



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 2362 OF 2023

Waryam Singh Kartar Singh ..Applicant
VS.
The State of Maharashtra and anr. ..Respondents

Mr. Ashok Mundargi, Senior Advocate a/w Mr. Subir Sarkar
i/b Foram Vora, for the Applicant.
Mr. S. H. Yadav, APP for the State.
PI- Suresh Padvi, EOW, Mumbai present.

CORAM : M. S. KARNIK, J.

DATE : 01st FEBRUARY, 2024

ORAL JUDGMENT :

1. Heard Shri Mundargi, learned Senior Advocate for the appellant and Shri Yadav, Learned APP appearing for the State.
2. This is a second application for bail by the applicant- Waryam Singh Kartar Singh in this Court. The earlier application being Bail Application No. 800 of 2022 was rejected on merits by this Court vide order dated 21/02/2023. Having regard to the gravity of the accusations against the applicant, before I proceed to consider this application on the grounds now raised, it is expedient to

reproduce the earlier order dated 21/02/2023 for ease of reference and to appreciate the magnitude of this serious economic offence alleged which reads thus:

“1. Heard learned counsel for the applicant, learned APP and learned counsel for the intervener.

2. This is an application for bail in respect of C.R.No. 86 of 2019 dated 30/09/2019 registered with EOW, Banking Unit-II, Mumbai Police Station for the offences punishable under sections 406, 409, 420, 465, 467, 468, 471, 477, 201, 120-B of the Indian Penal Code, 1860 (“IPC”, for short) and under sections 46(I) and 47(A) of the Banking Regulation Act, 1949.

3. The FIR is dated 30/09/2019. The FIR initially was registered with Bhandup Police Station which has since been transferred to Economic Offences Wing, Banking Unit-II, Mumbai. The Bank in question is ‘Punjab and Maharashtra Co-operative Bank’ (‘PMC Bank’, for short). There are 44 accused in all. The applicant is the accused no.4. The applicant at the relevant time was the Chairman of the PMC Bank. On a complaint lodged by Jasbir Singh Matta, Manager of the Recovery Cell of PMC Bank, the alleged offence which involves financial fraud to the tune of Rs.4635 Crores came to be registered.

4. Briefly stated, it is alleged that PMC Bank had sanctioned loans without following due procedure and without adequate security, in favour of Housing Development and Infrastructure Limited (“HDIL”, for short). The accused nos. 1 and 2 are the Promoters and Directors of HDIL who obtained these loans. The accused no. 3 is the Managing Director of PMC Bank who is alleged to have been aware all through out of these procedural irregularities committed by PMC Bank while sanctioning the loans. Though he was duty bound to bring to the notice of the concerned the said irregularities which he was well aware of, the same was never brought to the notice of the regulators.

5. Against the applicant i.e. accused no. 4, it is alleged that there has been deliberate dereliction in his duty and failure on his part as a Chairman in preventing the

perpetration of financial fraud that was committed thereby putting the savings of around 9 to 12 lakhs depositors to peril. The argument is that the applicant was not only aware of the irregularities but actively facilitated them given his close proximity with accused no.1. It is alleged that loans were given to one group of companies of which accused nos. 1 and 2 were the main beneficiaries and that as many as 21049 fictitious loan accounts were created to route the loan transactions.

6. After filing of the charge-sheet, 4 supplementary charge-sheets have been filed. The investigation is complete. It is contended that the offence under Prevention of Money Laundering Act, 2002 also has been registered against the accused and further investigations are on-going. The charge-sheet runs into 4900 pages and there are additional 50,000 pages which are to be relied upon during the trial as per the submission of learned counsel for the applicant. The number of witnesses is more than 400.

7. Considering the allegation against the applicant who was mainly tasked to supervise the general working of the Bank, learned counsel for the applicant submitted that the Managing Director in his letter addressed to the Reserve Bank of India has clearly stated all the loan accounts were sanctioned at his behest and none of the Directors are responsible. Learned counsel submitted that as many as 39 persons which include the Directors and Bank officials have been released on bail. He submits that the role of the applicant is not greater than that of the Directors who are released on bail and on ground of parity, the applicant be released on bail. It is the further contention of the learned counsel for the applicant that the applicant is 73 years of age and therefore this is also a factor which should guide this Court while exercising discretion in favour of the applicant. It is submitted that there is no allegation about the applicant being a beneficiary. It is further submitted that now the intervener i.e. Unity Small Finance Bank Ltd. has taken over the operation of the PMC Bank and therefore the interest of the depositors is secured.

