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

CRIMINAL APPLICATION (BA) NO.735 OF 2023
(Sunil Mohanlal Gandhi 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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Mr. S.V. Sirpurkar, Advocate for the applicant.
Ms. T. Udeshi, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : DECEMBER 01, 2023.
PRONOUNCED ON : DECEMBER 11, 2023

Heard.

2. 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.63/2023 registered at police station Borakhedi, District Buldhana for the offence punishable under Sections 420, 409, 465, 468 and 471 read with Section 34 of the Indian Penal Code.

3. The applicant is arrested on 6th February, 2023 and since then he is in jail.

4. The accusation against the present applicant is that he is the employee of Buldhana Urban Co-operative Credit Society, Kothali branch. As per the allegations from 09/06/2021 to 09/06/2022, the present applicant and accused persons by misusing their official positions have issued forged fixed deposit receipts to 55 customers of Kothali branch and instead of depositing the said amount

in the society had deliberately misappropriated said amount for their own benefit and caused loss to the said society worth of Rs.1,37,59,500/-. After receiving the complaints from depositors on 04/07/2022, the society conducted flying squad raid on Kothali branch. On enquiry conducted by the society it was found that by issuing forged receipts accused have committed criminal breach of trust. By resolution dated 24/09/2022, it was resolved in the meeting by the body of society that a criminal action should be taken against the applicant and other accused persons. The Chairman of the society with a view to protect the reputation of the society has paid Rs.1,41,27,999/-. On the basis of report of regional manager of the said society of the Malkapur region, present crime came to be registered against the present applicant and other accused persons.

5. Learned Counsel for the applicant submitted that the applicant was arrested on 6th February, 2023. Now, investigation is completed and charge-sheet is filed. He further invited attention towards the recitals of the First Information Report and submitted that at the time of lodging the report on 07/10/2022, the applicant was not named in the FIR or the Fixed Deposit receipts bears the signatures of co-accused Satish Rathi. Present applicant was Manager at the relevant time. In the FIR entire allegations are against the Satish Rathi. The statements recorded also shows the involvement of the co-accused Satish Rathi. Now, investigation is completed and charge-

sheet is filed. Further custody of the present applicant is unwarranted. The applicant is from the respectable family and will abide by all the conditions imposed by the Court.

6. He placed his reliance on ***P. Chidambaram Vs. Central Bureau of Investigation [(2020) 13 SCC 337]*** and ***Sanjay Chandra Vs. Central Bureau of Investigation [(2012) 1 SCC 40]*** and submitted that in view of both the decisions of the Honorable Apex Court wherein the bail is granted to the accused who are involved in the economic offence. Present applicant though implicated in the economic offence no direct role is attributed to him and hence he be released on bail.

7. *Per contra,* learned Additional Public Prosecutor for the State submitted that the brief facts of the prosecution case shows that the complainant in his report narrated that Buldhana Urban Co-operative Credit Society having its 17 branches within Malkapur division and one of the branch is situated at Kothali, Taluka Motala, District Buldhana. Present applicant who was Branch Manager of the said Credit Society branch at Kothali along with the bank employees Madhukar Sawale and Satish Rathi during the period from 09/06/2021 to 09/06/2022 accepted the amount of Rs.1,37,59,500/- from 55 depositors for getting said amount deposits in the fixed deposit as per agreed terms interest thereof. In case of 23 depositors, total amount came to be deposited to the extent of Rs.72,45,000/-. Thus, the applicant and other

