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

CRIMINAL APPLICATION (ABA) NO.235/2023
Smt.Nayana wd/o Avinash Manatkar
..vs..
State of Maharashtra, thr.PSO PS Ramdaspeth, Akola, at present through Economical Offence Wing, 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 S.P.Bhandarkar, Counsel 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 438 of the Code of Criminal Procedure, the applicant seeks anticipatory 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. 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. 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 in the account of the applicant and other co-accused Deepk Dighode and Sawai Ratnakar. The amounts were transferred in the accounts of the aforesaid persons by RTGS at behest of Rajesh Shrishrimal, the Branch Manager working in the said bank, who is applicant in Criminal Application (BA) No.152/2023, which is also decided by this court today. 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 the applicant. 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 said Rajesh Shrishrimal, the clerk working in the said bank, 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.

3. As per contentions of the applicant, she is well educated and serving as Headmistress of "Smt.Ahilyabai Holkar

Vidyalaya" since last ten years and well reputed in the society. She had saving account, term loan account (closed), and personal loan account in the said bank, and saving account in the State Bank and salary account in ADCC Bank. As per the allegations, co-accused Rajesh Kantilal Shrishrimal has transferred amount of Rs.7,04,63,000/- in her bank account and other several customers. It is further alleged that amount Rs.3,10,38,000/- was transferred in the bank account of her husband. She had already deposited amount Rs.74.00 lacs. She and her husband have never misused the amount which was transferred in her bank account. She is always ready to settle the bank account. Her earlier bail application was rejected, thereafter, her husband committed suicide. It is further her contention that her physical custody is not required for any custodial interrogation. Now, the investigation is almost completed. As such, she be released on anticipatory bail in the event of her arrest.

4. The application is strongly opposed by the State on the ground that the report is lodged on the basis of allegations that co-accused Rajesh was controlling all transactions. He being the Branch Manager, had an access to entire documents, bank accounts, and computer systems of the said bank. The said bank has a scheme of advancing loans referred to as loan

against fixed deposit receipts (for short, "LAFDR"). The said bank advances loan upto 85% of the deposited amount by pledging the original fixed deposit receipts of the said bank as security and in such loan against fixed deposit receipts, the Branch Manager of the Bank was fully empowered to immediately disburse loans. Co-accused Rajesh hatched conspiracy with the applicant and others and has misused this facility by resorting to forgery and fraud and caused enormous loss to the said bank. The illegal transfer of the amounts were made to the accounts of the applicant. The *modus operandi* of the applicant and other co-accused was to illegally and fraudulently transfer huge amount of money from the bogus account Nos.204 and 256 which were opened in the names of the said societies. During the investigation, it revealed that the said societies have their genuine bank accounts bearing Nos.172 and 185 respectively and it had not opened any other additional loan accounts. However, the fake loan accounts were opened and huge amount was siphoned by using fraudulent loan accounts. Thus, *prima facie* evidence shows that the applicant has accepted the entire liability of depositing Rs.6.5 crores with the said bank. She had undertaken to deposit Rs.2.00 crores on or before 28.2.2023 which is not complied with. Now, the chargesheet is filed in respect of other two co-accused who are in custody. The custodial interrogation of the applicant is required to ascertain the complete truth of the matter and her involvement. Hence, the application deserves to be rejected.

5. 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. Said co-accused Rajesh Shrishrimal had opened two fixed deposit loan accounts in the names of the said societies and shown the transaction in these accounts. He 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.

6. Heard learned counsel Shri S.P.Bhandarkar for the applicant, learned Senior Counsel Shri Avinash Gupta assisting the prosecution, and learned Additional Public Prosecutor Shri M.J.Khan for the State.

7. Learned counsel for the applicant submitted that as far as the role of the applicant is concerned, it is alleged that she is beneficiary and co-accused has transferred some amounts in her bank account. The entire role of transfer of amount of the said bank is attributed to the co-accused. She

has already deposited Rs.74.00 lacs. As far as allegations, regarding conspiracy is concerned, there is no direct material to connect her with the alleged offence. Her physical custody is not required and she be released on anticipatory bail.

8. *Per contra*, learned Additional Public Prosecutor Shri M.J.Khan for the State submitted that recital of the First Information Report shows that the applicant and her husband, who were having their bank accounts in the said bank, by joining hands with the co-accused, hatched conspiracy and the co-accused transferred various amounts in the bank accounts of the applicant time to time. The informant has narrated the details which show that amount Rs.3,10,38,000/- was transferred in the bank account of the husband of the applicant. Whereas, from the fake bank account bearing No.204 amount Rs.74.00 lacs was transferred to the bank account of the applicant. The various statements, recorded during investigation, including the said bank employees, show that the applicant and her husband used to visit the said bank and used to have discussion with co-accused Rajesh Shrishrimal who was the Branch Manager of the said bank at the relevant time. He further submitted that amount Rs.34,25,000/- came to be credited in her bank account in the State of India, Telhara Branch. During the investigation, it further revealed that one

customer, who was having LAFDR Account, namely Pramila Gole, who has obtained loan Rs.4,50,000/-, has repaid the amount. However, her bank account was not closed, but in connivance with the said bank Manager the debit entry was taken in the said bank account of Rs.8.00 lacs and the said debit amount came to be credited in the bank account of the applicant. Thus, the applicant had received amount Rs.8.00 lacs illegally. It further revealed in the investigation that the applicant, through her employee Rajendra Singh Thakur, obtained home loan for purchasing flat and, thereafter, the said amount was repaid partially by cheque and partially obtaining the amount from the account of Shri Deepak Dighode. Thereafter, she got transferred the said flat in her own name. Thus, she is involved in doing various amounts from the various LAFDR Accounts of the other persons in the said bank for her personal monetary gain. Thus, there is *prima facie* material against applicant.