8. Learned APP and learned counsel for the intervener-Unity Small Finance Bank Ltd. opposed the application and submitted that the dereliction of the duty on the part of the applicant is willful and deliberate. It is urged that

the materials in the charge-sheet clearly indicate the complicity of the applicant and that in his capacity as a Chairman, the applicant has taken an active part in commission of the financial fraud. According to them, this is not a case of mere omission in the discharge of his functions.

9. Heard learned counsel. The charge-sheet from page 222 onwards of the paper-book reveals the role of the applicant reading thus:

“1. He was earlier served on various HDIL associated companies as Director having long association with Patriarch of HDIL i.e. Accused Rakesh Wadhwan. He became Chairman of PMC Bank in the year 2015. He along with other accused persons namely Joy Thomas (A-3) of PMC Bank. Accused executives of HDIL Rakesh Wadhwan and Sarang Wadhwan with a common intention and meeting of mind and nurturing MENS REA with Managing Director accused person Joy Thomas (A-3) in order to cause a wrongful gain to accused executives of HDIL namely Rakesh Wadhwan and Sarang Wadhwan hatched a criminal conspiracy and to accomplish the said goal concealed material position of long pending/ outstanding dues of overdraft against mortgage facilities of HDIL and its associated companies, made a favorable financial environment within the PMC Bank for HDIL group companies to exploit the voluminous internal resources of PMC bank (120 B of I.P.C.)

2. He has committed criminal acts of commission and omissions in such manner to achieve manifestation of conspiracy with other accused persons for committing such acts of Cheating to the monetary controlling authority of Banking in India i.e. Reserve Bank of India and other authorities, falsification of record, creation of dummy accounts, concealing OSS reports from RBI, forgery of electronic records, suppression/misrepresentation of facts in respect of financial status of PMC Bank to RBI & falsification of accounts (420, 465, 467, 471, 477-A of IPC)

3. Being a Chairman of PMC Bank since year 2015, he while perpetrating the fraud within the bank has frequently violated prevalent basis banking norms

and standard guidelines of RBI. He being custodian of common depositors money and being entrusted to safeguard the interest of depositors and having dominion over deposits of PMC Bank in his capacity as a banker to protect the interest of account holders in almost 137 branches in the country, breached the trust of depositors, caused huge physical and mental trauma to common depositors of the bank (406 of IPC)

4. While accomplishing his ulterior motive, accused Waryam Singh along with accused executives of HDIL and the then Managing Director of PMC Joy Thomas (A-3) has misappropriated the fund of PMC Bank for their own personal gain by exploiting the Currency Chest of PMC Bank like a Piggy Bank and thereby caused wrongful loss to PMC Bank (406 IPC)

5. By gradually committing and perpetrating the fraud, he along with other accused persons has camouflaged the bank's actual financial position, and deceptively reflected a rosy picture of banks financial parameters. Thus, inducing more depositors to open accounts with the Bank, to their detriment and affected the depositors' interest adversely and cheated the Depositors of PMC Bank (420 of IPC)

6. Being long associated with HDIL accused executives he was knowing their loan requirements and to achieve this goal ludicrously he along with other accused persons got themselves involved in Loan processing of HDIL's un shown loan accounts and contributed in causing disappearance of vital loan documents and has committed acts for disappearance of evidence for screening of offenders from legal punishment (201 IPC)."

10. The accusations against the applicant are serious. So far as the bye-laws are concerned on which much emphasis is placed by learned counsel for the applicant, provides for the powers and functions of the Chairperson. The same reads thus:

"39. POWERS AND FUNCTIONS OF THE CHAIRPERSON:

The Chairperson shall have the following powers and functions:

- i) To preside over the meeting of the General Body, Board of Directors and Executive committee and other committees.
- ii) To supervise the General working of the bank.
- iii) To sign the proceedings of all the meetings presided over by him;
- iv) In the event of equality of votes on a resolution the Chairperson shall have an additional casting vote in the meeting;
- v) The Chairperson may delegate any of his powers and functions to the vice Chairperson;
- vi) Chairperson may take decisions as of an urgent and emergent nature affecting the policy of the bank on behalf of the Board of Directors, Executive Committee or any other committees. The matter will be placed before the next meeting of the board of ratification”

It needs to be borne in mind that the accusations reveal the applicant's complicity in perpetrating the financial fraud. The applicant allegedly utilised his position to conceal facts thereby painting a rosy picture about the financial condition of the bank and in the process, by violating the prevalent banking norms and guidelines not only actually assisted the main accused, but also utilised the banks resources for personal gains. Reliance on the bye-laws does not further the case of the applicant.

