**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**ANTICIPATORY BAIL APPLICATION NO.659 OF 2022**

VIDHYASAGAR S/O WAMANRAO KENDRE
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicant : Mr. Kadam Gajanan G.
APP for Respondent/State : Mr. V.M. Kagne
...

**CORAM : S.G. MEHARE, J.**

**DATED : 07th SEPTEMBER, 2022**

**PER COURT:-**

1. Heard learned counsel for the applicant at length and learned APP for the State.

2. It has been alleged against the applicant that when he was working as Postmaster at Sub Post Office Loha, he has misappropriated the amount of Rs.5,32,328/-. When the complaint was received against the applicant, one team was constituted. They have conducted the inquiry in detail and find that on various dates, the total amount of Rs.6,75,000/- was received from Ashtoor Branch Post Office but he did not take its entries in the account. Same thing happened about the money received in the Post Office at Loha. He did not send the amount to the concerned post office. He has misappropriated that amount. The applicant was to deposit the amount at Loha Sub Post Office online. However, subsequently the applicant deposited Rs.3,73,871/- and committed the

misappropriation of Rs.5,32,328/-. It has been specifically alleged against the applicant that the applicant has been instructed orally and in written but he did not deposit the amount till the report was lodged. On the basis of these allegations, the offence under Section 406, 409 and 420 of the Indian Penal Code has been registered against the applicant at Police Station Loha, District Nanded.

3. Learned counsel for the applicant has argued on many occasions at length. In a nutshell, he has the case that due to the failure of the electronic gadget, the amount could not be deposited. Whatsoever the amount has been shown received from another post office was incorrectly shown. However, that amount has been deposited. He has vehemently argued that the applicant has deposited the amount more than the amount against the alleged misappropriation. Time and again, he has referred to a chart on page nos. 7 and 8 in his application. He has also referred to page no.48 of his application and argued that the amount of Rs.4,50,000/- was deposited. He also referred to a chit on page no.50 and would submit that the applicant has maintained the account manually. He would point out that on 01.01.2021, the applicant received Rs.15,000/- from Post Office Ashtoor. However, incorrect allegations have been levelled against him that on 01.01.2021, the amount of Rs.10,000/- was received from Post Office Ashtoor. He also referred to page 60 to corroborate his contention that whatever amount was received was

subsequently transferred online. In his lengthy arguments, he has heavily relied upon the conduct of the postal department that the department did not supply the relevant documents he sought under the Right to Information Act. The reasons given for the denial of those documents are irrelevant. He has also argued that if the documents had been supplied, the applicant would be in a better position to satisfy the department differently how he has not done the misappropriation. He has also assailed the failure of the electronic system in the postal department. He has referred to one mail and vehemently argued that one Dr. Shrikant Eknath Shinde has raised a voice about the failure of the connectivity and internet system in the postal department. Referring to such documents, he has tried to convince the Court that the postal department failed to provide adequate internet and updated electronic gadgets. Time and again, he has stressed his arguments that whatever the contentions the applicant has made have not been denied by the prosecution on the affidavit. The applicant has attended the police station as and when called. Not a single pie is to be recovered from the applicant. Therefore, his arrest in the instant crime for his no-fault would unnecessarily malign his prestige and reputation. The applicant has a good status and reputation in the vicinity. If he would not released on anticipatory bail, his prestige and reputation would be maligned for his no fault. He was and is ready to cooperate with the investigation.

Due to the failure of the system of the postal department, no online entries of the transaction in SAP application could be taken. He has also vehemently argued that the applicant had attended the police station many times. Therefore, the investigation is completed, and the custodial interrogation is not required. He also argued that all the relevant documents are lying with the office; therefore, also the custodial interrogation of the applicant is not essential. He prayed to grant him anticipatory bail.

