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

**CRIMINAL APPLICATION (BA) NO.152/2023
Rajesh Kantilal Shrishrimal (Jain)
..vs..
The State of Mah., thr.PSO PS Ramdaspeth, Akola, Taluka and District Akola**

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

Shri Amol Mardikar, Senior Counsel assisted by Shri V.R.Deshpande, Advocate for the Applicant.
Shri Avinash Gupta, Senior Counsel assisting the Prosecution.
Shri M.J.Khan, Additional Public Prosecutor for the State.

**CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 01/08/2023
PRONOUNCED ON : 11/08/2023**

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.576/2022 registered with the non-applicant police station for offences punishable under Sections 406, 409, 420, 468, and 469 read with Section 34 of the Indian Penal Code.

2. The applicant is arrested on 29.9.2022 and since then he is in jail.

3. Dilip Vasantrao Patil, has lodged a report with the non-applicant police station. He is the Branch Manager of "Malkapur Urban Cooperative Bank, Malkapur (Akola Branch)" (the said Bank). As per allegations in the report, during

inspection, conducted by the Reserve Bank of India, some irregularities were noted in functioning of the said bank wherein the applicant was working as Manager. It is alleged that from 15.5.2017 to 29.2.2020, new accounts were opened in the names of "Nishant Multistate Cooperative Credit Society" bearing Bank Account No.256 and "Arihant Multistate Cooperative Society" bearing Bank Account No.204. In the said accounts, false credit is shown and amounts are transferred to co-accused Naina Manatkar, Deepk Dighode, and Sawai Ratnakar. The amounts were transferred in the accounts of the aforesaid persons by RTGS at behest of the applicant. The total amounts Rs.1,12,25,000/- and Rs.3,10,38,000/- were transferred from account No.204 and amount Rs.74,00,000/- was transferred in the account of co-accused Naina Manatkar. It is further alleged that amount Rs.2,02,00,000/- and Rs.6.00 lacs were transferred from account No.256 in favour of Sawai Ratnakar. Thus, total amount Rs.7,04,63,000/- was transferred by the applicant in different accounts and thereby the said bank was defrauded. On the basis of the said allegations, the crime is registered against the applicant and other co-accused.

4. As per contentions of the applicant, he was appointed as Junior Clerk in the year 1995 and has discharged his duties diligently. Thereafter, he was promoted as Assistant

Branch Manager and posted at Aurangabad. Thereafter, he was transferred as Branch Manager at Motala, district Buldana. Thus, he was serving as Assistant Manager and was discharging duties as the Bank Manager. Thereafter, he was transferred at Jalgaon in the yer 2009 and at Akola in the year 2012. All the branches including the branch at Akola of the said bank were subjected for audit and no irregularities were pointed out. Initially, audit was carried out. However, no objection has been raised regarding transferred amounts in the account of Naina Manatkar. The sanctioning of loan in favour of said Naina Manatkar is also as per the rules. Thus, there is absolutely no material to connect him with the alleged offence. The investigating agency has filed incomplete chargesheet to deprive the applicant from getting benefit of default bail under section 167(2) of the Code of Criminal Procedure. As such, he prays that he be released on bail.

5. The application is strongly opposed by the State on the ground that during investigation, it revealed that the applicant has opened fake loan accounts against fixed deposit accounts in the names of the said societies and taking disadvantage of their original accounts, the applicant, on the ground of renewal, obtained their signatures and opened the fake accounts. The said fact was revealed during the audit

report submitted by auditor Nita Zawar. The Reserve Bank of India also issued a letter to the said bank and directed to lodge First Information Report. The copy of the said letter issued by the Reserve Bank of India is already annexed along with the chargesheet. Thus, there is a *prima facie* material against the applicant. Moreover, the applicant purchased properties in the name of his brother and during investigation it further revealed that there was an entry of Rs.19.00 lacs which came to be transferred by the applicant in the account of his brother Rupesh Shrishrimal. Considering involvement of the applicant in the economic offence, the application deserves to be rejected.