11. At this juncture, it is pertinent to reproduce the communication dated 21/09/2019 addressed by the Managing Director (accused no. 3) to the Chief General Manager, Reserve Bank of India. It is necessary to reproduce the entire letter to appreciate the extraordinary influence and control which the accused nos. 1 and 2 had on the said PMC Bank.

“Ref. No. PM/CO/SEC/71/2019-20 Date 21/09/2019

The Chief General Manager
Reserve Bank of India
Department of Cooperative Banks Supervision
Bandra Kurla Complex
Bandra East, Mumbai

Respected Madam,

I, the Managing Director Mr. Joy Thomas joined this bank as General Manager although was having the powers of a Managing Director, of the Bank in the year March 1987 and was re-designated to the post of Managing Director in the year 1999.

PMC bank had commenced its operations in February 1984 as unit bank (with single branch operation) with the capital of Rs.10.00 lakh. However, within a couple of years, the then board was reconstituted in 1986, due to the apprehension of closure of the bank due to some unlawful deeds of some of the borrowers/member. This was the time, when Late Mr. Rajesh Kumar Wadhawan, the then director of Land Development Corporation and many other companies run by the Dewan family, along with his brother Mr. Rakesh Kumar Wadhawan (present director of HDIL) came to the rescue of the Bank. Networth of the bank became negative and the bank was facing troubles. This family infused capital, help the bank and also helped to bring the networth of the bank from negative to positive.

In the year 1986-87 they further infused capital of Rs.13.00 lakh and kept huge quantum of deposits for revival of the bank. Since then the Dewan family started banking with the bank as depositor. The loan and advances relation started in late 1990s. These advances were mostly in the form of overdrawals in current accounts of various firms of the companies of the family due to cheque presented in clearing. These accounts were regularised on regular basis. The operations in these accounts were good and satisfactory.

In the year 2004, the bank again faced a run on the bank due to simultaneous failure of Maraha Mandir Co-op Bank, South Indian Co-op. Bank and Global Trust Bank. There were huge withdrawal of the deposit of the bank from 13th August 2004. The bank was honoring all the payments of deposit on 24*7 basis from 13th August 2004 till 17th August 2004. It was on 17th August 2004, when the confidence of the deposits started building up again. At the time of the run, many people helped the bank in gaining the position with the funds and stood behind the bank in support. Mr. Rajesh Kumar Wadhawan was one of them and deposited more than

Rs.100 crores to tide over the liquidity crunch faced by the bank.

Since the time Mr. Rakesh Kumar Wadhawan (Director of HDIL) started banking with the bank and the performance of all his accounts were good. More than 60% transactions of the bank were from this group. This group was dealing with purchase of Land & Developing them. Their operations were mostly from Vasai, Virar and Palghar area. They had huge land bank in those areas and they used to do all their all land purchase and development turnover with our Bank only. In connection with their business, their accounts used to get overdrawn and thereafter they used to get cleared also in due course of time. In this process, our bank used to charge 18% to 24% interest from their accounts and earned very good profit. These accounts used to get regularized from time to time. Thus, bank used to had a lot of income which helped in the growth of the Bank. The Wadhawan group exposure were around Rs.500 Crores up to 2006-2007. In the year July-2007, one of the company of the family, i.e. HDIL became a listed company. After getting listed, they cleared all their dues with the Bank. The funding requirements of HDIL became huge and after getting listed, they started operating with other banks also. The Bank approached and requested HDIL to continue banking with it as it started impacting the profitability of the bank as the huge portion of advances were repaid by the company. So, HDIL again started their operations with our bank after 5 to 6 months and they also expanded their operations to beyond Mumbai to the other parts of the country. They also became specialized in slum rehabilitation projects and were the pioneers of the TDR in India. Owing to our limitation of funding, they started banking with other bank to fulfill their growing funds requirements. Till 2008, bank continued to earn high interest from the funding from the business of Wadhwan family. Meanwhile we also merged 3 weak banks with our banks in the year 2008, 2009 and 2010 (named as Kolhapur Janta Sahakri bank ltd. (Kolhapur), Jaishivrai Sahakari bank ltd. (Nanded) and Chetna Shakari Bank (Karnataka)).

In the year 2011-2012 the Government of Maharashtra came up with the major policy change regard the sale

of TDR which was the strong business for the HDIL group. And at the same time the company's major project of slum rehabilitation in the area near the Mumbai airport got cancelled due to change in the policy and the subsequent change in the government. In the year 2013 the project near the airport got terminated due to non-completion. Though the company submitted that it was due to change in policy, the Government did not take cognizance of issue.