4. Learned APP had vehemently argued that before lodging the report, a detailed inquiry was made by the committee constituted by the competent authority. Each and every document entry has been verified. The applicant tried to convince the Court that the entire amount had been deposited, but it was incorrect. He would also submit that the documents sought by the applicant under the Right to Information Act were irrelevant to the present crime. Hence, they were refused to be supplied. The relevant documents were supplied to the applicant. The so-called account maintained by the applicant is not in a prescribed format. The applicant has misappropriated a huge amount. It was not necessary to take the facts on the affidavit. He would refer to the statement of one of the branch postmasters who has categorically stated before the police that the applicant has acknowledged the money received on the daily account, but he did not take the entry of the said account in DTR online. Learned APP

also argued that the applicant had given a confessional statement before lodging the report and accepted the misappropriation. However, learned counsel for the applicant has vehemently argued that it was obtained under pressure.

5. Embarking on the merits and demerits of the case, some facts have to be mentioned here. The applicant has been on interim protection since 07.06.2022. He was directed to attend the police station on a particular date and time. However, there was a conflict as regards the attendance of the applicant at the police station. He also alleged against the police, but the police did not accept his explanation. Therefore, he sends his explanation by post. Learned APP replied that the applicant barely attended the police station but did not submit an explanation. Therefore to make the equity, this Court, by order dated 11.08.2022, granted the applicant an opportunity to appear before the Investigating Officer on 17.08.2022 and 18.08.2022 for submission of an explanation in writing.

6. Learned APP would submit that the Investigating Officer called an accounting expert, and whatever explanations submitted by the applicant were verified. But the accounting expert was not satisfied with the explanations submitted by the applicant. The Investigating Officer is stuck up to the allegations that a huge amount has been misappropriated. Thereafter, the matter was listed before this Court on 24.08.2022. During the course of arguments, learned

counsel Mr. Kadam after arguing the matter for about 40 minutes, was continuously taking instructions from the applicant in the Court hall. Therefore, the Court granted him two weeks more time for preparation. Thereafter, today the applicant is heard again.

7. It is not in dispute that the applicant has been charged for the similar offence before the present incident. A detailed inquiry appears to have been made by the concerned officers, and then they concluded that the applicant misappropriated an amount of Rs.5,32,328/-. The chit on page no.50, which is alleged to be the account maintained by the applicant, cannot be believed for the simple reason that there are prescribed proformas for manually maintaining the accounts at the postal department and many other government departments. So far as other documents referred to by the applicant, those must have been examined by the accounting expert. The papers produced by the Investigating Officer reveal that a fair opportunity was granted to the applicant to make the submissions; however, the accountant, who was an expert, was not satisfied with the explanation. The prosecution has come up with a specific case that the applicant deposited an amount of Rs.3,73,871/- after the inspection. However, he failed to deposit the remaining amount. The allegations are based on the record. The system may fail, but the bonafide may be examined from the entire circumstances. There are witnesses stating against the applicant that he has received

the money from them but did not take entry in DTR. A sufficient opportunity has been granted to the applicant by this Court also to explain whatever he wants to explain. So far as the confessional statement is concerned, though it has been argued that it was obtained under pressure, the applicant has no material to show that he made a complaint ever before that his statement was recorded under pressure. Be that as it may, considering the documents produced by the Investigating Officer and the allegations against the applicant, *prima facie* material is available against him. The prosecution has filed the proforma of the account to be maintained by the post office. The entire circumstances raise serious doubt about the bonafide of the applicant. The huge amount, as alleged, has been misappropriated. Though the learned counsel for the applicant has vehemently argued that the applicant has attended the police station on various dates, the custodial interrogation of the applicant is not essential, an opportunity was granted to the applicant to explain how he has not misappropriated the amount. He has submitted the explanation to that effect. But the fact remains that the misappropriated amount is to be recovered. The Investigating Officer has to investigate where the applicant has spent or invested that amount. Considering the case in entirety, the gravity and severity of the offence, this Court is of the view that this is not a fit case for anticipatory bail. Hence, the application stands dismissed.

8. Learned counsel for the applicant seeks continuation of the interim protection for two weeks. Interim protection in his favour to continue for two weeks from today.

**(S.G. MEHARE, J.)**

*Mujaheed//*