

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for enlargement of the Applicant on bail.

2. The Applicant is facing trial in RCC No. 576 of 2018, pending on the file of the Addl. Sessions Judge/Judicial Magistrate, for offences under Section 409, 420, 465, 467, 468 and 471 of the Indian Penal Code (IPC). The said case arises from Crime No. 488 of 2017 registered with Sarkarwada Police Station, Nashik, pursuant to the First Information Report (FIR) lodged by Pawan Vasant Shukl, the loan Officer of Dr. Padmashree Vitthalrao

Vikhe Patil Co-operative Bank, Nashik. It is the case of the prosecution that the Applicant, who was working as a cashier , and his father, the co-accused Tukaram Inkar cheated the bank to the tune of Rs.2,65,35,610/- being the amount deposited by various depositors in their account, by forging the documents/records of the bank in his possession. The Applicant was arrested on 28.5.2018. Upon completion of investigation, chargesheet came to be filed against the Applicant and his father for committing offences as stated above.

3. The applications for bail having been dismissed by the learned Chief Judicial Magistrate and the learned Sessions Judge, the Applicant has approached this Court by filing bail application under Section 437 of Cr.P.C. for enlargement on bail.

4. Shri Talekar, learned Counsel for the Applicant submits that the Applicant is in custody since 28.5.2018. He submits that in the charge and the additional charge against the Applicant was framed on 14.8.2018 and 28.8.2018 and that the evidence of PW1 had commenced on 29.1.2020. He has stated that the evidence of

PW1 is not yet concluded and several witnesses are yet to be examined. He submits that in view of inordinate delay in conducting the trial, the Applicant filed an application before the Magistrate for bail under Section 437(6) of the Code. The learned Magistrate has dismissed the said application even though the delay in conduct of trial is not attributable to the Applicant. He submits that the application filed by the Applicant to release him on bail on the ground of COVID 19 pandemic has also been rejected. He submits that the denial of bail amount to unjustified and unwarranted pre-trial punishment and violation of his fundamental rights under Article 21 of the Constitution of India for speedy trial.

5. Learned Counsel for the Applicant has relied upon the decision of the Apex Court in ***Kashmira Singh vs. State of Punjab (1977)4 SCC 291***, wherein the Apex Court took note of the practice adopted by the High Courts as well as Apex Court not to release on bail the person who has been sentenced to life imprisonment for an offence under Section 302 of IPC. The Honourable Apex Court observed that such practice, not to rrelease on bail was evolved on the basis that has held that the underline postulated of this practice was that the appeal of such persons would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent he would not have to remain in jail for a unduly long period. While departing with the said practice the Honourable Apex Court held that the rationale of this practice can not have application where the Court is not in a position to dispose the appeal for 5-6 years. It was observed that it would indeed be a travesty of justice to keep a person in jail for a period of 5 or 6 years for an offence which is ultimately found not to have been committed by him.

6. The learned Counsel for the Applicant has also relied upon the decision of the Apex Court in ***Ashok Dhingra vs. NCT of Delhi (2000) 9 SCC 533*** wherein the Applicant who was charged for offence under Section 420, 468, 471 and 506 was in custody for about 5 months, in view of which the Honourable Supreme Court had ordered to enlarge him on bail even though there were prima facie circumstances not entitling him to be released on bail.

7. Learned Counsel for the Applicant has also relied upon the decision of the Apex Court in ***Babba @ Shankar Raghuman Rohida vs. State of Maharashtra (2005)11 SCC 569*** where the accused was in jail for 12 years. Considering the fact that there was no regular TADA Court at Bombay and that it would take considerable time to commence the trial, the Honourable Apex Court had ordered to release him on bail.