This was the time the group started facing liquidity crunch and they also started defaulting with all dues of all banks. However, they were still managing to partly pay the overdues of the banks. Since, they were in defaults, they could not raise fresh capital or loan and their project also got stalled. Slowly collections got reduced therefore some of the accounts became stagnant. As the loans outstanding were huge and if these were classified as NPA it would have affected the profitability of the bank and the bank would have faced regulatory action from RBI also. Further, this would have created reputation risk for the bank. As the HDIL group had a good record of clearing their dues with certain delays we continued to report all the accounts as standard accounts.

Though some of the accounts were not performing well, it was not brought into notice of the board. The subsequent overdues of various loans were also not reported to the board. They were running many projects and were also in the business of taking over of the companies many a time they we opened separate accounts for different projects.

The concealment of information from board, auditors and regulators was due to the fear of reputational loss. The volume in the accounts were huge as the major business of the company were to acquire the small places of land from the farmers and then developing the land and creating infrastructures after getting the necessary approvals from the authorities. The concealment of the information was done from the board due to fear of the reputation of the company as the cheques were of small amount. Till 2019 some of the accounts were reported and shows but many legacy accounts were not reported to the Board.

Since the bank was growing, the Statutory auditors, due to their time constraints, were checking only the incremental advances and not the entire operations in all the accounts. They validated the incremental loans and advances and scrutinized the accounts which were shown by us.

In the RBI Inspection prior to 2015 officers, use to check mostly top few borrower accounts reported by the bank branchwise, therefore, these account did not come into picture and it was around 2017 onwards when the RBI started asking for indent for the Advances master. The stressed legacy accounts belonging to this group were replaced with dummy accounts to match the outstanding balances in the balance-sheet. As the loans were mentioned as loans against deposits and were of lower amounts they were never checked by RBI.

With regards to OSS 5 part A segment wise advances analysis- the amount of big borrowers was added under non-priority sub-category all others. OSS 5 party B industry wise exposure - it was included under Miscellaneous Industries.

Some of the large accounts were not reported to RBI from 2008 because of fear of reputational risk. The size of the bank in 2011 was around 57 branches, with Deposits of Rs.2524 Cr and Advances of Rs. 2000 Cr. The exposure to HDIL group then was Rs.1026 Cr. Further, had we classified them as non performing asset, we would have to stop charging interest on these accounts and we could have made losses. The growth path of the bank would have got hampered. The bank had created a name for itself in the market. The HDIL group always promised to clear the dues and also gave adequate security to back their loans.

We all still very optimistic on the repayment plan of the HDIL group. Following road map was planned for the action implementation.

- 1) We have already closed the fixed deposit amounting to Rs.158.23 crores of the HDIL group and adjusted towards their loan accounts.
- 2) Bank had started creating second charge on the securities mortgaged with other banks where the

outstanding of the other banks was less than the mortgaged property value.

3) We met the borrower on 21st September 2019 and they have offered immediately to create bank's charge on assets worth Rs.3500 crores which were already mortgaged with some other banks but the dues of other banks was only Rs.500 Crores. This will further increase the backup of the security to cover the Principal and interest dues to our bank.

4) The company is at the finalised an agreement for joint development with Poddar group for one project where in they can generate aprox. Rs.100 crores. The company namely Excel Arcade Pvt. Ltd. will be sold to the Poddar group and the liquidation amount will be used for repayment of dues of our bank.

5) The Bank hand issued pay-orders to the court for retrieval from NCLT filed by various banks.

6) Bank has made payments to various bank to get the additional securities to backup our outstanding.

7) Every year during the corse of RBI inspection we undergo into a lot of stress due to concealment of Information from RBI. It was worrying each of us. We 6 members of staff, who were fully aware of the situation decided to bring it into the notice of highest authority in Reserve Bank of India. On 18th September 2019 we tried to get appointment with Deputy Governor. Since he was busy we got the appointment of Executive Director Dr. Rabi N. Mishra. We met the Executive Director and appraised him of our position and requested to give some time to save the bank.

I submit that all the decisions for granting of overdrawals to these accounts was as per my instructions. The executives has no role in allowing overdrawals they were doing it as per my instructions as they had lot of faith in me and as a part of the system. Even in case of reporting the staff and executive had done in good faith.

Managing Director."

(emphasis mine)

12. Learned counsel for the applicant was at pains to point out that in view of the letter dated 21/09/2019, followed by the registration of the FIR dated 30/09/2019 reveals that it is the Managing Director (accused no. 3) who had taken all decisions for granting overdrawals. According to him, the executives had no role in allowing the overdrawals which they were doing as per his instructions. No doubt, from this letter, it appears that the Managing Director has taken over upon himself the entire responsibilities of sanctioning of these irregular loans in favour of HDIL. According to the learned counsel, this completely exonerates the applicant. In view of what is discussed hereafter, this contention of learned counsel is completely devoid of substance.

