

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

Criminal Application [ABA] No.881 of 2021

Sunil Parsharam Gandhare

vs.

The State of Maharashtra, through PSO Ballarsha, District Chandrapur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S.G Chaube, Advocate for the Applicant.

Mr. V.A. Thakare, A.P.P. for the Non-Applicant/State.

CORAM : SURENDRA P. TAVADE, J.

DATE : 19th JANUARY, 2022.

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

02] This is an application filed by the applicant for apprehending his arrest in connection with Crime No.1267/2021, registered with Police Station Ballarsha, District Chandrapur for the offences punishable under Sections 409 and 511 of the Indian Penal Code.

03] One Sohan Arun Apet lodged report on 17/11/2021 against the applicant. It is alleged that the applicant had opened two R.D. Accounts at Ballarpur Sub Post Office, where he was working as Postal Assistant for the period from 19/03/2011 to 29/08/2013. The applicant had opened two R.D. Accounts bearing Nos.112011 and 112012. The applicant had opened the said R.D. Accounts by depositing Rs.500/- per month for a period of five years. However, the applicant closed the said accounts prematurely

on 25/04/2015, as he was in need of money. After tendering the Pass-Books along with withdrawal form of both the R.D. Accounts for withdrawal of amount at the counter of Ballarpur Sub Post Office, the applicant received an amount of Rs.42,090/-. The complete procedure was verified. The applicant worked at Ballarpur Sub Post Office till 14/01/2013 and thereafter on 15/01/2013, he was transferred to Divisional Office, Chandrapur. The deputation period of applicant was ended on 28/08/2013 and he was regularly posted as Office Assistant at the Office of Senior Superintendent of Post Offices, Chanda Division, District Chandrapur.

04] It is alleged that an amount of Rs.20,000/- has been misappropriated by the applicant during the period he was transferred from Ballarpur Sub Post Office to Chandrapur Divisional Office. Although the applicant had closed his two R.D. Accounts on 25/04/2015, but an amount of Rs.21,045/- was transferred to his Saving Bank Account No.71196. It is contended that Ballarpur Sub Post Office had checked the said accounts and then only issued payment of Rs.21,045/- and a certificate to that effect was issued by the Sub Postmaster. It is alleged that the applicant had made false data entries in said R.D. Accounts and then withdrew the said amount resulting in misappropriation of the Government money.

05] It is contended that the Superintendent of Post Offices, Chanda Division, Chandrapur, had initiated disciplinary action against the applicant. However, the

Enquiry Officer exonerated the applicant on the charge of misappropriation of Rs.20,000/-. But, the applicant was punished for violation of various provisions of Rules of Department. The said punishment was challenged by the applicant by preferring revision petition before the Chief Postmaster General, Maharashtra Circle, Mumbai. The said petition is still pending.

06] It is contended that the applicant is an innocent employee of Post Office and he has been made a scapegoat. It is contended that the alleged misappropriation had taken place at Ballarpur Sub Post Office in the year 2015, during that period, the applicant was not posted at Ballarpur Sub Post Office, as he was working in Divisional Office at Chandrapur. It is alleged against the applicant that he reopened his R.D. Accounts on 20/08/2015 by higher denominations at Ballarpur Sub Post Office by using data entry module of 'Sanchay Post' that made fake data entry in these accounts raising the balance amount of Rs.76,500/- in both the accounts and, hence, the total comes to the tune of Rs.1,53,000/-. These accounts were never operated by the applicant as he had no Pass-Books to deposit or withdraw the amount. The applicant had no knowledge of these accounts as he was never issued Pass-Books by Ballarpur Sub Post Office for these accounts. Neither he was applied for automatic standing instruction application from Saving Bank Account to R.D. Account, nor he had applied for transfer of accounts, which are mandatorily required after filling form for transfer application, which is compulsorily required as per the Postal Savings Bank Rules.

07] It is contended that bare perusal of the F.I.R. would reveal that no offence is registered against Ku. Vibha Gedam, who was the Counter Postal Assistant at Ballarpur Sub Post Office, working as a Clerk keeping the details of opening and closure of accounts and also Smt. R.N. Hanumante, who was working as Sub-Post Master and was In-charge of the Ballarpur Sub Post Office and used to verify the accounts. It is contended that the police authority also did not make Shri V.D. Channe as co-accused in the F.I.R., who was allotted the work of System Administrator for Core Banking Solutions (CBS) Migration. It is contended that an amount of Rs.25,000/- has already been recovered by the Senior Superintendent of Post Offices, Chanda Division, Chandrapur from the applicant in the year 2017 for the fraud and misappropriation of funds alleged to have committed by the applicant. It is contended that the custodial interrogation of the applicant is not required as all documents and material are already with the police. The applicant undertakes that he will abide by each and every condition, which may be imposed upon him. The applicant is a Government Servant and earning member of his family, hence, the question of his absconding does not arise. He, therefore, prays that he may be released on pre-arrest bail.

