IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1237 OF 2024

Advay Prashant Hiray …Applicant
Versus
The State of Maharashtra …Respondent

WITH
INTERIM APPLICATION NO.1709 OF 2024
IN
BAIL APPLICATION NO.1237 OF 2024

Gorakh Ramchandra Jadhav …Applicant

IN THE MATTER BETWEEN

Advay Prashant Hiray …Applicant
Versus
The State of Maharashtra …Respondent

Mr. Aabad Ponda, Senior Advocate a/w Mr. Chetan G. Patil, Mr. Mandar Bagkar, Mr. Vishwesh Gadage & Mr. Bhushan Jadhav, for the Applicant.

Mr. P. H. Gaikwad, APP, for the Respondent – State.

Mr. N. R. Bubna a/w Ms. Pooja Malik, for Respondent No.2.

Mr. R. G. Magar, P.I., EOW, Nashik Road, present.

Mr. Pawar, Police Constable (B-1112), present.

CORAM: MADHAV J. JAMDAR, J.
DATED: 12 AUGUST 2024

P.C.:

1. Heard Mr. Ponda, learned Senior Counsel for the Applicant, Mr. Gaikwad, learned APP for the Respondent−State and Mr. Bubna, learned Counsel for Respondent No.2 – Intervenor.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1	C.R. No.	I-51 of 2023
2	Date of registration of F.I.R.	30/03/2023
3	Name of Police Station	Ramjanpura, District – Nashik
4	Section/s invoked in FIR	409, 420, 465, 468, 471 & 34 of the *Indian Penal Code, 1860.*
5	Date of incident	January, 2013 to April, 2013
6	Date of arrest	15/11/2023
7	Date of filing Charge-sheet	09/02/2024
8	Section/s applied in Charge-sheet	409, 406, 420, 465, 467, 468, 471, 201, 120B & 34 of the *Indian Penal Code, 1860;* 3 & 4 of the *Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.*

3. The Respondent – State of Maharashtra has opposed this Bail Application by filing detailed Affidavit dated 22nd April 2024 of Dhanyakumar Changdeo Godse, Superintendent of Police, Economic Offences Wing, Nashik Rural, District – Nashik. The prosecution case is set out in Paragraph No.4 of said Affidavit. The said Paragraph No.4 reads as under:

"*4. I say that the prosecution case in short is as under:-*

(a) That the Orig. Complainant namely, Gorakh Ramchandra Jadhav, Divisional Officer, Malegaon,N.D.C.C. Bank Ltd.,Nashik has lodged FIR with Ramjanpura Police Station,Malegaon,Nashik Rural inter alia stating therin that

the Nashik District Central Co.Op.Bank Ltd. Nashik is registered under Maharashtra Co.Op. Society's Act 1960, to accept the deposits, to pay the interest on it, to supply the loans on interest to the agricultural and non agricultural purpose to personal members and members of society doing the all works relating to the bank.

(b) That the Head Office of the said bank is at Nashik and there are branches of the bank in towns and villages and one of the branch is at Malegaon. Shri.Gorakh Ramchandra Jadhav Divisional Officer, Malegaon has described fully in the complaint, he has personal information of the said matters in which the accused have committed the offence as per resolution passed by Director Board on 20.10.2018 of the complainant bank delegated the powers to lodge the complaint.

(c) That the Accused no. 1 "Renuka Devi Yantra Mag Audyogik Sahakari Sanstha Maryadit, Malegaon, Dist. Nashik" is a registered organization under Cooperative Act and accused no. 2 Smita Prashant Hiray is working as president and accused no. 3 Surekha Dinesh Shirude is vice president of the organization and accused no. 4) Shashikala Dilip Kedar, 5) Kamalbai Suresh Thakare, 6) Shakila Ashraf Mansuri, 7) Hirabai Bhausaheb Shinde, 8) Shobha Sunil Wagh, 9) Mirabai Bhimrao Borse, 10) Maltibai Ravindra More , 11) Mainabai Vishwanath Dasnoor, 12) Tulsabai Ananda Aahire, 13) Pramila Bhagvansingh Bagul, 14) Indubai Rajaram Aahire were the directors of the said institution during the period of disbursing the loan. Accused no. 2 to 14 are responsible for daily affairs of this organization.

(d) That the Accused no. 15 "Shri. Vyankatesh Sahakari Bank Maryadit, Marketyard Malegaon Dist. Nashik" is being a registered society under the Maharashtra Co-operative Society Act, the accused no.

16) Shri.Prashant Dada Venkatarao Hiray, is working as the founder chairman of this organization and accused no. 17) Shri. Ravindra Gorakh Patil, 18) Mrs. Smitatai Prashant Here, 19) Shri. Prabhakar Supdu Pawar, 20) Shri. Ashok Muralidhar Bachao, 21) Shri. Dharma Ganpat Shirole, 22) Shri. Apoorva Prashant Hire, 23) Shri. Advaya Prashant Hire, 24) Shri. Ramesh Somesingh Patil, 25) Shri Ramesh Ratan Desale, 26) Sampada Prashant Hire, 27) Shri. Sanjay Jagannath Marathe, 28) Shri. Bunker Lasha Gavit, 29) Mrs. Yogita Apoorva Hire, were working as the director of this organization, accused, no. 30 Mr. Bhausaheb Shravan Thackeray was working as the Chief Executive Officer. Accused no. 16 to 30 were jointly and personally responsible for the daily affairs of the organization.