13. While considering the application for bail by the present applicant who is 73 years of age and is now in custody for a period of 3 years and 4 months, I seek guidance from the decision of the Supreme Court relied upon by the learned counsel for the applicant in case of ¹**Sanjay Chandra Vs. Central Bureau of Investigation**. It would be profitable to reproduce paragraphs 39 to 44 where Their Lordships observed thus :

“39. Coming back to the facts of the present case, both the Courts have refused the request for grant of bail on two grounds: the primary ground is that offence alleged against the accused persons is very serious involving deep rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that the possibility of the accused persons tempering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating using as genuine a forged document. The punishment of the offence is punishment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated,

1 (2012) 1 Supreme Court Cases 40

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.

41. This Court in *Gurcharan Singh Vs. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case.

43. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in

custody, that too, after the completion of the investigation and filing of the charge-sheet.

44. This Court, in the case of State of Kerala Vs. Raneef [(2011) 1 SCC 784 : (2011) 1 SCC (Cri) 409], has stated : (SCC p. 789, para 15)

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."

14. It is pertinent to note that prior to the applicant taking over as the Chairman of the PMC Bank, the applicant was closely associated with HDIL group. The applicant was associated with accused No.1 since 1970. He was a Director with HDIL for the period 1999 till 2015. It is material to consider the stand of the respondents from the affidavit which has been filed by Shri Kishor Parab, Investigating Officer, Economic Offence Wing, Banking Unit, Mumbai. The relevant portion is reproduced, reading thus:

"(2) Applicant/Accused Waryam Singh (A-4) and Mr. Rakesh Wadhwan (A-1) are long associated with each other since 1970 as they have completed their college education together and have commenced land development business at Palghar together. The Applicant/Accused had remained director in most of the group companies of HDIL along with Mr. Rakesh Wadhwan (A-1) & Mr. Sarang Wadhwan (A-2). As their business relations progressed the Applicant was inducted in the board of PMC Bank as a chairman to cater prompt credit facilities to HDIL group companies. Similarly Applicant has also expanded his own business activities within and outside

the country.

(3) Acts of forgery & falsification of documents & electronic records and acts of making alterations or deletions in electronic records to cause disappearance of material facts of HDIL group companies' credit exposure from RBI scanner by officials of PMC Bank in connivance with executives of HDIL & others. (U/sec. 465, 467, 477A & 201 of I.P.C.). Being Chairman of PMC Bank, present applicant Waryam Singh was instrumental along with the then Managing Director accused Joy Thomas in committing forgery & falsification of documents & electronic records and making alterations or deletions in electronic records to cause disappearance of material facts of HDIL group companies' credit exposure from RBI scanner.

(4) He has played an active role in respect of non reporting of various loan accounts of HDIL & its Associate companies through OSS-4 statements, through which loan accounts of HDIL and its associate companies were kept hidden from RBI Scanner.

(5) Forgery in respect of Advances Master indent. Accused applicant Waryam Singh, who was the then Chairman of PMC Bank played vital role in tandem with the then Managing Director Accused Joy Thomas in committing forgery in respect of advances Master indent. In March 2015, for the purpose of inspection of bank, RBI provided the List of reports (indent) to be prepared and submitted to them. In that indent, one of the reports required was "Advances Master". Advances Master report contains the list of Bank's all borrowal accounts which tallies with the Offsite statements submitted for the respective financial year. It was the practice of PMC Bank to show additional count of fictitious loan accounts to conceal the HDIL group companies' credit exposure. However, when RBI sought the list of Bank's all borrowable accounts as reported in Offsite statements in 2015, PMC Bank started preparing fictitious loan accounts firstly in the Excel sheet and thereafter these accounts were uploaded or created in the parallel system maintained by the Bank for the purpose to RBI Inspection/Audit. Parallel system was prepared for the CBS (Core Banking Solution-Banking Software) used by PMC Bank i.e. OMNI for period previous to 13/04/2015 and Finacle for period after 13/04/2015. During course of investigation certified copies of 21,049 fictitious individual

loan accounts created at PMC Bank were taken into custody as documentary evidence.