co-accused have only deposited 10% of the said amount showing towards fixed deposit to the extent of Rs.7,24,000/-. Rest of the amount Rs.65,20,500/- came to be misappropriated by the accused persons. It is further alleged that 32 depositors have deposited total amount of Rs.72,39,000/- towards fixed deposit and the forged receipts were given to them. During investigation, Investigating Officer found involvement of total 15 accused and out of them only 8 accused persons are arrested and 6 out of them were released on bail and rest of the 4 accused are still behind bar. She further submitted that during investigation, it reveals that the *modus operandi* adopted by the accused persons involved in the offence was that the entire transaction came to be done manually without using computerized accounting system which was established at the branch. No computer entries were made by the present applicant and accused No.2 - Madhukar Sawale and accused No.3 - Satish Rathi and were directly taking money from depositors for Fixed Deposit in the society and handwritten fixed deposit certificate are issued to the respective depositors and thereafter they have adopted *modus operandi* directly utilized said amount and have misappropriated the said amount without showing entries in the fixed deposit account of the bank in their name. As far as the role of the present applicant is concerned, she submitted that the present applicant used to direct the Cashier to directly received the said amount of fixed deposit and to pay to the persons named by accused No.1 i.e. the present applicant. When the Cashier refused to do in terms as directed by the present applicant, he used to threaten the said employee that being a subordinate employee he has to follow his orders. The Cashier has also maintained the register whereby he has taken entries of cash receipts towards fixed deposits as well as maintained the entry of debit with the amount given to him by the applicant and directed by the applicant. Said register came to be seized. Thus, the role of the present applicant is that he has directed the subordinate employees to obtain the amount and issue the forged receipts. Not only this, the total amount of Rs.3,50,000/- is transferred to his account and the applicant himself has withdrawn the same. It further reveals that the present applicant has approved the illegal transaction by using his login. On 09/06/2021, from the savings account of Accountant Shankar Kisan Tayade, the amount of Rs.10,00,000/- was supposed to be deposited in the fixed deposit account but without doing so Rs.1,00,000/- FD was deposited in the account. The remaining amount of Rs.9,00,000/- was deposited in the account of accused No.4 – Narayan Rabde. While transferring the said amount, the login used is of accused Satish Rathi and present applicant has approved the said transaction. In the similar manner, various such transactions are carried out by using his login ID. Thus, she has submitted that considering the nature of the transactions, the present applicant has played a vital role in commission of the crime and wrongfully gained the amount by transferring to his account and to other accounts. Thus, the applicant is the beneficiary of the misappropriated amount of the fixed deposits and therefore, the application deserves to be rejected.

8. In support of her contention, she placed reliance on ***Y.S.Jagan Mohan Reddy Vs. CBI, [(2013)7 SCC 439]***.

9. After hearing the learned Counsel for the applicant and learned Additional Public Prosecutor for the State. On perusal of the investigation papers, it reveals that the present applicant was serving as a Manager at the relevant time. During his tenure between 09/06/2021 to 09/06/2022, total misappropriation of Rs.1,37,59,500/-. The report is lodged after the flying squad has conducted a raid on the Kothali branch on receiving the complaint. To the flying squad during the raid it was revealed that not only the amount was misappropriated but the forged receipts were also issued to the depositors. Therefore, the report was lodged. After initiation of the investigation, it revealed that the present applicant is the key person who directed his subordinate employees to accept the amount in cash and without taking the computerized entry issued the forged receipts. Said entries are approved by the present applicant. It further revealed during the investigation that after going through the entries of the transactions, it is found that the salary of the present