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

1. P.Chidambaram vs. Directorate of Enforcement, reported in (2019)9 SCC 24;

2. Nimma Gadda Prasad vs. CBI, reported in

(2013)7 SCC 466, and

3. Ramesh Kumar vs. The State of NCT of Delhi, reported in 2023 LiveLaw (SC) 496.

10. Learned Senior Counsel Shri Avinash Gupta, who assists the prosecution, has placed on record his written submissions and submitted that the amount misappropriated is public money. The First Information Report shows details regarding illegal transfers made by co-accused Rajesh Shrishrimal 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 co-accused Rajesh Shrishrimal 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 said co-accused. Thus, *prima facie* material is against the applicant to connect her the alleged offence. Considering the nature of the offence the co-accused along with the applicant committed, the application deserves to be rejected.

11. 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 co-

accused Rajesh Shrishrimal are concerned, he 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 the applicant, Avinash Manatkar, Deepak Dighode , and Sawai Ratnakar. The informant has given details in the First Information Report, which shows that the co-accused 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 co-accused without obtaining the signature of the passing officers. The auditor further observed that for withdrawing amount more than Rs.10,000/-,

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cheque is to be obtained. However, the co-accused 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 co-accused Rajesh. The statements of various employees, working in the said bank, also disclose that the said co-accused 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 said co-accused and the applicant. 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 said co-accused 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 applicant.

12. Thus, from the investigation papers, it reveals that

the applicant, who was customer of the said bank, had her bank account in the said bank in the name of her firm. Recital of the First Information Report shows that her husband was proprietor of Suman Auto Services and having loan account in the said bank. It further revealed during the investigation that co-accused Rajesh has opened the fake accounts in the names of the said societies bearing Nos.204 and 256. The amount of Rs.3,10,38,000/ was transferred in the account of the husband of the applicant through RTGS on various dates. The amount of Rs.74.00 lacs was transferred to the bank account of the applicant through the loan account number 204 which was not genuine account. It further reveals that the applicant along with her husband used to visit the Branch Manager and their association is witnessed by the said bank employees. It further reveals that amount Rs.8.00 lacs was shown to be debited in the bank account of one Pramila Gole and the said amount was credited in the bank account of the applicant. The applicant, through her employee, obtained loan and by transferring the amount from bank account of co-accused Deepka Dighode, the said loan account shown to be satisfied. Thus, there were several illegalities by the co-accused with the help of the applicant. It further reveals from the investigation that the applicant was instrumental in handling the said bank accounts and other financial transactions with the help of the co-accused. The applicant has given an undertaking to the said bank by which she accepted the monetary liability to the extent of Rs.6.5 crores. The specimen handwriting of the applicant and her specimen signatures are required to be obtained and, therefore, her custodial interrogation is required. Admittedly, she has deposited amount Rs.74.00 lacs in the said bank. As far as depositing of the amount is concerned, it appears from the investigation papers, she had accepted the liability of Rs.6.5 crores. Whereas, the amount deposited is only Rs.74.00 lacs. As observed by the Honourable Apex Court in the case of Ramesh Kumar vs. The State of NCT of Delhi cited *supra,* In the context of grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of investigation/trial and safety of the community assume relevance.

13. Here, allegations against the applicant is regarding involvement in the economic offence. The investigating papers show that the public money was siphoned by the co-accused with the help of the applicant and other co-accused. The power exercisable under Section 438 of the Code is somewhat extra ordinary in character and it is only in exceptional cases where it appears that a person may be falsely implicated or where there

are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misused his liberty, then power is to be exercised under Section 438 of the Code. The object which is sought to be achieved by Section 438 of the Code is that the moment the person is arrested if he has already obtained an order from the court of sessions or high court, he shall be released immediately on bail without being sent to the jail.

14. Recently, the Honourable Apex Court in the case of P.Chidambaram vs. Directorate of Enforcement cited *supra* held that though object of Section 438 of the Code of Criminal Procedure is to safeguard personal liberty of an individual, delicate balance is required to be established between the two rights i.e safeguarding personal liberty of an individual and societal interest and that grant of anticipatory bail particularly in economic offences hampers effective investigation. It is further held that power to grant anticipatory bail being an extra ordinary power has to be exercised sparingly, more so, in cases of economic offences. Such bail must be granted only in exceptional cases after application of mind in relation to nature and gravity of accusation, possibility of applicant fleeing justice and other factors. The powers are to be evoked where the cases alleged to be frivolous or groundless.

15. In the case of **State of Gujrat vs. Mahanlal Jitamalji Porwal and anr**, reported in **AIR 1987 1321** it is held that the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence 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.

16. Thus, in view of the observations of the Honourable Apex Court, Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country. While considering the application for anticipatory bail, one has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of punishment which

conviction will entail, the character of accused, circumstances in which the offence is committed, and the larger interest of the public etc..

17. In the present case, in a very systematic manner, the co-accused and the applicant, by opening the fake bank accounts in the names of the credit societies siphoned the amount which is a public money by transferring the same in the account of the applicant and other co-accused. This indicates the systematic plan of the applicant along with the co-accused and defrauded the said bank which resulted into the heavy loss to the said bank and, therefore, this is not a fit case in which discretion can be used in favour of the applicant and, therefore, protection under Section 438 of the Code of Criminal Procedure cannot be granted.

18. For all the aforesaid reasons, the application deserves to be rejected and the same is rejected.

The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

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