08] Notice of this application was issued to the non-applicant/State. The State has filed its reply, wherein it is contended that the applicant was working in the Post Office, Ballarsha. He opened two R.D. Accounts bearing Nos.112011 and 112012 for monthly installment of Rs.500/- per month each. The present applicant prematurely closed

both the accounts on 25/04/2015 and withdrawn total amount of Rs.42,090/-, which came to be transferred in his Saving Bank Account. It is alleged in the F.I.R. that in the year 2015, the Postal Department has decided to upgrade their software, therefore, the earlier software "Sanchay Post Module" was upgraded to "Finacle (Infosys) Software". Taking advantage of this upgradation, the present applicant again revived the closed R.D. Account Nos.112011 and 112012 and enhanced the amount of monthly installment to Rs.1500/- each. It is further alleged that on 20/08/2015, the present applicant again visited the Ballarsha Branch, at that time he shown entry of Rs.20,000/- by using ID of the Postmaster. The present applicant committed fraud of reviving old R.D. Accounts, which was already closed. It is also alleged that second is the fake entry of depositing the amount of Rs.20,000/- in his Saving Account. The investigation in the present crime is very technical in nature. It is to be revealed how the applicant has used ID of the Postmaster, for which the custodial interrogation of the applicant is very much necessary. It is contended that the Investigating Agency has added Sections 43 and 66 of the Information Technology Act in the present case. The custodial interrogation of the applicant is required. Hence, the application be rejected.

09] Heard the learned Counsel for the applicant and the learned A.P.P. on behalf of the State.

10] Admittedly, the applicant is an employee of Post Office. He was posted at Ballarpur Sub Post Office from

2011 to 2013 and thereafter he was transferred to Chandrapur Divisional Office. It is also admitted fact that the applicant had opened two Recurring Deposit Accounts bearing Nos.112011 and 112012 for monthly installments of Rs.500/- each. It is also admitted fact that the said accounts were prematurely closed by him on 25/04/2015 and withdrawn the amount of Rs.42,090/-, which came to be transferred in his Saving Bank Account.

11] It is alleged in the FIR that the Postal Department has upgraded its software to Finacle (Infosys) Software. It is also alleged that by taking disadvantage of this upgradation, the present applicant revived his closed R.D. Accounts and enhanced the amount of monthly installments to Rs.1500/- each. There is specific allegation against the applicant that he used ID of the Postmaster and had made an entry of Rs.20,000/- in his account. The Investigating Officer also recorded a statement of Ratnamala, who has stated that the applicant had been to Ballarpur Sub Post Office after his transfer. He was making some entries in the account, but she has not given any details of the same. Similarly, departmental enquiry was initiated against the applicant, wherein he was held guilty for breach of Rules of the Postal Department. It appears that he has been exonerated from the charge of misappropriation of Rs.20,000/-. The said decision is challenged by the applicant, but the fact remains on record that the allegations against him that he used the ID of other employee and made entries in his account, he has also revived his R.D. Accounts. Therefore, now the Investigating Officer has invoked the provisions of the

Information Technology Act. The investigation is technical in nature, therefore, custodial interrogation of the applicant is required.

12] On this point, the learned Counsel for the applicant has placed reliance on the judgment in the case of Jagannath Ramchandra Biyani vs. State of Maharashtra, reported in 1981 Mh.L.J. 791, wherein this Court had relied on the ratio laid down in the case of Hussainara Khatoon vs. State of Bihar – 1979 Cri.L.J. 1036, wherein the Supreme Court has indicated eight factors for finding out as to whether an accused person has got roots in the community. In the present case, there is no allegation that the applicant is likely to abscond. Therefore, the said ratio is not applicable in the facts of the present case. In the ruling cited *supra*, it is also observed that while granting any bail either post-arrest or pre-arrest, the Courts have also to take into account -

- i. Nature and seriousness of the accusation;
- ii. Nature of the prosecution evidence;
- iii. Severity of the likely punishment in case the prosecution succeeds and
- iv. Status of the accused.

13] There is no dual opinion about the said observation. In the present case, the applicant is an employee of the Postal Department, wherein he is facing charge of misappropriation of fund by making the entries in the account with the help of ID of other staff. So, the

modus of the act of the applicant is technical in nature, which requires detailed investigation. Therefore, in my opinion, the prosecution requires the custodial interrogation of the applicant. Hence, I pass the following order:

ORDER

- The application is rejected.

JUDGE

**sandesh*