IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1110 OF 2023

Shailesh Sampatrao Bhosale ..Applicant.
Versus
The State of Maharashtra ..Respondent

Mr. Girish Kulkarni, Sr. Advocate a/w. Mrunmai Kulkarni i/b. Milind Deshmukh for Applicant.
Mr. V. B. Konde Deshmukh, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 10 OCTOBER 2023

PC :

1. This is the second time the applicant has approached this Court for his release on bail in connection with C.R.No.26 of 2020 registered at Shivaji Nagar police station, on 08.01.2020, under section 406, 408, 409, 420, 468, 471 r/w. 34 of the I.P.C. During the course of investigation, provisions of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as 'M.P.I.D. Act') were also invoked and as of today the prosecution is also U/s.3, 4 and 5 of the M.P.I.D. Act.

2. On the first occasion, the applicant had approached this Court for his release on bail vide Criminal Bail Application No.1228 of 2020. This Court, vide order dated 09.02.2021 recorded that the learned counsel for the Applicant, on instructions, had prayed for unconditional withdrawal of that application. Permission was granted and the application was allowed to be withdrawn unconditionally. That order was passed on 09.02.2021.

3. The Applicant was arrested on 25.02.2020. This second application is preferred on the ground of change in circumstances. The first change in circumstance claimed by the applicant is a passage of time. According to him, since his arrest, there is no progress in the trial and the trial has not even commenced. The second ground citing change in circumstance is the order granting bail to the main accused Suryaji Jadhav vide order dated 02.03.2023 passed by co-ordinate bench of this Court in Criminal Bail Application No.2006 of 2021. According to the applicant, his role is much lesser than that of Suryaji Jadhav. On these two circumstances, the applicant has preferred this fresh application

for his release on bail.

4. Heard Shri. Girish Kulkarni, learned senior counsel for the Applicant and Shri. Konde Deshmukh, learned APP for the State/Respondent.

5. The F.I.R. in this case was lodged by one Yogesh Lakde. He was a Chartered Accountant. He conducted the Audit of Shivajirao Bhosale Co-operative Bank. During his audit, he found that there was shortfall of the cash of the amount of Rs.71,91,82,000/-. There were no satisfactory entries in respect of that amount. He submitted his audit report. He had conducted the audit in May 2019. He had given his specific audit report on 08.11.2019 to the District Sub Auditor Co-operative Department, Pune. Based on that report, he was authorized to lodge an F.I.R. Accordingly, he lodged the F.I.R. The F.I.R. mentions 16 persons including the present applicant. The accused included the Directors of the Bank. On this F.I.R., the offence was registered vide C.R.No.26 of 2020 on 08.01.2020. The investigation was carried out and the applicant was arrested on 25.02.2020. The applicant was working as the

Chief Accountant of the Bank.

6. At the conclusion of the investigation, the charge-sheet was filed. During the course of investigation, provisions of the M.P.I.D. Act were invoked. The charge-sheet gives further details about the entire fraud. It mentions that, there was shortfall of the cash amount mentioned in the F.I.R. According to the prosecution, the responsibility of keeping cash in the head office was with the Chief Executive Officer Tanaji Padval and the present applicant and, therefore, they were responsible for the difference in the cash amount. There were 93,128 investors in the bank. The loans were sanctioned indiscriminately and deliberately. Non Performing Assets were to the tune of Rs.89.40% of the disbursed loan amount. The loans were sanctioned without verifying the documents. Huge amounts were deposited in the accounts of accused Suryaji Jadhav, Anil Bhosale and Tanaji Padval. Ultimately, according to the prosecution case, the fraud amount involving all the illegalities and irregularities was to the tune of Rs.4,94,45,19,130/-.

7. Learned senior counsel for the Applicant submitted that the applicant was a mere employee of the bank and he had to act on the orders of his superiors, otherwise, he would have lost his job. He submitted that the applicant was left with no option but to aid and abet the main offenders. Though, this may not absolve him of his criminal liability, this circumstance can be taken into consideration. He further submitted that the entire extensive investigation did not reveal that the applicant had received any monetary benefits from this fraud amount. This itself shows that, he was used by the main accused. The applicant is in custody for more than three and half years. The trial has not even commenced. The main beneficiary Suryaji Jadhav is already released on bail vide order passed on 02.03.2023 by the co-ordinate bench of this Court. Therefore, it would be travesty of justice to deny bail to the present applicant. He submitted that, though on the earlier occasion, the bail application of the applicant was withdrawn, there are reasonable and strong changes in the circumstances and, therefore, he deserves to be released on bail.

8. Shri. Konde Deshmukh, learned APP submitted that the

actual fraud amount is of Rs.494,45,19,130/- as mentioned in the charge-sheet. The order granting bail to Suryaji Jadhav mentions the fraud amount as Rs.30 crores. This figure is not correct. He further submitted that, there is strong material against the present applicant.

9. I have considered these submissions. As far as, role of the present applicant is concerned, there are statements of at least three witnesses which are relevant. These witnesses are Sunita Bandal, Santosh Kale and Amol Raut. Sunita Bandal has stated about the procedure regarding withdrawal of cash amount and how the entries are made in respect of that. She has stated that, on 16.04.2019, the amount of Rs.71,78,87,723/- was found short in the branch and it was shown to have been transferred to the main branch only by making entries on the documents. The actual amount was not transferred and it was not deposited with the head office. She has stated that, C.E.O. Tanaji Padval, the present applicant and Loan Superintendent Santosh Kale had withdrawn the cash on various occasions from the Shivaji Nagar branch of the bank.

Santosh Kale has stated that, whenever Suryaji Jadhav wanted cash, he used to tell this witness or to Tanaji Padval. Santosh Kale himself had taken huge amount to the house of Suryaji Jadhav. Some amount was transferred to Shanur Mujawar by RTGS through the present applicant. He has stated that, on 14.02.2018 he himself, Tanaji Padval, Amar Pawar, Shashikant Gavade, Raju Bargande and the present applicant had taken Rs.28,53,00,000/- to the house of Suryaji Jadhav. At that time, other accused Anil Bhosale was also present.

Amol Raut has stated that the applicant had directed him to accept the entry regarding amount of Rs.71,78,87,723/- on 04.05.2019, though, no such cash was transferred.

10. All these statements show the role played by the applicant. Therefore, at this stage, there is sufficiently strong material against the present applicant. However, in spite of these transactions of huge amount, the investigating agency has not come up with the case that the applicant himself had received

any monetary benefit in any of these transactions. There is no recovery at his instance or from him. Therefore, there is force in the submission that the applicant was used by the main accused. As pointed earlier, Suryaji Jadhav is already granted bail and in spite of wrong figure presented to the Court in that application which is much lesser than the actual fraud amount, the investigating agency has not taken any steps to take corrective measures. Therefore, it would be travesty of justice to deny bail to the applicant, when the main accused who was the main beneficiary is released on bail. Therefore, on this ground, leniency can be shown to the present applicant. It also cannot be overlooked that, the applicant is in custody since 25.02.2020 and the trial has not yet commenced. Therefore, on this ground, the applicant can be released on bail.

11. Hence, the following order:

<u>O R D E R</u>

i) In connection with C.R.No.26 of 2020 registered at Shivaji Nagar police station, the Applicant is directed to be released on bail on his furnishing

P. R. bond in the sum of Rs.50000/- with one or two sureties in the like amount.

ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)