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

CRIMINAL APPLICATION (BA) NO.469 OF 2023
(Kishor s/o Abhiman Bakal Vs. State of Maharashtra)

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

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Shri D.V. Chauhan, Advocate for the applicant.
Shri I.J. Damle, APP for State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : JULY 03, 2023.
PRONOUNCED ON : JULY 07, 2023

Heard.

2. Present application is filed by the applicant for grant of bail under Section 439 of Code of Criminal Procedure.

3. The applicant is arrested on 04/02/2022 in connection with Crime No.05/2020 registered at police station Bhadrawati, District Chandrapur for the offence punishable under Sections 420, 467, 468, 471 of the Indian Penal Code. Since the date of arrest the applicant is in jail.

4. As per the contention of the applicant since 2002 he was working as a Cashier with the Bank of Maharashtra. The applicant being the Government Officer is having an unblemished and clean service record during his entire tenure. There was no criminal antecedents against him and he belongs to well reputed family.

5. The crime is registered against him on the basis of report lodged by the Branch Manager of the Bank of Maharashtra, Branch Bhadrawati, District Chandrapur namely Prabhanjan Pranbandhu Barik. The present applicant came to be appointed on compassionate ground at the post of Cashier in the year 2002. He was assigned with the work of deposit and withdrawal of the amounts in Savings, Pensions and other accounts. It is alleged that, from 01/11/2010 to 12/07/2016, the present applicant misusing his position and putting fake signature and thumb impressions of the 39 pension account holders had withdrawn amount of Rs.37,82,400/- from the said accounts, similarly, unauthorizedly deposited an amount of Rs.2,26,450/- of several Niraadhar Account holders to other accounts. Thus, it is alleged that he had duped the bank for total amount of Rs.40,08,850/-. As per the allegation, the applicant paid the amount of Rs.2,22,840/- and caused loss to the bank of the remaining amount. On the basis of said report, crime is registered against the present applicant.

6. Initially, the applicant has filed the application for bail which came to be rejected by the learned Magistrate as well as the Sessions Judge. Now investigation is completed and charge-sheet is filed. As per the contention of the applicant charge is framed against him and the prosecution has examined seven witnesses. The prosecution is intending to examine more 10 witnesses. He is in jail since 04/02/2022.

7. As per the contention of the applicant, though Handwriting Expert opinion and Fingerprint Expert opinion is received which is negative. The oral evidence on which the prosecution relied upon is also not supporting. The trial will take its own time for its final disposal, hence he be released on bail. It is contended by the applicant that no purpose will be served by keeping him behind the bar.

8. Said application is strongly opposed by the State on the ground that there is *prima facie* material against the present applicant. The audit report shows that the applicant has misappropriated the amount from the account holders of the bank. The audit report reveals the illegality carried out at the branch Bhadrawati in the Bank of Maharashtra during the period from 01/11/2010 to 12/07/2016. The applicant has prepared and fabricated bogus withdrawal slips of the deceased account holders, public pensioners and also, from account holders of beneficiaries of various Government Schemes. The applicant had legally withdrawn and misappropriated an amount of Rs.40,08,850/. Out of which the bank has recovered an amount of Rs.2,22,840/, therefore, an amount of Rs.37,86,000/- is yet to be recovered from the applicant. The applicant has committed serious offence. The investigating agency has carried out the investigation and filed the charge-sheet against the present applicant. The investigating agency also recorded the statements of various witnesses which discloses the involvement of the

present applicant. The investigating agency has also collected the fake and bogus withdrawal slips prepared by the applicant for withdrawing the money. Thus, there is *prima facie* material against the present applicant to connect him with the alleged offence. Considering the same, application deserves to be rejected.

9. Heard Shri D.V. Chauhan, learned counsel for the applicant. He submitted that the applicant was Cashier and his entire service was unblemished. The applicant is arrested on an allegation that while he was working as a Cashier in the Bank of Maharashtra, Branch Bhadrawati, District Chandrapur, he has misappropriated the amount by misusing his position and putting fake signatures. The investigation was carried out and the charge-sheet is filed against the present applicant. The investigating agency has collected various documents including withdrawal slips, specimen signatures of the present applicant and forwarded it to the Handwriting Expert. Now, the opinion of the Handwriting Expert is received which is negative and not connecting the present applicant. The thumb impressions and finger prints of the applicant was also obtained and forwarded to the Expert. Now the Expert opinion is received which is also negative. The charge was framed against the accused and the Prosecution has examined in all seven witnesses. The prosecution is intending to examine 10 witnesses. Considering the same, there is no possibility of conclusion of trial in near future.

