IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (BA) NO. 485 OF 2021

Gajanan s/o Raghunath Nandanwar
Aged about 70 years, Occ. Retired,
R/o. 169, Empress mill Society,
Shrinagar, Ring Road, Nagpur
(Presently lodged in Central Prison, Nagpur) **.. Applicant**

...V E R S U S...

State of Maharashtra
through Police Station Officer,
Hudkeshwar Police Station, Nagpur **.. Respondent**

Mr. D. V. Chavan, Advocate for applicant.
Ms. T. H. Khan, A.P.P. for respondent.

CORAM :- MANISH PITALE J.
RESERVED ON :- 08th June, 2021
PRONOUNCED ON :- 10th June, 2021

JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

(2) The applicant has approached this Court seeking bail in connection with First Information Report No.0551 dated 28/12/2020, registered at Police Station, Hudkeshwar, filed

against him and co-accused persons under Sections 406, 409, 420 r/w 120-B of the Indian Penal Code (IPC) and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (MPID Act).

(3) The applicant is behind bars from 28th December, 2020. The applicant had approached this Court earlier by filing a bail application, but the same was withdrawn in the light of filing of charge-sheet with liberty to approach the Special Court. Pursuant thereto, the applicant moved a fresh bail application before the Special Court under the MPID Act, which stood rejected by order dated 05th May, 2021.

(4) The informant in the present case is an Auditor who had prepared an Audit Report in respect of Anand Sai Urban Credit Co-operative Society Limited (hereinafter referred to as the Society) for the period 2017-18. During the relevant period, the applicant was working as General Manager of the said Society and it was recorded in the Audit Report that the Society through its office bearers and the alleged involvement of the applicant, had misappropriated amount to the extent of Rs.4,08,00,000 (Rupees Four Crores and eight Lakhs). On this basis, the aforesaid FIR

dated 28th December, 2020, stood registered against the office bearers of the Society as well as the applicant. The allegations in the FIR against the applicant are to the effect that he was party to illegal advancement of amounts by the Society to one Dakshayani Group. It was alleged that various amounts in cash totalling Rs.4 Crores were illegally advanced to the said Dakshayani Group during the said period and that further amount of Rs.8 Lakhs was advanced, by a cheque which was signed by the applicant along with co-accused person. It was alleged that the said huge amount was misappropriated, thereby causing grave loss to the depositors of the said Society. On this basis, aforesaid offences were registered. The Special Court rejected the bail application of the applicant after filing of charge-sheet, on the basis that sufficient material was placed on record to indicate prima facie direct involvement of the applicant in the misappropriation of the aforesaid amount.

(5) Mr. D. V. Chavan, learned counsel appearing for the applicant submitted that the applicant had worked with the Bank of Maharashtra and he had retired from the post of Assistant General Manager of the said Bank in the year 2011. It was submitted that the applicant had an absolutely clean and

unblemished record during his entire period of service with the aforesaid Bank and that after his retirement, on 14th May, 2016, the applicant had joined service of the said Society as the General Manager. According to the learned counsel for the applicant, the material on record would show that the applicant himself had sent communications to the office bearers of the Society, including the co-accused persons, regarding the inappropriate procedures being followed in the functioning of the Society. It was the applicant who had specifically stated in written communications that relevant documents including vouchers pertaining to cash amounts given to the Dakshayani Group were not properly maintained in the record of the Society, which was illegal. It was further submitted that even the Audit Report submitted by the informant did not show the involvement of the applicant, insofar as cash amounts being advanced to the Dakshayani Group were concerned. As regards the cheque of Rs.8 Lakhs given to the said Group, it was submitted that blank cheques signed by the applicant were kept with the accountant for disbursing amounts to depositors and that one such cheque may have been misused, for which the applicant could not be held criminally liable.

(6) It was further submitted that a perusal of the entire

charge-sheet along with statements of witnesses and other material placed on record by the investigating agency, would show that there was nothing to implicate the applicant. It was further submitted that the applicant being a 70 years old senior citizen, suffering from ailments, deserved to be enlarged on bail, particularly when there was no possibility of the applicant influencing the witnesses or tampering with the evidence. It was submitted that appropriate conditions could be imposed on the applicant for grant of bail. The learned counsel for the applicant relied upon the judgment of the Hon'ble Supreme Court in the case of **P. Chidambaram vs. Directorate of Enforcement (2020) 13 Supreme Court Cases 791,** to contend that even if the applicant was alleged to have committed economic offences, his prayer for grant of bail ought to be considered on the well established principles of bail jurisprudence.

(7) On the other hand, Ms. T. H. Khan, learned APP appearing for the respondent State submitted that serious offences were alleged against the applicant and the co-accused persons. Large amount of money was misappropriated by the office bearers of the Society in connivance with the applicant herein. It was further submitted that there was material on record in the form of

statements of witnesses indicating that certain false entries were made in registers and record was created by the applicant in his own handwriting, so as to falsely show that the aforesaid amounts were advanced to the Dakshayani Group after due approval of the Executive Body of the Society. In the face of such material, it could not be said that the applicant was merely an employee and that he was not actively involved in the illegal activities. It was further submitted that the applicant failed to take any steps to prevent illegalities committed on behalf of the Society, which had resulted in misappropriation of huge amount of the Society, thereby causing loss to the depositors. On this basis it was submitted that Special Court was justified in rejecting the bail application of the applicant and that the present application also deserved to be dismissed.

(8) Heard learned counsel for the parties. The learned counsel for the rival parties invited attention of this Court to statements of witnesses and other material placed on record with the charge-sheet. There is no dispute about the fact that at the relevant time, the applicant was working as General Manager of the said Society. Although he resigned from the post of General Manager on 15th January, 2018 and he was relieved from the said

post on 19th April, 2018, since the allegations pertained to the period when the applicant was the General Manager of the Society, it becomes necessary to make a prima facie assessment of the material on record to analyze the extent of responsibility of the applicant for the offences alleged in the present case.

