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

CRIMINAL APPLICATION (BA) NO.309 OF 2023

Suvarna Pramod Kokde
Vs.
State of Maharashtra, Through Police Station Officer, Police Station, Wathoda, Nagpur

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

Mr. D. V. Chauhan, Counsel for applicant.
Mr. I. J. Damle, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/06/2023

1. The present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.425/2020 registered with Wathoda Police Station, Nagpur for the offence punishable under Sections 409, 420, 467, 468, 469, 471, 120B read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999. The applicant is arrested on 03.02.2021.

2. As per the allegation, the report is lodged by the auditor who had been appointed by the Assistant Registrar, Co-operative Society, Nagpur to conduct the financial audit of Vishvakarma Gramin Bigar Sheti Sahakari Pat Sanstha, Maryadit Kharbi, Nagpur for the

year 2016-17, 2017-18 and 2018-19. The present applicant is serving as a Cashier in the said Patsanstha. In compliance of the report lodged by the informant, informant has produced all the necessary documents and during the audit of the Patsanstha, he came to know that the Management of the society in collusion with the Manager namely Digamber Yeole and the present applicant had committed the misappropriation to the tune of Rs.2,22,80,710/-. As per the allegations in the First Information Report that the present applicant who was holding the post of Account/Cashier in the said society and as a part of duty to make the entry in the cash book of the incoming cash in the society and obtained the signatures of the President and Vice President of the society in the same. On 03.06.2017 an amount of Rs.88,51,301/- was shown as outstanding however, same was not deposited in the account of society. It was informed by the Management that present applicant went on leave without informing the Management. It is further alleged that the informant requested the Management of the society to ask the present applicant to remain present at the time of inquiry, however, she remained absent and therefore, the Management of the society by passing the resolution held her responsible for duping the amount of Rs.2,22,80,710/- of the society. On the basis of said allegation, the crime is registered against the present applicant.

3. As per the contention of the present applicant, the audit report discloses that the Directors, President as well as Vice President and the Manager of the society are also responsible for the said misappropriation. As a part of his duty she has to obtain the fixed deposit, deposits, pigmy deposits in different schemes. It is alleged against her that she has obtained the commission by obtaining the said deposits however, said commission is received by the society. There is allegation against her that she has prepared the loan forms in the name of the persons who has not obtained the loan and disbursed the said loan to the third person. In fact, she was not assigned with the said work. As per her contention since the date of arrest i.e. from more than two years, she is in jail. She is shouldering the family responsibility. The President and Vice President are already released on bail against whom the similar allegation is made. The other Directors are also released on bail against whom also the similar allegation is made. As far as the allegation against her is concerned, she is not the beneficiary of any misappropriation amount. The Investigating Officer has carried out the investigation and also collected the bank details of her account and it nowhere reveals from the investigation papers that she has received any benefits from the said misappropriation amount. In fact, the beneficiaries who are President and his family members and the said beneficiaries are already released on bail. It is contended that now investigation is

completed and charge-sheet is filed. No purpose will be served by keeping her behind bar and hence, she be released on bail.

4. The said application is strongly opposed by the State on the ground that there is a *prima facie* material against the present applicant to connect her with the alleged offence. The audit report specifically shows that the present applicant is involved in the misappropriation of the amount. During audit report, the Auditor has inspected the cash book and it reveals to him that in the said cash book pencil entries are taken and thus, the applicant is responsible for the said misappropriation. It is contention of the State that considering the huge amount is involved and the *prima facie* material against the present applicant to connect her with the alleged offence, the application deserves to be rejected.