8. Shri Talekar, learned Counsel for the Applicant has also relied upon the decision of the Honourable Single Judge of this Court (Coram: J.H. Bhatia, J.) in ***Tarkeshwar Goraknath Pandey vs. State of Maharashtra (2012) Bom CR (Cri.) 569*** and the decision of ***Madhya Pradesh High Court in Ramkumar vs. vs. State of M.P. (2000) 2 MPLJ 43*** wherein the accused was released on bail by invoking the provisions of sub-section (6) of Section 437 of the Code. Relying upon these decisions, learned Counsel for the Applicant states that the provisions under Section 437 (6) of the Code mandates release of the accused person where the trial is not concluded within a period of 60 days. He submits that considering the delay in concluding the trial, the Applicant is entitled for bail under Section 437(6) of the Code. Learned

Counsel for the Applicant has also relied upon the decision of the Apex Court in Suo-moto Writ Petition no.1 of 2020 to urge that the Applicant is entitled for bail in view of the present situation arising from COVID-19 pandemic.

9. Per contra, Mr. Gavand, ld. APP contends that the Applicant has cheated and defrauded innocent depositors, who had invested their hard earned life savings in the bank by misusing his position as a cashier and forging the bank records.

10. Learned APP further submits that there is a prima facie material on record to indicate tht the Applicant and his father had defrauded the bank to the tune of Rs.2,65,35,610/-. He submits that the economic offences pose serious threat to the financial health of the country and hence need to be viewed seriously. He contends that the offence under Section 467 IPC is punishable with life imprisonment. He submits that the nature and the gravity of the offence would not justify grant of bail.

11. Learned APP has placed on record roznama sheets to demonstrate that the Applicant and the co-accused were responsible for delaying the trial. He submits that the case had to be adjourned time and again since the Accused No.2, father of the Applicant who is on bail and the advocate engaged by them had failed to attend the hearing. He therefore contends that the Applicant is not entitled for bail under Section 437(6) of the Code.

12. Learned APP further submits that the Applicant is charged for committing offence which is punishable with life and hence he is not entitled for bail in view of the situation arising from COVID 19 pandemic.

13. I have perused the records and considered the submissions advanced by the learned Counsel for the Applicant and the learned APP for the State.

14. The records indicate that the Applicant herein was working as a cashier in Dr. Vikhe Patil Co-operative Bank, Nashik. The internal audit report prepared by Ravindra Eknath Misal indicated that in ICICI Bank Account No. 699305600182 dated 8.8.2016 there was an entry of cash deposit for Rs.83,00,000/- made through login id IGT and passed through login id GTI by the Applicant, but no such deposit challan slip was available in the bank and no such entry was reflected in ICICI Bank Account statement. Similarly, there was cash withdrawal entry dated 26.10.2016 for Rs.5,00,000/- made through login id GTI by the Applicant herein. But no such cash withdrawal voucher or cheque details were available with the bank and no such entry was reflected in ICICI Bank Account. The verification reconciliation statement revealed that out of long pending entries funds have been misused by the Applicant from time to time and for making over the difference of the bank balance and the cash balance, the Applicant made the cash deposit or withdrawal entries in the bank account. The said entries were entered and passed by the Applicant through his login id. Based on the various discrepancies pointed out in the said internal report, the first informant Pawan Shukl lodged the First Information Report.

15. The investigation revealed that the Applicant herein had misused his position as cashier, made several false entries and defrauded the bank and the depositors to the tune of Rs.2,65,35,610/-. The material on record prima facie indicates that he had transferred huge amount from the accounts of the depositors to the accounts of the persons related to him by creating false records. The material on record thus, prima facie shows involvement of the Applicant in commission of the said crime. The allegations against the Applicant pertain to commission of economic offence, which involves loss of public fund.

16. In ***Y.S. Jagan Mohan Reddy vs.CBI (2013) 7 SCC 439*** and ***Nimmada Prasad vs. CBI (2013) 7 SCC 466*** the Apex Court has observed that economic offence constitute a class apart and need to be visited with a different approach in the matter of bail. It is held that the economic offence have deep rooted conspiracy and involving huge loss of public funds needs to be viewed seriously and considered as grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. The Apex Court has held that while granting bail in such cases, the Court has to keep in mind nature of accusation, severity of punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, the reasonable possibility for securing presence of the accused on trial, reasonable apprehension of the witness being tampered, the larger interest of the public or State and other similar considerations .