(9) A perusal of the Audit Report, which is the basis of the registration of FIR, would show that insofar as cash amounts to the extent of Rs.4 Crores advanced to Dakshayani Group are concerned, the illegal actions have been attributed to the co-accused who claimed to be the office bearers of the said Society. In the FIR also the involvement of the applicant has been indicated on the basis that he was the General Manager of the Society and therefore, he was also responsible for such illegal activities, But, a perusal of letter dated 29th December, 2017, sent by the applicant to the co-accused i.e. the President of the Society would show that he had raised the issue of non-availability of payment vouchers regarding cash amounts to the extent of Rs.4 Crores advanced to the Dakshayani group. In fact, the applicant stated that when the accountant of the Society was asked regarding such payment vouchers, she stated that the vouchers were with the President of the Society. In this backdrop, the applicant requested the co-

accused i.e. the President of the Society to provide the payment vouchers as the Inspecting Officer was insisting upon the same. It is also recorded in the said communication that the said President of the Society claimed that he was not aware about the matter and that the Inspecting Officer could be sent to his cabin. Since this communication is dated 29th December, 2017, it prima facie indicates that the applicant as the General Manager of the Society had informed the co-accused person that payment vouchers for cash amounts advanced to Dakshayani Group were not available.

(10) Apart from this, the applicant had earlier i.e. on 2nd September, 2016, sent communication to the co-accused stating that there were instances of mismanagement in the working of the Society and that if remedial measures were not taken, the Society would suffer loss and that ultimately it may collapse. This would prima face indicate that after joining the post of General Manager of the said Society, the applicant did take steps to inform the co-accused persons about mismanagement in the affairs of the Society.

(11) Insofar as the amount of Rs.8 Lakhs advanced to Dakshayani Group by way of cheque bearing the signature of the

applicant is concerned, it is sought to be explained that blank signed cheques were kept with the accountant for payment to depositors and that this could be an instance of misuse of such cheque. Whether this explanation can be accepted or not is a matter for trial and equally it is matter for trial as to whether the applicant as the General Manager was acting on the directions of the co-accused persons who were the office bearers of the said Society. Even if the signature of the applicant is said to be affixed on the cheques in question, the amount of money advanced to Dakshayani Group by way of aforesaid cheque was only Rs.8 Lakhs. Therefore, at this stage, it prima facie appears that direct material to show involvement of the applicant in advancing amount to the said Dakshayani Group is only to the extent of Rs.8 Lakhs. Even for this, the applicant has sought to give a plausible explanation.

(12) As regards the record allegedly created in the handwriting of the applicant pertaining to meetings of the Executive Body of the Society, admittedly, report of the handwriting expert is awaited. Apart from this, a perusal of the statement of witnesses relied upon by the learned APP would show that it is stated that the applicant had allegedly recorded

holding of meetings of the Executive Body of the Society and passing of resolutions in the registers on the direction of co-accused No.1. Whether such creation of record was in the handwriting of the applicant and whether he was directly involved in creation of false and fabricated record would also be a matter for trial.

(13) There is no dispute about the fact that the applicant is a senior citizen aged 70 years. It is also not disputed that he was arrested on 28th December, 2020, thereby showing that he has been behind bars for the past about six months. The investigation is completed and charge-sheet is already filed. There is material placed on record to show that the applicant suffers from diminished vision and that he suffers from other ailments prevalent in senior citizens. The applicant is a retired Assistant General Manager of Bank of Maharashtra and there is nothing on record to show that he has any criminal antecedents. Considering the nature of statements of witnesses and the other material placed on record along with the charge-sheet, it appears that the applicant has made out a case for grant of bail. If appropriate conditions are imposed, while granting bail, it would serve the ends of justice, as no purpose would be served by keeping the

applicant in custody, who is a 70 years old person suffering from diminished vision and other ailments.

(14) The emphasis placed by the learned APP upon the seriousness of the alleged offences and that these are economic offences, cannot be the basis for rejection of bail. In the aforesaid judgment in the case of P. Chidambaram vs. Directorate of Enforcement (supra), the Hon'ble Supreme Court has reiterated the position that although economic offences are indeed serious offences, bail jurisprudence would require that each case is considered on its own facts, with the cardinal principle being kept in mind that grant of bail is the Rule and refusal is an exception. The Hon'ble Supreme Court has further reiterated in the said judgement that appropriate conditions can be imposed to secure the presence of the accused at the time of trial and that the past record as well as character and behavior of the accused are circumstances to be taken into consideration while considering the prayer for bail.

(15) Applying the said principles to the facts of the present case, in the light of the observations made above, this Court is inclined to allow the present application.

(16) Hence, the application is allowed in the following terms: -

(a) The applicant shall be released on bail on furnishing PR Bond of Rs.50000/- (Rupees Fifty Thousand only) and a surety in the like amount in respect of the aforesaid FIR dated 28th December, 2020.

(b) The applicant shall attend proceedings before the Special Court in the trial proceedings on each and every date, unless specifically exempted by the said Court.

(c) The applicant shall not himself or through any person tamper with the evidence or influence prosecution witnesses.

(d) The applicant shall fully co-operate in the proceedings before the Special Court for expeditious conclusion of the trial.

(17) Needless to say, any violation of the aforesaid conditions would make the applicant liable for cancellation of bail.

It is clarified that the observations made in this order are limited to the question of grant of bail and that the Special Court shall conduct the trial proceedings without being influenced by the same.

JUDGE

KOLHE/P.A.