10. Learned Counsel further submitted that during investigation, the Investigating Officer has recorded the statement of Mohammad Tarbej Mohd. Qadir Sheikh as Prosecution Witness No.1 who has not supported. Thus, the evidence of material witness is not supporting. He further submitted that the prosecution has also adduced the evidence of informant. The cross-examination of this witness shows that the applicant was able to pass withdrawal of Rs.20,000/-. For withdrawing more than Rs.20,000/- Superior Officer has to verify and has to complete the transaction. The cross-examination further shows that the specimen signatures and thumb impressions of the account holders are available in a soft copy in a bank. The informant further admitted that all the transactions carried out by the applicants are with the permission of his Superior Officer. Learned Counsel submitted that this evidence sufficiently shows that *prima facie* case is not made out against the present applicant. Considering the oral evidence and the Expert opinion which is not supporting to the prosecution case, the applicant be released on bail.

11. *Per contra,* learned Additional Public Prosecutor submitted that the prosecution has to adduce the evidence by examining 10 more witnesses. The crime is registered in the year 2020, however the applicant is arrested on February, 2022. The applicant was absconding. There is *prima facie* material against the present applicant which shows the involvement of the present applicant. He

further submitted that considering the public money is involved and the applicant has misappropriated the public money, the application of the applicant for bail deserves to be rejected. He further submitted that the applicant has misappropriated huge amount by misusing his position. The Auditor has ascertained certain discrepancies and illegalities. The applicant has withdrawn the aforesaid amount from 30 account holders account who are beneficiaries of various Government Schemes. The applicant has also withdrawn the aforesaid amount from nine account holders who are dead. Thus, considering the gravity of the offence, the application of the applicant deserves to be rejected.

12. Having heard both the sides and after perusal of the investigation papers, it reveals that the applicant is in jail since 04/02/2022. It is also apparent that charge is already framed and 7 witnesses are examined. The Prosecution is intending to examine 10 more witnesses. It is further apparent from the record that the entire prosecution case is based upon the documentary evidence. The Investigating Officer has seized the withdrawal slips and obtained the specimen handwriting of the present applicant. The incriminating documents and the specimen handwriting was forwarded to the Handwriting Expert. The opinion of the Handwriting Expert is received and as per the said opinion in absence of sufficient identifying characteristics for comparison, it has not been possible for the Handwriting Expert to express a definite opinion

regarding the authorship of the enclosed signatures, marked as Exhibits Q1 and Q2. When compared with the enclosed signatures marked at Exhibits S1 to S6 and N2 to N5 and N9, N10, N12, N13, N17 and N19 etc. The Handwriting Expert opinion further shows that the enclosed writing marked as Exhibit Q11 when compared with the enclosed writings marked at Exhibit is S37 to S42 and N2, N3, N4, N5, N9, N10, N12, N13, N17 and N19 and N21 to N27. Thus, it is apparent that this Expert opinion is not much helpful to the prosecution to prove the charges against the accused.

13. As per the allegation, the accused has prepared fabricated bogus withdrawal slips of the diseased account holders and Pensioners and also from account holders of beneficiaries of various Government Schemes (Niradhar Yojana), the applicant had illegally withdrawn and misappropriated an amount of Rs.40,08,850 out of which bank has recovered Rs.2,22,840/-. Thus, an amount of Rs.37,86,000/- is yet to be recovered. Thus, it is alleged that out of 30 accounts of senior citizens, most of them have expired and their accounts are used by the present applicant and misappropriated the amount. Admittedly, the prosecution has adduced the evidence of the persons in whose account the amount was deposited by the present applicant and misappropriated the said amount. Out of them Mohammad Tarbej Mohd. Qadir Sheikh is examined by the Prosecution who has not supported the prosecution case.

14. The informant is also examined and the admission during his cross-examination shows that the applicant is unable to pass the withdrawal more than Rs.20,000/- without the consent of Superior Officer. Admittedly, this Court cannot appreciate the evidence at the stage, but it can be looked into. As far as the evidence adduced by the Prosecution is concerned, at this stage the Prosecution could not adduce the evidence to prove the guilt of the accused. However yet Prosecution has to examine 10 more witnesses. Considering the serious allegation against the present applicant that he has used the accounts of dead account holders to misappropriate the amount and also misappropriated the amount subsidies which is reserved for Poor Strata of the society including Niraadhar Yojana.

15. Considering the gravity of the offence, earlier bail applications are rejected. Learned Counsel for the applicant submitted that now there is change in circumstance and only seven witnesses are examined, the Prosecution will take its own time to examine the 10 witnesses. As the Handwriting Expert opinion and Fingerprint Expert opinion is not supporting the prosecution case, the applicant be released on bail. However, though Expert opinions are not supporting the prosecution, but prosecution has yet to adduce material evidence. If the applicant is released on bail there is possibility of tampering of the witnesses. Moreover, the

public money is misappropriated by the applicant as per the allegation.

16. In view of that, the application deserves to be rejected by expediting the trial. Accordingly I proceed to pass the following order :

(i) The application is rejected.

(ii) The trial before the Judicial Magistrate First Class, Bhadrawati, District Chandrapur shall expedite by examining the witnesses on day to day basis and shall conclude the trial within six months.

(iii) The parties to cooperate the Judicial Magistrate to conclude the trial within above said period.

(URMILA JOSHI-PHALKE, J.)

**Divya*