5. Heard learned Counsel Mr. Chauhan for the applicant. He submitted that even the audit report if taken into consideration as it is, general allegation is made against the present applicant, as well as Directors, President and Vice President of the said Pat Sanstha. As per the said audit report, all the office bearers and the employees are responsible for the said misappropriation. He pointed out that in the audit report there are specific allegation against the co-accused Digambar Anandrao

Yeole that he was working as a Manager and he has obtained the various deposits and assured that said deposits would be returned to the investors but he has not handed over or return the same. As far as the allegation against the present applicant is concerned, that she has obtained all the deposits, she has obtained the commission but the said commission is received by the society not by the present applicant. He further submitted that it is alleged that she has prepared the loan applications in the name of some persons but has not disbursed the said loan and disbursed the same to the said third person and thereafter, deposited the amount in the society. Thus, she has assisted to commit the said offence. He invited my attention towards the complaint filed by her long back against the office bearers of the society. The said complaint is dated 19.08.2017, wherein she has alleged that she is serving in the said Pat Sanstha since 2010 and the complaint is lodged against her and the Manager is false. In fact, President and Vice President insisted them for committing the misappropriation as they have not obeyed the same. This false report is filed against them. The said complaint is dated 19.08.2017. He further invited my attention to the aforesaid audit report as also the report leading to the registration of the FIR and submitted that even the contents of the report or the audit report shows that it was the Manager of the society who is responsible for said misappropriation and Directors and Vice President and President are responsible for all the shortfalls or irregularities committed during the day to day affairs of the society. He further submitted that the statements of the witnesses also nowhere shows the present applicant has obtained the applications for loan and disbursed the same to the third person. He submitted that the statements of the witnesses are only to the extent that the loan applications are prepared in their name by the Manager of the society and loan was disbursed to any third person. As far as the allegation against the present applicant is concerned, the statement reflects that it is hearsay material and they have no direct knowledge about the same. He further submitted that applicant is a lady and this aspect is considered by this Court in various orders passed by this Court while releasing them on bail, considering the provision under Section 437 of the Code of Criminal Procedure. He placed reliance on Criminal Application No.928/2021 wherein this Court has considered that the applicant is woman who is in custody since 27.11.2020 and by referring the provision under Section 437, she was released on bail. He further placed reliance on the order passed in Criminal Application No.260/2021 wherein also this Court has considered the provision under Section 437 of Cr. P.C. and observed that "I do not consider it appropriate to minutely examine the material on record or to refer in detail the material available in the charge-sheet, lets some prejudice is caused to the co-accused Rakeshsingh, who is permitted to withdraw the bail application with liberty to apply fresh, if there is no significant progress in trial in the next six months. I have already observed that there is strong *prima facie* case made out against the applicant however a strong *prima facie* case is not an absolute fitter to the exercise of discretion in favour of the applicant, particularly since the applicant is a woman and released the applicant on bail.”

6. He submitted that same analogy is applicable in the present applicant also. The present applicant is lady, offence registered against her is under Section 409, 420, and the Section 3 of the Maharashtra Protection of Interests of Depositors (In Financial Establishment Act, 1999 (MPID Act). He further submitted that now investigation is completed and charge-sheet is filed. The Directors and the President and Vice President are already released on bail. No purpose will be served by keeping the applicant behind bar and hence, she be released on bail.

7. Per contra, learned APP submitted that there is *prima facie* material against the present applicant to connect her with the alleged offence. Huge amount of Rs.2,06,11,106.50/- is involved. He invited my attention towards the audit report and submitted that the audit report shows that the present applicant who was in-charge of the account section as she was serving as

Accountant wherein there was a scoring and the entries were taken by the pencil. The said entries were taken by the present applicant. He further invited my attention towards the statement of one Ajay Malik wherein he has alleged that he was informed that present applicant and Manager has got sanctioned the loan in the name of one Sunil however, said loan amount was not disbursed to the said Sunil but to the third person. In fact, the said Sunil was not alive on the date of the disbursement of the loan. Thus the *prima facie* involvement of the present applicant is established during the investigation. Considering the huge amount is involved, the bail application deserves to be rejected.

