**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL BAIL APPLICATION NO.1109 OF 2020**

Vimal Jadhavji Maluka @ Barot .... Applicant
Versus
The State of Maharashtra & Anr. .... Respondents

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Mr. Ujjwal Gandhi, Advocate for the Applicant.
Smt. M.R. Tidke, APP for the Respondent-State.
Mr. H.S. Venegavkar, Spl. Prosecutor for Respondent No.2-CBI.

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**CORAM : SARANG V. KOTWAL, J.**
**DATE : 14th JULY, 2021**
**[Through Video Conferencing]**

**P.C. :**

1. The applicant is seeking his release on bail in connection with R.C. No.06/E/2014 – CBI/BS & FC/MUMBAI under Sections 419, 420, 467, 468, 471 read with 120-B of IPC read with Sections 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The applicant was arrested on 28.3.2015 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

3. The FIR was lodged by Shri Motilal Behera, working as a Deputy General Manager/Zonal Manager in Zonal Office of Dena Bank, Fort, Mumbai. He has stated in his FIR that his bank takes bulk deposits from Government institutions to grow its business. Accused No.2 Nagarkar was the Branch Manager of Malabar Hill Branch at the relevant time. He tried to canvass bulk business for his branch. In that connection he came in contact with the present applicant. The applicant introduced himself as custodian of government departments' / corporations' funds. He was connected with the group known as Showman Group, Jogeshwari (West). It is mentioned in the FIR that between the period 30.1.2014 to 5.5.2014, he mobilized bulk deposits aggregating to Rs.256.49 crores from the following organizations :

(1) Mahatma Phule Backward Class Development Corporation Ltd.,

(2) Mumbai Metropolitan Region Development Authority,

(3) Maharashtra Tourism Development Corporation Ltd.,

(4) Mumbai APMC,

(5) Hero MotoCorp Ltd.,

(6) Modi Innovative Education Society,

(7) Modi ATI Education Private Ltd.

. For these entities, the term deposit accounts were opened at Malabar Hill branch for various amounts. For the purpose of this process, the bank officers had to verify the KYC of the deposit account and the original deposit receipts were to be delivered to the authorized persons of the organizations. In this case, this part was manipulated by the applicant. The applicant handled the KYC documents. He retained the KYC documents of these entities, generated fake KYC documents and handed them over to Dena bank. The original TDR receipts were retained and their photocopies were handed over to those entities. Thereafter based on the original TDR receipts, different loans were sanctioned in the name of these entities. Thus, the loans were sanctioned on the basis of fabricated documents, like, loan application, specimen signature, resolution of the organisation, discharge at the backside of the SDR, authority letter etc.. All these documents were forged based on earlier submitted forged documents. It is mentioned in his complaint that the applicant presented himself as a representative of Dena bank and collected various documents from these organizations and on the other hand he represented to the bank as financial adviser of these organizations. After the amounts were sanctioned in the names of those organizations, they were deposited in fake loan accounts of these entities and from there onwards they were siphoned off by applicant's various entities. This is how the offence was committed. The bank had issued receipts by the name Samruddhi Deposit Receipts. Thus, all those entities had suffered monetary loss and Dena bank also suffered losses because of the applicant's fraudulent act.

4. Shri Venegavkar, learned Special Prosecutor, has pointed out that the total defrauded amount which was misappropriated in this offence was to the tune of more than Rs.245 Crores.

5. Heard Shri Ujjwal Gandhi, learned counsel for the applicant, Smt. M.R. Tidke, learned APP for respondent No.1-

State and Shri H.S. Venegavkar, learned Special Prosecutor for respondent No.2-CBI.

6. Learned Counsel for the applicant submitted that he is arrested on 28.3.2015 and since then he is in custody. The main accused Nagarkar was not even arrested. The other co-accused, who were arrested, are released on bail. The applicant's properties are also seized under PMLA proceedings and substantial amount is already recovered. The evidence pertains to documentary evidence. Therefore, the applicant's further custody is not necessary.

7. Learned Special Prosecutor Shri Venegavkar opposed this application and he relied on the affidavit of the investigating officer filed in this connection.

8. At the outset Shri Venegavkar, on instructions of the investigating officer, has stated that the trial can be started immediately and the prosecution will not take more than one year to complete the trial. He submitted that there is overwhelming evidence against the applicant. Shri Venegavkar invited my attention to Paragraph-9 of this

affidavit, wherein it is mentioned that the applicant was not available during investigation as he had been absconding. Al efforts to trace him at his known places of residence did not yield any result. Therefore, NBW was issued by CBI Court and he was finally traced in Ahmedabad. He could be arrested only on 28.3.2015. Therefore, Shri Venegavkar submitted that availability of the applicant for the trial is also extremely doubtful. He, therefore, strongly opposed this application.

9. I have considered all these submissions. The offence indeed is very serious. Sheer audacity of the applicant in defrauding various entities including the informant's bank shows that this is not a case where some leniency can be shown to the present applicant in granting him bail during pendency of the trial.

10. With the assistance of both learned Counsel I have also perused the statements of witnesses from the charge-sheet which are annexed to this application.

11. There is a statement of one Preeti Javkar, who was working with Denak Bank since 1983. Her statement shows

transfer of various amounts in connection with some of these entities. Her statement shows that the co-accused Nagarkar had instructed the staff at the branch that Samruddhi Deposit Receipts should not be handed over to the parties as they were high-value customers and he would personally hand over SDR receipts to the parties. This, of course, appears to be a part of conspiracy and the original receipts never reached these entities. This witness has identified many important documents.

12. There is a statement of one Jivtesh Singh, who was working with Dena Bank. He has referred to account of Public Health Foundation of India (PHFI). Accused Nagarkar had arranged KYC for this account as a part of the fraud. He has stated that co-accused Nagarkar had told this witness that he had personally verified all the documents. This witness has also identified various important documents.

13. The statements of witnesses like Ramesh Sharma and Madhumati Gawade show as to how the applicant was instrumental in collecting those KYC documents of some of the

entities. The affidavit of the investigating agency mentions statement of one Kanishk Kejriwal which shows that his entity M/s. Ramtech Industries Private Limited was also defrauded by the applicant in similar manner.

14. The investigation has revealed that the sanctioned amount of loan which was deposited in fake loan accounts were siphoned off by the present applicant and he has amassed properties in his own and his wife's name. Thus, at this stage, there is sufficiently overwhelming evidence against the present applicant in the entire case. I am aware that the applicant is in custody since 28.3.2015. Section 467 of IPC is punishable with life imprisonment. However, as submitted by Shri Venegavkar, the investigating agency has assured the Court that the trial can be concluded within a period of one year from its commencement.

15. In this view of the matter, I am not inclined to grant bail to the present applicant. However, request can be made to the trial Court to give effect to the assurance given by the prosecuting agency. Hence, the following order :

## ORDER

(i) Bail Application is rejected.

(ii) The trial Court is requested to take up this trial as early as possible and conclude it as far as possible within a period of one year from today.

**(SARANG V. KOTWAL, J.)**

Deshmane (PS)