6. The application is strongly opposed by the informant also on the ground that the applicant dishonestly and fraudulently misused the fixed deposit receipts standing in the names of two societies which are old and reputed customers of the said bank. The applicant had opened two fixed deposit loan accounts in the names of the said societies and shown the transaction in these accounts. The applicant has exploited User ID and password of other staff members and misused the same and caused loss to the said bank and prays for rejection of the application.

7. Heard learned Senior Counsel Shri Amol Mardikar

assisted by Advocate Shri V.R.Deshpande for the applicant; learned Senior Counsel Shri Avinash Gupta assisting the prosecution, and learned Additional Public Prosecutor Shri M.J.Khan for the State.

8. Learned Senior Counsel Shri Amol Mardikar for the applicant, submitted that the investigating agency has filed incomplete chargesheet to deprive the applicant from taking benefit under Section 167(2) of the Code of Criminal Procedure. The applicant is arraigned as an accused on the basis of report lodged by the Branch Manager. In fact, the applicant is not beneficiary. The transaction was validated by passing officers. The statements of the passing officers, recorded during the investigation, show non-involvement of the applicant. The applicant was made scapegoat. Now, the investigation is completed and chargesheet is filed and further custody of the applicant is not required.

9. In support of his contentions, learned Senior Counsel Shri Amol Mardikar for the applicant has placed reliance on the following decisions:

1. Mahadeorao Uttamrao Rajurkar and anr vs. State of Maharashtra, through PSO of PS Rajapeth and ors, reported in 2020 SCC OnLine Bom 3648;

2. Ritu Chhabaria vs. Union of India and ors, reported in 2023 SCC OnLine Sc 502;

3. Criminal Application (APL) No.585/2017 (Mahadeorao Uttamrao Rajurkar and anr vs. The State of Mah., thr.PSO of PS Rajapeth, Amravati and ors) decided on 3.12.2020;

4. P.Chidambaram vs. Directorate of Enforcement, reported in (2020)13 SCC 791;

5. Sanjay Chandra vs. Central Bureau of Investigation, reported in (2012)1 SCC 40, and

6. Satender Kumar Antil vs. Central Bureau of Investigation and anr, reported in (2022)10 SCC 51.

10. *Per contra*, learned Additional Public Prosecutor Shri M.J.Khan for the State submitted that the chargesheet is filed against the applicant and the investigation, as far as the role of the other co-accused is concerned, is continued by seeking permission under Section 173(8) of the Code of Criminal Procedure. As far as benefit under Section 167(2) of the Code of Criminal Procedure is concerned, the accused is not entitled to take such benefit after filing of chargesheet and, therefore, the said ground is not available to the applicant. He further submitted that two accounts are fabricated by the applicant. The statements of various witnesses on record sufficiently show involvement of the applicant in the alleged offence. The crime is registered on the basis of report lodged by Dilip Vasantrao Patil, Branch Manager of the said bank. The allegations show that in the years 2017 to 29.2.2020 the account of "Nishant

Multistate Cooperative Credit Society" is having fixed deposit loan account bearing No.172 and the account of "Arihant Multistate Cooperative Society is having loan account No.185. The applicant has opened bogus and fabricated accounts bearing Nos.204 and 256 in the names of the said societies. Out of these loan accounts, amount was transferred in the account of co-accused Naina Manatkar and other customers to the extent of Rs.1,12,25,000/- out of which amount Rs.23.00 lacs were transferred in the bank account of the applicant in Akola District Cooperative Bank bearing No.490412010006325. The amount of Rs.78.00 lacs is credited to the account of Naina Manatkar. The investigation papers further disclose that amount of Rs.34,25,000/- came to be credited in the account of said Naina Manatkar. Thus, the applicant has vital role in the commission of the crime. The offence is in the nature of economic offence. Hence, the application deserves to be rejected.

11. In support of his contentions, learned Additional Public Prosecutor Shri M.J.Khan for the State has placed reliance on the following decisions:

> **1.** Himanshu Chandravadan Desai and ors vs. State of Gujarat, reported in (2005)13 SCC 23, and
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> **2.** Sanjay Dutt vs. State of Maharashtra, decided on 9.9.1994 in Special Leave Petition (Cri) No.1834-25/1994.