8. Having heard both the sides and on perusal of the investigation papers it reveals that the Auditors has lodged the report after he conducted the audit. As per the audit report, on 04.08.2017 the President and Vice President made a complaint against the present applicant and Manger regarding the misappropriation. During the audit report, he has verified the accounts and it reveals to him that some amounts were withdrawn by contravening the provisions by not considering the limitation over the withdrawal of the amount. It further reveals that the Manager has withdrawn the said amount and deposited in the name of some persons. The names of the persons mentioned in the audit report shows that said amount are received by one Purushottam Bele who

is the Present and Neha Bele who is the wife of the President. As far as the allegation against the present applicant is concerned, in the audit report general allegations are made against her that being she was in-charge of the cash or the account section, on verification of the account book it reveals to him that the amounts were withdrawn by affixing the paper on the said account books and institution has not followed the rules and regulation while withdrawing the said amount. General allegation is made against the Administrative Committee as well as President, Vice President, Manager and the Accountant i.e. the present applicant. As far as the allegation that present applicant had made the said pencil entries. The investigation is not carried out whether the said entries were in the handwriting of the present applicant or not. The various statements are also recorded during the investigation, wherein it is alleged that present applicant has prepared the loan accounts in the name of the persons who are dead. Learned APP pointed out the statement of Ajay Rameshchandra Malik however, from his statement it reveals that he has no personal knowledge, the present applicant has prepared the said loan documents and get it sanctioned and disbursed to some third person. In fact, there is specific allegation against the co-accused that he has prepared the said document and disbursed the said loan amount to the third person though one Sunil is already reported to be dead. Thus, from the investigation papers it reveals that, the general allegation is made against the Directors, President and vice President. Similar allegation is made against the present applicant also. During investigation the details of the accounts are also collected by the Investigating Officer and nothing is on record to show that she has received the benefits out of the said misappropriation amount. Now, the investigation is completed and the charge-sheet is filed. The case of the prosecution is based on the documentary material which is a part of the charge-sheet. The applicant is in custody since 03.02.2021. Considering the role attributed to the present applicant her further custody is not required. As far as the economical offence is concerned, the Hon'ble Apex Court has considered this aspect in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation*** reported in ***(2022) 10 SCC 51*** and held that the question for consideration is whether the economical offence should be treated as a class of its own or otherwise. It is further observed by the Hon'ble Apex Court that this issue has already been dealt with by this Court with ***P. Chidambaram Vs. Directorate of Enforcement*** reported in ***(2020) 13 SCC 791,*** after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgements, will govern the field.

9. The Hon'ble Apex Court has reproduced para No. 23 of **P. *Chidambaram Vs. Directorate of Enforcement*** referred supra and observed that:-

> *"23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held 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. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

10. It is held by the Hon'ble Apex Court that the The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not

to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

11. It is further observed by the Hon'ble Apex Court that "we are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge. Therefore, their presence in the custody may not be necessary for further investigation."

12. In view of the observation of the Hon'ble Apex Court here also though huge amount is involved however, considering the role attributed to the present applicant. Now investigation is completed. The charge-sheet is filed. The entire material is in the nature of documentary evidence. The applicant is in custody for considerable period. Considering the role attributed her

further detention would be pre-trial punishment. There is no ground to apprehend that she would not be available for trial or she would be abscond or tamper with the prosecution evidence. Considering the same, and in view of the observation of this Court, in the orders passed in various bail applications referred by the learned Counsel. For all above reasons, the discretion can be exercised in her favour. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant Suvarna Pramod Kokde is hereby released on bail in connection with Crime No.425/2020 registered with Wathoda Police Station, Nagpur for the offence punishable under Sections 409, 420, 467, 468, 469, 471, 120B read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall attend the office of Economic Office Wing as and when required for the investigation purpose.

(iv) The applicant shall not induce, threat or promise any of the witnesses who are connected with the alleged crime.

(v) The applicant shall attend the trial Court on each and every date unless exempted.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate