

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

Criminal Application (BA) No. 699 of 2022

Lokesh Ganesh Chunakhaye

Versus

The State of Maharashtra, through Police Station Officer,
Police Station Pachpaoli, Dist. Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri D.V.Chavan, Advocate for the applicant.

Shri V.A. Thakare, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 7th JULY, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No.811 of 2021 registered with Police Station Pachpaoli, Dist. Nagpur for the offence punishable under Sections 409, 420, 467, 468, 471, 477(A) and 201 of Indian Penal Code read with Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act.

2. Shri Chauhan, learned counsel for the applicant submits that applicant was working as pigmy

agent in Manjushree Sahakari Path Sanstha Maryadit, Nagpur and on a complaint of a pigmy agent that the society has misappropriated the amount of the depositors, the present complaint came to be registered vide Crime No.811 of 2021.

3. He further submits that as a pigmy agent, his duty was to collect the amount and deposit the same in the bank. He further submits that there are no allegations in the First Information Report that the applicant collected the amount but not deposited in the bank. Thus, he submits that applicant is no way connected with the alleged defalcation of the amount of the depositors. He further submits that after completion of the investigation, the chargesheet has been filed, as such the custody of the applicant is no more required.

4. He points out that the applicant is in jail from last one year and as the custody of the applicant is not required, he prays for grant of bail.

5. Shri Thakre, learned Additional Public Prosecutor strongly opposed the application and submits that the accused persons are closely related with each other and with common intention they have committed the alleged offence and thereby misappropriated the huge amount of the depositors.

6. According to the learned Additional Public Prosecutors, the applicant is a cashier and not a pigmy agent. It is pointed out that father of the applicant is a Director in the said Path Sanstha. Thus, he submits that considering the fact that all the accused persons including the applicant are closely related with each other, their involvement is apparent. Accordingly, he prays for rejection of the present application.

7. I have perused the chargesheet, application and the reply filed by the State.

8. From the record it appears that the applicant was an employee in the said society. Considering the role of the applicant either as pigmy agent or a cashier was to collect the amount and to deposit the same in the bank. *Prima facie*, there are no allegations that the applicant collected the amount but did not deposit the same in the bank. Even there was no complaint any of the depositors to that effect.

9. Interestingly, the complaint was lodged by a pigmy agent saying that he and other pigmy agents collected the amount from the depositors and deposited in the bank, however, when due date appeared to return back the amount, the Directors of the Bank are not traceable.

10. The allegations though are serious and the amount involved is huge, however, the allegations are attributable to the Chairman and Directors of the Society, who are responsible for the management of the Society and also for repayment of amount on due date.

11. Thus, if any default is there, *prima facie* it is at the level of Directors and the Chairman, but in any case at this stage without leading evidence, it cannot be said that employee like applicant are also responsible.

12. Even if the applicant is a relative of one of the Directors, that will not make him responsible in this case unless there is incriminating material in misappropriation of amount of the depositors.

13. *As prima facie*, no incriminating material is available against the applicant and since the applicant is in jail since last one year and as his custody is no more required, I am of the opinion that applicant is entitled for grant of bail. Accordingly, I pass the following order.

- i. Criminal application is allowed;
- ii. It is directed that the applicant shall be released on bail in No.811 of 2021 registered with Police Station Pachpaoli, Dist. Nagpur for the offence punishable under Sections 409, 420, 467, 468, 471, 477(A) and 201 of Indian Penal Code read with Section 3 of the

Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, on furnishing P.R.Bond of Rs.25,000/- with a solvent surety in the like amount;

iii. The applicant shall attend the concerned police station on 1st day of every month between 10 am to 11 am till the conclusion of the trial;

iv. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

v. The applicant shall not leave the jurisdiction of the concerned police station without permission of the Court.

[ANIL S. KILOR, J.]

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by
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