12. Learned Senior Counsel Shri Avinash Gupta, who assists the prosecution, has placed on record his written submissions and submitted that the applicant is involved in misappropriation of the amount which is public money. The First Information Report shows details regarding illegal transfers made by the applicant into the accounts of third parties from these bogus loan accounts along with the UTR Numbers. The investigation agency has collected sufficient material to connect the applicant with the crime. The statements of the said bank officials and Chartered Accountants show the manner in which the applicant has used his knowledge being the Branch Manager. The statement of General Manger of the main branch of the said bank shows criminal activities of the applicant. Thus, *prima facie* material is against the applicant to connect him with the alleged offence. Considering the nature of the offence the applicant committed, the application deserves to be rejected.

13. Perusal of the investigation papers shows that the crime is registered on the basis of report lodged by the Branch Manager of the said bank. As far as the allegations against the applicant are concerned, it shows that the applicant has obtained the signatures of the account holders on the pretext of renewal of the loan accounts and opened the fake accounts

bearing Nos.256 and 204 in the names of the said societies. He has transferred the amounts from the said fake accounts in the bank accounts of Naina Manatkar, Avinash Manatkar, Deepak Dighode , and Sawai Ratnakar. The informant has given details in the First Information Report, which shows that the applicant has transferred various amounts from the fake account No.204 in various bank accounts. He further transferred huge amounts by way of RTGS in various bank accounts and caused loss to the said bank to the extent of Rs.3,10,38,000/-. During the investigation, the Investigating Officer recorded various statements and collected the documents. The letter issued by the RBI on 7.7.2022 shows that RBI has directed the said bank to lodge First Information Report immediately and called report from the concerned. The statements of auditors namely Nita Zawar and Rohit Agarwal reflect that they have noted various irregularities. It is observed by them that while withdrawing the amounts, two officers have to pass withdrawal slip. However, the amount is withdrawn by the applicant without obtaining the signature of the passing officers. The auditor further observed that for withdrawing amount more than Rs.10,000/-, cheque is to be obtained. However, the applicant has permitted by signing on withdrawal to withdraw more than Rs.10,000/-. During the audit, she further observed that by changing the spelling of Nishant, the fake account was opened and transaction was carried out by transferring amounts in various accounts. The statement of Rohit Agarwal, who is another Chartered Accountant, also discloses various illegalities and irregularities committed by the applicant. The statements of various employees, working in the said bank, also disclose that the applicant has obtained their User IDs, passwords, and opened the fake accounts and transferred the accounts in various accounts. The statements of Sunita Attarkar, shows connection between the applicant and the other co-accused. The Investigating Officer further recorded statement of Jitendra Jain, Director of “Arihant Multistate Cooperative Society”, who also disclosed that the said society has obtained mortgage loan on fixed deposit. Their loan account is numbered as 185. The applicant obtained signatures on the pretext of renewal of the loan account and opened fake accounts in the name of the said societies and transferred some amounts from the fake account to the various account holders including the accounts of the co-accused.

14. Thus, from the investigation papers, it reveals that the applicant, who was serving as the Branch Manager, by misusing his position, opened the fake accounts and transferred various amounts in his own account and in the account of his

brother and the other co-accused.

15. The submission on behalf of the applicant is that the audit of the said bank is to be carried in view of Section 81 of the Maharashtra Cooperative Societies Act, 1960. If there are some irregularities, the auditor has to file First Information Report. The auditor has not filed any report. In support of his contentions, he has placed reliance in the case of **Mahadeorao Uttamrao Rajurkar and anr vs. State of Maharashtra** cited *supra* wherein it is held that Section 81 of the said act deals with audit. As per the mandate of said Section, the society shall cause to be audited its accounts at least once in each financial year and also cause it to be completed within a period of four months from close of financial year to which such audit has to be done by Auditor or auditing firm from a panel prepared by the Registrar and approved by the State Government or the authority authorized by it in this behalf. It is further held that Section 81 sub Section (5-B) shows that auditor has to submit audit report and first proviso to Section (5-b) shows that where auditor has come to conclusion in his audit report that any person is guilty of any offence relating to the accounts or any other offences, he is under obligation to file specific report to the Registrar within a period of 15 days from the date of submission of his audit report. The said proviso further reads

that concerned auditor after obtaining written permission from the Registrar shall file a First Information Report of the offence. If an Auditor fails to file the First Information Report, he shall be liable for disqualification and his name can be removed from the panel of the Auditors.

