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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.3290/2022

SACHIN ASHOK KAMBLE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Munira Palanpurwala a/w. Adv. Deepa Amati for the
applicant.

Adv. Mahesh Mule, Spl.P.P. a/w. Adv. Nidhi Narwekar for the
respondent.

IO Girish Dighavkar, Dy.SP, CID,Pune.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 3, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned
Special Public Prosecutor for the State.

2. This is an application for bail in respect of the offence
punishable under Sections 409, 418, 420, 467, 468, 471,
120-B read with 34 of the Indian Penal Code (hereafter 'IPC'
for short) read with Sections 13(1)(c), 13(1)(d) read with
13(2) of the Prevention of Corruption Act, 1988, registered
vide First Information Report (FIR) No.135/2015 with Shivaji
Nagar Police Station, Beed.

3. The applicant was arrested on October 17, 2017 and

now he is in custody for more than five years and three months. There are in all nine accused. Five accused have been enlarged on bail. It is the allegation that the applicant and the co-accused no.2-Bapurao Nekte issued a cheque in their own name i.e. "self" with their joint signatures and withdrew the amount of Rs.50 lakhs. These monies were meant for the downtrodden people.

4. Learned counsel for the applicant submitted that the applicant be granted bail on the ground of long incarceration.

5. Learned Special Public Prosecutor while vehemently opposing the application for bail invited my attention to the order dated June 14, 2018 passed by this Court in Criminal Bail Application No.392 of 2018 (Aurangabad Bench) while rejecting the bail application of the applicant. Reliance is placed on paragraph 6 of the order which reads thus:-

"6. The papers of investigation show that the cheques were jointly signed by the applicant Shravan and accused No.2 Netke jointly in the sum of Rs.4,57,00,000/-, during the period from 9th June, 2014 to 19th July, 2014. It was sufficiently long a period to enable the applicant Shravan to make grievance in case his signatures really were obtained forcibly by accused

No.2 Netke on various cheques. However, the applicant Shravan did not make any grievance. His silence, prima facie, indicates his voluntary participation in withdrawing the said amount. The amount of Rs.50,00,000/- has been withdrawn with the signatures of the applicant Sachin and accused No. 2 Netke on 20th August, 2014. He also did not make grievance immediately after withdrawal of that amount. There are statements of the witnesses showing that both of the applicants and accused no.2 Netke reached the amounts withdrawn by them to the persons named by accused no.5, Ramesh Kadam, the then President of the Corporation. In the circumstances, the belated complaint made by the applicants on 29th January, 2015 would not be helpful to them to show that they have no concern whatsoever with the above mentioned offences. Had the applicants not signed the cheques, it would not have been possible for accused No.2 Netke to withdraw the cheque amounts. Moreover, there is evidence to show, prima facie, active participation of the applicants in siphoning the amount of the Corporation.”

6. It is then submitted that the applicant preferred an application for bail before the Sessions Court which was rejected by the order dated August 23, 2022. Paragraphs 11, 12 and 13 of the order passed by the Sessions Court while rejecting the application for bail on which reliance is placed by learned Special Public Prosecutor reads thus:-

“11. It is pertinent to note that the present successive bail application is filed on the ground that co-accused Pawandeepsingh Kohli and Laxman Waghmare have been released on bail by the Hon’ble Bombay High Court vide order dated 02.03.2022. The allegation against co-accused Pawandeepsingh Kohli is that he in collusion with accused Ramesh Kadam had received an amount of Rs.35,57,886/- which was transferred from the account of Corporation to the account of Satnam Automobile, Aurangabad, with Axis Bank. Had the amount was not transferred in the account of Satanm Automobiles, it would not have been possible for co-accused Pawandeepsingh Kohli to withdraw the same. It is alleged that co-accused Laxman Waghmare had ferried cash which was handed over to accused Ramesh Kadam.

12. It is to be noted here that the applicant was working as a Cashier at the relevant time. He is public servant and the custodian of the funds of SLASDC. He had withdrawn the amount of SLASDC alongwith co-accused Bapurao Netke without any loan proposal in their own name and with joint signatures. There are statements of witnesses showing that both the accused handed over the amounts withdrawn by them to the person named by accused Ramesh Kadam. Thus, the role attributed to the applicant stands on different footing than role attributed to co-accused Pawandeepsingh Kohli and Laxman Waghmare. It is pertinent to note that earlier bail application of the applicant came to be rejected by the Hon’ble High Court

of Judicature at Bombay, Bench at Aurangabad. In the backdrop of the aforesaid facts, I am of the considered view that there is no substantial change of circumstances to entertain successive bail application.