applicant is only Rs.29,025/- and his account number is 23/5634 wherein during 01/01/2021 to 31/07/2022 he made a transactions of Rs.43,60,363/- and in another account No.23/3389 there are transactions of Rs.13,71,729/-. The copy of the charge-sheet which is produced before this Court from which it reveals that the statements of various bank employees are recorded. The statements of various bank employees are recorded including Sanjay Dnyandeo Tekade, Amol Bharat Khande, Shrikrushna Vitthal Kinange and others from which it reveals that it was the present applicant who directed the Cashier to receive the said amount of fixed deposit and to pay the persons named by him. When the Cashier refused to do the same as directed, present applicant used to threaten him that if he denies to obey his direction, he would be transferred at a long distance. The Cashier has maintained the register which was seized during the investigation. The Cashier has maintained the register by making the entries of debit mentioning the amount given to him and mentioning the names to whom the amount was given by him. The Investigating Officer has seized the said register. Thus, the role of the present applicant is not only he approved the transactions but he was actively involved in the misappropriation by directing the employees. The amount of Rs.3,50,000/- transferred to his account and he himself has withdrawn the same. It further revealed during the investigation that 23 depositors have deposited the amount of Rs.72,45,000/- but the amount of Rs.7,24,000/- was only shown in the fixed deposit which is the 10%. Rest of the amount of Rs.65,20,500/- was misappropriated. It further reveals from the investigation that the applicant has approved various such transactions by using his login ID. Thus, the applicant was not only having full knowledge that he is illegally misappropriating the amount, but he is the beneficiary of the said amount. Thus, *prima facie* case is made out against the present applicant.

10. Learned Counsel for the applicant placed reliance on ***P. Chidambaram Vs. Central Bureau of Investigation*** *(supra)* wherein by referring the various judgments, the Hon'ble Apex Court has held that the appellant is not a "flight risk" and in view of the conditions imposed, there is no possibility of his abscondence from the trial. The Hon'ble Apex Court further held that the statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his further influencing the witnesses cannot be the ground to deny bail and release him on bail. He further placed reliance on ***Sanjay Chandra Vs. Central Bureau of Investigation*** *(supra)* wherein it is held that even if the allegations is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial.

11. Admittedly, at the stage of granting bail, an elaborate examination of the material which is collected during the investigation and detailed reasons touching the merits of the case, which may prejudice accused should be avoided, but there is a need to indicate the reasons why the bail is not granted. The evil of economic offences like money laundering, and its adverse impact on the society and citizens is to be taken into consideration.

12. *Prima facie* on the basis of allegations levelled against the present applicant which shows that the applicant is the key person who directed his employees to accept the amount in cash and issued the forged fixed deposit. The cash amount deposited by the Investors is misappropriated by using the position in the Bank. Thus, it reveals that the public money is on stake which was misappropriated by the present applicant by misusing his position.

13. In the backdrop of the material collected during the investigation, it reveals that huge amount of the investors which is a public money is misappropriated by the applicant and the applicant is the beneficiary.

14. It is well settled position of law that jurisdiction to grant bail has to be exercised having regard to the facts and circumstances of cases. The factors to be taken into consideration are; 1) the nature of accusations and severity of the punishment; 2) reasonable apprehension of tampering with witnesses; 3) reasonable

possibility of securing presence of accused, and 4) character, behaviour and standard of accused.

It is well settled that each case has to be considered on its own merits.

15. In the present case, considering the nature of the crime, the amount involved and the nature of the offence which is an economic offence wherein the public money is involved. The learned Additional Public Prosecutor rightly placed reliance on the decision of the Hon’ble Apex Court in the case of ***Y.S.Jagan Mohan Reddy vs. CBI, [(2013)7 SCC 439]*** wherein while dealing with offence, involving conspiracy to commit economic offences of huge magnitude, the Hon’ble Apex Court laid down following parameters:

> i) economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country, and
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> ii) while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the

character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other similar considerations.

16. The Honourable Apex Court, in the case of ***State of Gujarat vs. Mohan Lal Jitamalji Porwal, [(1987)2 SCC 364]*** held as follows:

> *"5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. 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….."*

17. Considering the role of the present applicant in the crime, having involved the economic offence, who betrayed the trust of the poor investors, the investigation

revealing the manner in which several investors are duped and the public money is at stake, the role of the present applicant is clearly exposed.

18. In the background of the accusations and its gravity, the applicant is not entitled for being released on bail, and therefore, the application deserves to be rejected and the same is rejected.

19. The observations made above are *prima facie* in nature, on the basis of material collected during the course of the investigation, and shall not be taken as findings recorded relating to the alleged offence.

20. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*