16. Another submission, made by learned Senior Counsel for the applicant, is that it is not the rule that bail should be denied in case of economic offence. Basic jurisprudence relating to bail is that bail is the rule and refusal is exception.

In support of his contentions, reliance is placed in the cases of of **P.Chidambaram vs. Directorate of Enforcement** and **Satender Kumar Antil vs. Central Bureau of Investigation** and anr cited *supra* wherein it is held that basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception. A presumably innocent person must have his freedom to enable him to establish his case. He must have an opportunity of seeking a fair trial. Though gravity of offence is an important factor, an economic offence, as in the present case is considered grave, considerations for grant of bail would depend upon facts of each case.

In the case of **Satender Kumar Antil vs. Central Bureau of Investigation** cited *supra* while considering Section 41 and 41A of the Code, the Honourable Apex Court considered the aspect of bail in economic offences and observed that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied.

17. The submission of the learned Senior Counsel Shri Amol Mardikar for the applicant is also that without completing the investigation, chargesheet is filed which is incomplete to deprive the applicant from getting benefit of default bail under section 167(2) of the Code of Criminal Procedure. In support the contention, reliance is placed in the case of **Ritu Chhabaria vs. Union of India and ors** cited *supra* wherein the Honourable Apex Court held that pendency of the investigation, supplementary chargesheets were filed by the Investigation

Agency. The incomplete chargesheets are accepted by the court. A bare perusal of statement of objects strongly indicates that Section 167(2) of the Code of Criminal Procedure was enacted to ensure that the investigating agency completes the investigation within the prescribed time limit, failing which no accused could be detained if they are willing to avail bail.

18. Learned Additional Public Prosecutor Shri M.J.Khan for the State, vehemently submitted that the offence committed by the applicant is grievous in nature.

It is held by the Constitution Bench of the Honourable Apex Court in the case of **Bihar Legal Support Society vs The Chief Justice Of India & anr, reported in (1986)4 SCC 767** that the court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be final arbiter. The crime in which petitioners are involved is very serious involving conspiracy to cheat and defraud public institutions in a systematic manner and the punishment is likely to be severe in the event of conviction. Having regard to the huge amount involved in the systematic fraud, there is a danger of the appellants absconding, if released on bail or attempting to tamper with the evidence by pressuring the witnesses.

As regards the default bail, in view Section 167(2) of the Code of Criminal Procedure, he submitted that right of accused to be released on bail, after filing of chargesheet, is extinguished and in the present case as chargesheet is filed, the applicant is not entitled for any benefit under Section 167(2) of the Code of Criminal Procedure.

19. After going through the rival submissions, first, I would like to deal with submissions regarding right of the applicant to be released on bail as incomplete chargesheet is filed.

20. Section 167(2) of the Code of Criminal Procedure deals with procedure when investigation cannot be completed in 24 hours. It gives a maximum period of time to complete investigation. It gives right to the accused to release him on bail if chargesheet is not filed within 60 or the 90 days. The said Section was enacted and it provides clear mandate that investigating agency must collect required evidence within prescribed time period falling which accused can no longer be detained. The said right is to be availed by accused before filing of the chargesheet.

21. Here, in the present case, the chargesheet is filed against the applicant. Admittedly, the investigating agency seeks permission to continue with the investigation and file supplementary chargesheet in view of Section 173(8) of the Code of Criminal Procedure. A chargesheet is a final report within the meaning of Sub section (2) of Section 173 of the Code of Criminal Procedure. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. Indisputably, the power of investigating officer to make a prayer for making further investigation in terms of Sub section (8) of Section 173 of the Code is not taken away only because a chargesheet under Sub section (2) thereof has been filed. A further investigation is permissible even if order of cognizance of offence has been taken by the magistrate. It is observed by the Honourable Apex Court in the case of **Dinesh Dalmia vs. CBI**, reported in **AIR 2008 SC 78** that the investigating agency is required to complete investigation within a reasonable time. The ideal period, therefore, would be 24 hours, but in some cases, it may not be practically possible to do so. The Parliament, therefore, thought it fit that remand of accused can be sought for in the event of investigation is not completed within 60 or 90 days, as the case may be. But, if the same is