17. In the instant case, material on record prima facie indicates that the Applicant who was working as cashier in the bank has misused his position and defaulted/cheated the bank and the depositors to the tune of Rs. 2,65,35,610/-, by making fraudulent entries and forging the documents. The Applicant has thus made personal gain at the cost of public. The allegations leveled against the Applicant have serious economic ramifications. Considering the nature and gravity of the offence and its wide ramifcations and the ratior of the above case law, in my considered view the Applicant is not entitled for bail on merits.

18. It is pertinent to note that the learned Counsel for the Applicant has not argued the Bail Application on merits, but has pressed in service provisions of sub-section (6) of Section 437 of Cr.P.C. in view of delay in concluding the trial. The records reveal that during pendency of this application, the Applicant had filed application before the trial Court for release on bail under Section 437 (6) of Cr.P.C. This application, was filed before the Special Court without disclosing pendency of the present application. The said application has been dismissed by the trial Court by order dated 02.01.2019. which order is sought to be questioned without raising any challenge to the said order.

19. Be that as it may, Section 437 (6) of Cr.P.C. stipulates that if in any case traibale by Magistrate, the trial of the person accused of any non-bailable offence is not concluded within a period of 60 days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

20. Section 437 (6) of the Code confers right on the accused to seek bail when the trial is not concluded within a period of 60 days from the first date fixed for taking evidence. The object of sub-section (6) of Section 437 is to obviate delay in trial. Nevertheless, there may be several justifiable reasons for not concluding the trial within stipulated time, for instance, delaying tactics adopted by the accused, voluminous evidence, backlog of cases, number of accused facing trial and their availability for trial etc. The legislature has therefore not conferred on the accused an absolute or indefeasible right of bail, but has given discretion to the Magistrate to refuse bail for the reasons to be recorded in writing. Section 437(6) therefore seeks to achieve twin object, namely obviate the delay and to achieve ends of justice.

21. The learned Counsel for the Applicant is right in saying that the Applicant has right for speedy trial. However, as held by the Apex Court, in ***Ash Mohammad vs. Shivraj Singh (2012) 9 SCC 446,*** *"The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law." In an orderly society an individual is expected to live with dignity having respect for law and also having respect to others right. It is well* *accepted principle that the concept of liberty is not in the realm of absolutism, but is a restricted one....It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in a civilized milieu....Thus, analyzed, it is clear that though liberty is greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardized, for the rational collective does not countenance and anti-social or anti-collective act."*

22. In the instant case, it is not in dispute that there is delay in recording evidence, but the delay cannot be solely attributed to the prosecution. The records, more particularly, the roznama reveals that the case has been adjourned from time to time as the Advocate engaged by the Applicant as well as the co-accused i.e. father of the Applicant, who is on bail and who has filed affidavit-in-support of bail application had failed to appear before the trial court. The Magistrate was therefore unable to proceed with the trial even though the witness was present before the Court. It is thus abundantly clear that the delay in the trial was mostly caused due to the conduct of the defence. Hence the Magistrate cannot be faulted for refusing to grant bail under Section 437(6) of CrPC.

23. Though Shri Talekar, learned Counsel for the Applicant has relied upon the decision of the High Power Committee for release of the accused in view of COVID 19 pandemic, he concedes that since the offence is punishable with sentence of life imprisonment, the Applicant would not be entitled for bail as of right as per the decision of the High Power Committee.

24. Considering the nature of the accusation against the Applicant, and the gravity of the offence, the Application is dismissed. The trial Court is however directed to endeavor to dispose of the case as expeditiously as possible and in any event within a period of one year from the date of the order.

PRASANNA P SALGAONKAR
Digitally signed by PRASANNA P SALGAONKAR Date: 2021.07.20 15:16:02 +0530

(ANUJA PRABHUDESSAI, J.)