

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 600 OF 2023

Nitin S/o Sunder Meher

Applicant

Versus

The State of Maharashtra

Respondent

Mr. S. G. Ladda, Advocate for the applicant.

Mr. S. P. Sonpawale, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 5th JUNE, 2023.

PER COURT :

1. Applicant is apprehending arrest in connection with Crime No.124/2023 registered with Karjat Police Station, Tq. Karjat, Dist. Ahmednagar for the offences punishable under Sections 406, 408, 409, 420 read with Section 34 of the Indian Penal Code.

2. On 24th February, 2023, Sanjay Korde, CEO, Parner Taluka Sainik Sahakari Bank Ltd., Parner, lodged report with the police stating that on 31st October, 2020, current account was opened in the Karjat branch in the name of Shrirudra Infrastructure. In the said account, various cheques issued in favour of Public Works Division and Zilla Parishad were encashed. In the said report,

particulars were given in respect of the cheques covering an amount of Rs.1,79,76,846/- being realised. Specific allegations are is made against applicant who is the Junior Clerk and Vishal Pawar, Passing Officer, for the said mis-appropriation, including showing of complete disregard to the rules in respect realisation of cheque, these cheques were encashed.

3. Learned counsel for the applicant states that the applicant is a Junior Clerk and that he is not only the person in the said branch who was entrusted with this work. By referring to the report of enquiry conducted by the bank, it is submitted that in fact there was no specific assignment of work done in the said branch. It is therefore argued that applicant cannot be held responsible for opening of the account or realisation of the cheques in said account as alleged. He also drew attention of this Court to the second report of enquiry dated 31st December, 2022 wherein apart from the applicant, other persons working in the branch including Branch Manager Farande were held responsible for the said alleged mis-appropriation. In this regard, by referring to the documents placed on record, it is submitted that there are offences registered against the informant as well as the Branch Manager of causing

mis-appropriation and hence, it can be inferred that the present applicant is being victimised. He also submits that selectively report has been lodged against the present applicant. It is further argued that offence punishable under Sections 405, 406, 409 of the Indian Penal Code is not attracted and the essential ingredients for attracting offence punishable under Section 420 of the Indian Penal Code are absent in the present case. He placed reliance on the judgment of the Hon'ble Apex Court in the case of Gulbaksh Singh Sibbia vs. The State of Punjab, AIR 1980 Supreme Court 1632 in order to submit that the custodial interrogation of the applicant is not necessary and that even if any recovery is to be done, for that purpose, the applicant can be treated in the custody of police.

4. Learned APP opposed the said submission by referring to the relevant documents on record which according to him, clearly indicate that applicant by using his password has made said transactions. It is also stated that in order to realise cheque in the account false vouchers were prepared. This according to him indicates that the applicant acted in contravention of the banking rules.

5. Applicant has produced two reports of the enquiry wherein it is clearly stated that applicant is one of the Junior Clerks who by using his personal password has processed some cheques for realisation in the account of Shrirudra Infrastruture. Thus, there is sufficient evidence on record to show that applicant has created the vouchers and processed the cheques. Applicant being Junior Clerk is responsible for verification of the fact as to the name of the payee and the account in which the cheque is sought to be realised. Merely because passing authority is finally responsible for clearing cheques does not absolve the applicant from his obligation and responsibility to verify the said fact. Allegations in the First Information Report about creation of false vouchers showing as if the cheque is being realised in the account of payee indicate the malafide intention of the applicant which is more than sufficient to attract provisions of Penal Code. Though it is contended on behalf of the applicant that he was only obeying the orders of his superiors, said defence is not available for the applicant at this stage, as it is clearly an after thought. Similarly, merely because Branch Manager and others are not made accused would lead to grant of relief to applicant, when his prima facie involvement is found in the crime.

6. It is apparent that the cheques belonging to the Government authorities are mis-appropriated by their realisation in the account of a private individual. This is nothing but loss of the public exchequer. As far as personal gain of the applicant in the said transaction is concerned, the same is subject matter of investigation which is yet to be completed. The entire material on record fully justifies the application of Sections 406, 409, 420 read with Section 34 of the Indian Penal Code. Offence punishable under Section 409 of the Indian Penal Code provides for imprisonment of life.

7. Hence, the application deserves to be rejected.

8. Before parting, it is necessary to record that the amount belonging to the Government authorities is misappropriated and in ignorance of the report of enquiry, and other material on record, no action seems to have been taken against the other persons involved in the said crime. Having regard to the seriousness of offence, and manner of investigation carried it is just and necessary to direct the Superintendent of Police, Ahmednagar to oversee the investigation of this crime and to ensure that all persons guilty of crime are brought to the books and that investigation is taken to its logical end. A copy

of this order be sent to the Superintendent of Police, Ahmednagar,
for necessary compliance.

(R. M. JOSHI)
Judge

dyb