(6) Concealing the information on Cash Portfolio (Currency Chest) and day light criminal misappropriation of funds by Bank officials i.e. Joy Thomas (A-3), Applicant Waryam Singh (A-4), HDIL Executives namely Rakesh Wadhwan (A-1) and Sarang Wadhwan (A-2). During course of investigation, it is revealed that, as per the instructions of Mr. Joy Thomas (A-3), Managing Director of PMC Bank and Smt. Manjit Kaur Ishwar Singh, Joint General Manager of Accounts department & Credit department of PMC Bank during 2013 to 2019, Managers of Accounts department had paid cash to Mr. Rakesh Wadhwan (A-1), Director of HDIL, Applicant Mr. Waryam Singh (A-4) Chairman of PMC Bank and Mr. Joy Thomas (A-3), Managing Director of PMC Bank without maintaining proper records of the same. Being Chairman of PMC Bank and custodian of depositor's hard earned money the said act of commission by accused applicant is very grave and attracts sections of IPC i.e. U/s. 406, 409. The concerned Managers of PMC Bank namely accused Suraj Dalvi from Accounts Department used to pay cash from Centralized Cash Vault of PMC Bank but Mr. Joy Thomas (A-3) and Smt. Manjit Kaur Ishwar Singh had instructed them not to make any formal entry in the records of account number of Centralized Cash Vault i.e. General Ledger Account No.001019001000001 & 001019001000002. However after May 2017 onwards, these officials were instructed to record entries of cash transactions in General Ledger Account No.001019001000001 & 001019001000002 and they started taking corresponding entries of cash payments accordingly. Though Mr. Suraj Dalvi, Mr. Sunil Karpe and Mr. Subahsh Gholap were instructed not to maintain formal records of cash paid transactions in the books, yet they used to maintain a separate book for keeping date wise records of cash paid to HDIL and its associates, Mr. Rakesh Wadhwan (A-1), Applicant Mr. Waryam Singh (A-4) and Mr. Joy Thomas (A-3) for their references, which enabled them to keep the records of cash paid to these people and cash received back from them. They have maintained 3 note books containing details of cash paid to HDIL and its associates, Mr. Rakesh Wadhwan (A-1), Applicant Mr. Waryam Singh (A-4) and Mr. Joy Thomas (A-3) and cash received back from them. During course of investigation these three notebooks were

taken into custody under a Panchnama from above Bank official. In some instances they have paid cash to these people against cheques furnished by them and in some instances cash was paid to them without any cheque or any other instrument. Total shortfall in cash given to HDIL Group of companies, Applicant Waryam Singh (A-4) and Managing Director of Joy Thomas (A-3) is Rs.10,36,87,500/- which is yet to be recovered from them. Forensic Audit of M/s. Grant Thornton has given a detailed report on the same in their Forensic Report.

Contentions and averments made by the applicant accused in his above application are hereby denied by Respondent as follows :-

1)The instant applicant in tandem with the accused Managing Director Mr. Joy Thomas and other members of Board of Directors has played a vital role in intentionally overlooking repayment of various credit facilities sanctioned and disbursed to not only the HDIL and its group companies but to also various other business entities that have availed credit facilities from PMC Bank. His complicity with other members of Board of Directors and other officials of PMC have caused rise in NPA accounts and caused a huge wrongful loss to the tune of Rs.6121.07 Crores to PMC Bank. It has put the deposits of Common depositors having their accounts in Punjab & Maharashtra Bank in almost 137 Branches around the country in Jeopardy.

2) As the future of deposits of almost 60 lakhs depositors all across country of PMC Bank has gone ashtray due to siphoning of PMC Bank funds by members of Board of Directors including the instant applicant i.e. Chairman and Managing Director accused person. Due to precarious status of their deposited funds may a depositors have lost their lives out of shock and they have died of Cardiac Arrests etc. It is self explanatory to explain the gravity of overwhelming acts of commission and omission being committed by concerned accused Bank officials of PMC including the instant accused applicant.

4) Considering the gravity of the offence and application of U/s.409 IPC against present applicant, wherein, being Chairman of a Multi State Co-Operative Bank like PMC who is custodian of depositors' money and entrusted to safeguard the monetary interests of common people of

the country in connivance and collusion with each other has put the interests of common people i.e. depositors into a Financial Jeopardy.

7) Besides HDIL Group companies applicant accused Waryam Singh has sanctioned and appraised various loan facilities which have also resulted in NPA and apparently financial loss to PMC Bank. Therefore in the interest of wide spread investigation, this is not an appropriate stage to enlarge instant applicant.

8) During the course of investigation, it is revealed that the present applicant being Chairman of PMC Bank has favored HDIL and its associates companies to avail loan facilities conveniently and further he has benefited himself from the facilities so, availed by HDIL and its associates companies. Such instance has come across during inspection by officials of Reserve Bank of India and same has been reported in inspection report.