13. It is imperative to note that the applicant has been charged with an offence under section 409 of IPC which attracts maximum punishment of imprisonment for life. Therefore, the grounds like long period of incarceration and trial is not likely to be concluded in the near future, would not be sufficient for enlarging him on bail.”

7. Learned Special Public Prosecutor also relied upon the reply which was filed on behalf of the respondent. Drawing my attention to paragraph 14 of the said reply it is stated that the trial is protracted at the instance of the other accused and therefore, the applicant is not entitled to avail the facility of bail. Paragraph 14 reads thus:-

“14. The present Applicant has also taken the ground of long incarceration which the prosecution would like to clarify is not due to the fault of the prosecution agency. The prosecution further submits that one of the co-accused Ramesh Nagnath Kadam who had preferred a Criminal Writ Petition No.457 of 2020 before this Hon’ble Court against the rejected discharge order of the Ld. Session Court, Mumbai in Spl. Case No. 104 of 2015 @ 108 of 2015. This Hon’ble Court via order dated 19/03/2020, 08/02/2021, 10/03/2021, 14/02/2022 have stayed the trial against co-accused Ramesh Nagnath

Kadam and other accused. It is very interesting that the applicant never approached this Hon'ble Court for vacating the stay on trial but preferred an application for bail."

It is thus the submission of learned Special Public Prosecutor that the co-accused deliberately indulged in delaying the trial. Now the applicant cannot be allowed to take advantage on the ground of long incarceration.

8. It is pertinent to note that this Court in the case of **Pawandeepsingh Mahendrasingh Kohli vs. The State of Maharashtra**¹ by an order dated March 2, 2022 while granting bail to the co-accused in paragraphs 8 and 11 as observed thus: -

"8. The learned Special P.P. has submitted that the public funds of the Corporation which were granted with the avowed object of the upliftment of the backward classes have been siphoned off by the accused. However, learned APP has submitted that looking to the fact that the Applicant has been granted bail in five out of the six crimes registered against him, this Court may pass appropriate orders. Learned Special P.P. has further pointed out that there is a possibility of the Applicant and the other co-accused making attempt to protract the trial, once released on bail. He therefore submitted that this Court may expedite the trial.

1 CrI.B.A.No.4004/2021 decided on March 2, 2022.

11. It further appears that on 5 November 2020 the Supreme Court has granted bail to co-accused Santosh Shankar Ingale, the Additional Managing Director of the Corporation, inter alia for the reason of his incarceration for 4 years and 9 months. Similarly, on 25 March, 2021, the Supreme Court has granted bail to Haridas Vitthal Dalvi, the Managing Director of the Corporation who was in custody for around 5 years. A perusal of the order passed by the Supreme Court granting bail to the Applicant in Crime No.80/2015 and 336/2015 shows that the same has been granted inter alia on the ground of period of custody undergone by the Applicant and on account of the fact that the bail was granted to the co-accused namely Santosh Ingale and Haridas Dalvi.”

9. I have also noted that this Court expedited the trial and directed that an endeavour shall be made to complete the trial within a period of one year.

10. No doubt, the trial has been stayed at the instance of the co-accused by this Court. The fact is that the applicant is languishing in custody for more than five years and three months. The trial is not protracted at his behest. The co-accused who was having similar role as that of the applicant i.e. Bapurao Nekte has been released on bail on February 8, 2016, the same being a default bail. The investigation is complete. The charge-sheet has been filed. There are no

criminal antecedents reported against the applicant. No fruitful purpose will be served by prolonging the custody of the applicant and even the applicant can be granted the facility of bail on the ground of long incarceration. The applicant will face the consequences of the decision by the trial Court but the custody cannot be continued as and by way of a pre-trial punishment. Hence the following order.

ORDER

(a) The application is allowed.

(b) The applicant- Sachin Ashok Kamble in connection with FIR No.135/2015 with Shivaji Nagar Police Station, Beed, shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.

(c) The applicant be released on provisional cash bail of Rs.25,000/- for a period of six weeks from today.

(d) The applicant shall report to the Investigating Officer of the concerned police station once in a month on every first Monday, between 11.00 a.m. and 1.00 p.m.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) It is made clear that the observations made herein are *prima facie* in nature, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

11. The application is disposed of.

(M. S. KARNIK, J.)