not done within a stipulated period, the same would be detrimental to accused and thus, he, on expiry thereof, would be entitled to apply for bail, subject to fulfilling conditions. Such a right of bail although is valuable right, but the same is conditional one, the condition precedent, being the pendency of the investigation. Whether an investigation, in fact, has remained pending and the investigating officer has submitted a chargesheet only with a view to curtail the right of the accused, would essentially be a question of fact. Such a question strictly does not arise in this case as much as according to the CBI, sufficient material is already available for the prosecution of appellant. According to it, further investigation would be *inter alia* necessary on certain vital points including end use of the funds. It is further held by the Honourable Apex Court that right to bail does not revive only because a further investigation remains pending. The statutory scheme does not lead to a conclusion in regard to investigation leading to filing a final form under Sub section (2) of Section 173 of the Code and further investigation contemplated under Sub section (8) thereof. Whereas, only when a chargesheet is not filed and investigation is kept pending, benefit of proviso appended to Sub section (2) of Section 167 of the Code would be available to an offender, once, however, a chargesheet is filed, the said right ceases.

Such a right does not revive only because a further investigation remains pending within the meaning of Sub section (8) of Section 173 of the Code.

22. Perusal of the chargesheet shows that some accused are absconding and, therefore the said prayer is made by the investigating agency.

Insofar as the applicant is concerned, the investigation is completed, the chargesheet is filed and, therefore, the applicant is not entitled for any benefit to release him on bail under Section 167(2) of the Code of Criminal Procedure. Moreover, the said right is to be exercised prior to filing of chargesheet. As soon as the chargesheet is filed, the right is extinguished.

23. Coming to the merits of the case, there is no dispute that the applicant was serving as Branch Manager. Recital of the First Information Report and various statements recorded during the investigation shows that the applicant, while working as the Branch Manager, opened the fake accounts in the names of the said societies by obtaining signatures of the directors on blank forms and siphoned the public money through the said accounts. The applicant has transferred the loan accounts in the accounts of various account holders including

the account of the co-accused. Thus, the public money of the investors is misused by the applicant.

24. *Prima facie* material shows that the crime is registered on the directions issued by the Reserve Bank of Indian. The various statements further show manner in which the alleged fraud was committed by the applicant.

25. In the case of **Ram Narain Poply vs. Central Bureau of Investigation with Pramod Kumar Manocha vs. Central Bureau of Investigation,** reported **in AIR 2003 SC 2748,** the Honourable Apex Court, in paragraph 382, has observed that, "the cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona non granta whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment passions being aroused. An economic offences upon is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to

administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national Economy and National Interest, as was aptly stated in State of Gujrat vs. Mahanlal Jitamalji Porwal and anr, reported in AIR 1987 1321."

26. The Honourable Apex Court in the case of **Himanshu Chadravadan Desai and ors vs. State of Gujarat** cited reported referring another judgment of the Constitution Bench of the Honourable Apex Court in the case of **Bihar Legal Support Society vs The Chief Justice Of India & anr** cited *supra* observed that the crime in which the petitioners are involved is very serious involving a conspiracy to cheat and defraud public institutions in a systematic manner and the punishment is likely to be severe in the event of conviction. The court was justified in rejecting the bail application.

27. Even, in the case of **P.Chidambaram vs. Directorate of Enforcement** cited *surpa* it s held by the Honourable Apex Court that consideration for grant of bail would depend upon facts of each case.

28. After hearing learned Senior Counsel Shri Amol Mardikar for the applicant; learned Senior Counsel Shri Avinash

Gupta assisting the prosecution, and learned Additional Public Prosecutor Shri M.J.Khan for the State, in view of the catena of decisions and observations of the Honourable Apex Court in the aforesaid decisions, the applicant, who is involved in the misappropriation of public fund and who has caused heavy loss to the said bank, does not deserve to be released on bail and the application deserves to be rejected.

29. In this view of the matter, application is **rejected** and **disposed** of as such.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!