12) During the investigation of the case, it is revealed that 21 MOD (Mortgage Against Overdraft) loan accounts of accused executives of HDIL and its associated companies in PMC Bank were in process of sanctioning and disbursement since year 2007 to 2019 and most of the vital loan documents i.e. loan application forms, vouchers, sanction letters, original title deeds, valuation report, title search etc. are missing and tampering of valuable documents of the bank which clearly establishes that such acts were committed with an intention of screening the offender from legal punishment which not only attract sec. 201 of I.P.C. but sec. 477(A) of IPC. These sections were added during further course of investigation.”

(emphasis mine)

15. Thus, it is seen that the applicant was closely associated with the HDIL group. He was a director of HDIL when the bank advanced loans worth crores of rupees to HDIL. The applicant became Chairman of the PMC Bank in 2015. It is further pertinent to note that even after the applicant took over as Chairman of the PMC Bank in 2015, loans worth crores of rupees were advanced to HDIL. It is also alleged that the applicant has been responsible for cash withdrawal from the Bank to the tune of Rs. 4,14,30,000/-. No doubt the same was returned within intervals of 3 months. The bye-laws provides that it is for the Chairman to supervise the general working of the

Bank. Prima facie, from the accusations and materials on record, it could be reasonably seen that the applicant was aware of the irregular manner in which the loans were being advanced to the HDIL group during his Chairmanship. The accusations of financial fraud in the present case are serious in nature. The accusations are not restricted to section 420 of the IPC, but also extend to acts of forgery & falsification of documents & electronic records and acts of making alterations or deletions in electronic records to cause disappearance of material facts of HDIL group companies' credit exposure from RBI scanner.

16. The Managing Director (accused no.3) in his communication has clearly indicated that these irregularities while advancing loans of such a huge magnitude was being done and concealment of information from board, auditors and regulators was due to the fear of reputational loss. There are accusations that as many as 21000 fictitious accounts were opened only to facilitate smooth flow of the loan transactions in favour of the HDIL. Considering the nature of association of the present applicant with the accused nos. 1 and 2, and the manner in which financial benefits are doled out in favour of HDIL to the utter detriment of the depositors is nothing but breach of trust the investors reposed of the highest order. In my opinion, this is not a fit case to exercise discretion in favour of the applicant to grant him the facility of bail. The investment of Lakhs of depositors was handled in a shocking manner. These are not mere acts of omissions by the applicant. The nature of the accusations and the gravity of the economic offence which has shattered the confidence of the investors and robbed them of their hard earned money is such that I am dissuaded from exercising discretion in favour of the applicant though the applicant is 73 years of age and in custody for more than 3 years. No doubt the charge-sheet has been filed and the investigation is complete. The trial is likely to take a long time to conclude. However, the personal liberty of the applicant coupled with his right to a speedy trial will have to be balanced with the gravity of the accusations, the interest of the society and the manner in which the offence is alleged to have been committed. The question is how long the applicant should be kept incarcerated as an under-trial. It would be open for the applicant to apply for bail afresh after a reasonable

period if the trial does not progress. The application stands rejected. The interim application stands disposed of.”

(emphasis mine)

16. Learned Senior Advocate for the applicant submitted that the applicant is not a beneficiary. However, the main accused benefitted at the cost gullible investors. Allegedly the applicant has a major role in helping the co-accused who are the beneficiaries. On merits, therefore, in view of the aforesaid order, there can be no question of enlarging the applicant on bail.

17. However, it needs to be considered that in the aforesaid order dated 21/02/2023, it was indicated that it would be open for the applicant to apply for bail afresh after a reasonable period if the trial does not progress. It is more than 11 months since the passing of the order dated 21/02/2023. I am informed that even charges have not been framed. In paragraph 6 of the order it is recorded that the charge-sheet runs into 4,900 pages and there are additional 50,000 pages which are to be relied upon during the trial as is the submission of learned Senior Advocate for the applicant. The number of witnesses to be examined is

likely to be around 400. Learned APP submitted that it is not as if all 400 witnesses will be examined. The number of witnesses may be much less. Looking at the matter from any angle, it is obvious that the trial will take a long time to conclude. One circumstance in favour of the applicant therefore is that the trial is not likely to conclude any time soon. The applicant is in pre-trial custody for more than 4 years and 3 months.

18. Now on the age and medical condition of the applicant, it is submitted by learned Senior Advocate for the applicant that the applicant is suffering from Slip Disc for the last 20 years. It is submitted that the applicant's health condition is deteriorating and he is facing severe pain and discomfort in his basic and regular activities including sitting, sleeping in certain position etc. The applicant is also suffering from Cervical Spondylosis since June 2006. It is submitted that from February 2017, the applicant is a heart patient suffering from atrial flutter i.e. a type of heart rhythm failure in which the heart does not pump enough blood while it beats fast which may result in vital organs like heart and brain to fail. According to learned Senior

Advocate, there are several ailments the applicant is experiencing. It is submitted that the applicant suffered a paralytic stroke in October 2023 on his right side due to which he is facing pain and numbness on the right side of his body. The applicant has been advised a CT Scan and Brain MRI to know the gravity and seriousness of the stroke but due to long queues, the applicant could not be taken for MRI Scan since October 2023. Today, learned APP on instructions submitted that the applicant has been given an appointment for MRI Brain from Radiology Department of Sir J.J. Group of Hospital, Mumbai on 10/02/2024. Learned APP submitted that the applicant is being treated at the prison hospital and as and when needed, the applicant is taken to the Sir J.J. Hospital. From the reports which are placed on record regarding the medical condition of the applicant, it is also seen that the applicant is facing problem of swelling in both legs below knee, back pain, joint pain. The applicant is facing diminished vision and is hard of hearing. The applicant had a hard fall in the washroom at Taloja Central Prison which resulted in injury to his hip bone and a fracture on his hand. The applicant till date has difficulty to sit and

walk with ease due to the fall. Looking at the age of the applicant who is 73 years having spent 4 years and 3 months in custody, in the facts of the present case, I am of the considered opinion that age and health condition of the applicant is another circumstance I find favour with.

19. Learned Senior Advocate then submitted that for a period of 1 week from 08/07/2023 to 15/07/2023, the applicant was enlarged on temporary bail on the ground of “Dastar Bandi” ceremony of his grandson. The applicant had abided by the conditions and surrendered before the Superintendent of Taloja Jail on 17/07/2023 at 11.00 a.m. The applicant has not misused this liberty. The applicant does not appear to be a flight risk. The applicant’s passport is already with the investigating agency.

20. The applicant was arrested on 05/10/2019 and is now in custody for more than 4 years and 3 months. The trial is likely to take a long time to conclude. The accusations against the applicant undoubtedly are serious but in view of the circumstances enumerated above which are peculiar to the applicant’s case, I am inclined to enlarge the applicant on bail. Even after a period of 11 months of the rejection of

the earlier bail application, there has been no progress in the trial. The charges are not yet framed. The applicant cannot be indefinitely incarcerated as and by way of a pre-trial punishment. I am inclined to enlarge the applicant on bail by imposing stringent conditions.

21. In support of the view I take, let me place reliance on the decision in ²**Manish Sisodia Vs. Central Bureau of Investigation**. Their Lordships in para 26 observed thus:

“However, we are also concerned about the prolonged period of incarceration suffered by the appellant – Manish Sisodia. In *P. Chidambaram v. Directorate of Enforcement* (2020) 13 SCC 791, the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in *Shri Gurbaksh Singh Sibbia and Others v. State of Punjab* (1980) 2 SCC 565 and *Sanjay Chandra v. Central Bureau of Investigation* (2012) 1 SCC 40, that even if the allegation 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. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in *Satender Kumar Antil v. Central Bureau of Investigation and Another* (2022) 10 SCC 51, this Court referred to *Surinder Singh Alias Shingara Singh v. State of Punjab* (2005) 7 SCC 387 and *Kashmira Singh v. State of Punjab* (1977) 4 SCC 291, to emphasise that the right to speedy trial is a fundamental right within the broad scope

2 2023 SCC OnLine SC 1393

of Article 21 of the Constitution. In *Vijay Madanlal Choudhary* (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. *Vijay Madanlal Choudhary* (supra), also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in *Arnab Manoranjan Goswami v. State of Maharashtra and Others* (2021) 2 SCC 427 held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.”

22. Learned Senior Advocate on instructions of the applicant's son who is present in the Court voluntarily makes a statement that the applicant shall not leave Mumbai/Mumbai Suburban District without permission of the trial Court. The statement is accepted as an undertaking to this Court. Hence, the following order.

ORDER

(a) The application is allowed.

(b) The applicant-Waryam Singh Kartar Singh in connection with C.R. No.86 of 2019 registered with Banking II, E.O.W., Mumbai shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.

(c) The applicant shall attend the investigating officer of the concerned police station once in three months on first Monday of the concerned month between 11.00 a.m. and 1.00 p.m. commencing from March 2024 till the charges are framed.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(f) The applicant shall not leave Mumbai/Mumbai Suburban District without permission of the trial Court.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall

not seek unnecessary adjournments.

(h) The applicant's passport to remain with the investigating agency.

23. The application is disposed of.

(M. S. KARNIK, J.)