(e) That the Accused No.1 "Renuka Devi Yantra Mag Audyogik Sahakari Sanstha Maryadit, Malegaon, Dist. Nashik" had decided to start the powerloom project, for the said project and the machinery for the said project, furniture and working capital submitted the application to the complainant bank along with project report by accused No.1 to 14 in which the accused wants to purchase the various machineries or how much construction will be built, the detail information was submitted and also ready to follow the terms and conditions for loan and ready to mortgage the immovable properties of accused No.1 and trend to sanction the loan matter to accused No.1. The description of the loan was taken in the name of accused No.1 by accused No.1 to 14.

Date of demand of loan	*Demand of loan amount*	*Date of sanction of loan*	*Sanctioned loan amount*	*Period of loan*
30/10/2012	*3,40,16,000/-*	*05/01/2013*	*2,80,00,000/-*	*06 Yrs*
08/03/2012	*2,75,00,000/-*	*16/03/2013*	*2,20,00,000/-*	*06 Yrs*
05/04/2013	*3,30,00,000/-*	*16/04/2013*	*2,46,00,000/-*	*06 Yrs*

Total Amount of Loan Sanctioned :- 7,46,00,000/-

(f) That the As per the application for loan submitted by accused No.1 to 14, the directors of complainant bank after thinking the above mentioned loan amount of Rs.7,46,00,000/- was sanctioned on different dates and the said loan amount was / is taken by accused No.1 to 4 and mortgaged the properties Div. Zilha Nashik, Sub Div. Taluka Malegaon, within the limits of Malegaon Municipal Corporation situated at Dyane bearing Plot No.24, adm. Area 240 sq. mtrs, Plot No.25 adm. Area 440 sq. mtrs. and Plot No.26 adm. Area 535 sq. mtrs. out of S.No.104/1B/104/1/C along with construction thereon, machinery, electric connection, furniture, raw mater, ready material etc. immovable properties on 30.01.2013, 05.04.2012 and 26.04.2013 bearing documents No.1030/2013, 3380/2013 and 3968/2013 was / is registered the said properties with Sub Registrar Office, Malegaon with complainant bank.

(g) That the as per the application of demand of loan submitted by accused No.1 to 14, the Directors of complainant bank, it is agreed to comply and binding on the directors was and is to repay the bank loan. Then also the accused No.1 to 14 did not repay the loan amount, there is amount of Rs.31,40,76,000/- (Rs. Thirty One Crores, Forty lacs, six thousands) only is due against the accused.

(h) That the accused No.1 to 14 did not repay the loan amount of the complainant bank, the complainant bank came to know that, the accused No.1 to 14 avoid to repay the loan amount. The accused No.1 to 14 after taking the sanctioned loan, the most of the loan amount was transferred to accused No.15, as complainant bank shocked when the said fact came to know.

(i) That Really the accused No.1 and 15 institutions came under the control of Hiray family, accused No.1 to 30 conspiracy with each other shown to start the powerloom and prepared project report submitted to bank and told that, the immovable properties were mortgaged for loan and huge amounts were taken by way of loan and not used the said amount for purpose of loan and the said amounts misappropriated and used for self benefit and not repay the loan amount with interest forever and deceived to the bank, it is decided from started. It is the thinking of the complainant bank.

(j) That the The accused No.1 to 14 did not repay the loan amount with interest of the complainant bank, the bank started legal action against the accused No.1 to 14 to recover the due loan amount, the bank taken the possession of the mortgaged property, the accused persons did not made construction and there was no machinery as described in project report, the machineries which were there that were inferior quality installed, the said facts came to the knowledge of officers of the bank, so the bank prepared report. The complainant bank published notice in news paper on dtd. 23.12.2022 for auction of the machineries and the Govt. price of the said machinery was fixed for Rs.1,23,00,000/- and so the auction was carried on 06.01.2023 and the auction was carried and sale the said machineries for Rs.1,78,00,000/- (including GST). The said amount is credited in the account of accused No.1.

(k) That the It is came to the knowledge of the Nashik District Central Co.Op. Banb Ltd. that, accused No.1 to 30 conspiring with each other, it is shown that, the powerloom project is start on Plot No.24, adm. Area 240 sq. mtrs, Plot No.25 adm. Area 440 sq. mtrs. and Plot No.26 adm. Area 535 sq. mtrs. out of

S.No.104/1B/104/1/C situated at Dyane, within the limits of Malegaon Municipal Corporation, Malegaon, Dist. Nashik prepared false and concocted documents and it is known to them, they are real and true and submitted to complainant, submitting the matter to the complainant bank for sanction of loan and lure to mortgage the immovable properties and taken the huge amount of Rs.7,46,00,000/- (Rs. Seven Crores forty six lacs) only for unlawful gain and from 05.01.2013 to till today not repay the loan amount with interest and decided to deceive and betrayal and it is the one part the accused No.1 to 14 taken the loan transferred to the directors of accused No.15 conspire with the accused No.16 to 30, the misappropriated the amount for unlawful gain and deceived for Rs.31,40,76,000/- (Rs. Thirty One Crores Forty Lacs Seventy six thousands) of the bank.

(l) On the basis of the complaint lodged by the Orig. Complainant/Informant, offence vide CR No.51/2023 u/sections 409, 420, 465, 468, 471 r.w. 34 of the Indian Penal Code was registered at Ramjanpura Police Station, Malegaon on 29.03.2023 against 1) Renukadevi Machinery Industrial Co-operative Society Limited Smt. Smita Prashant Hire, Address Madhuramurli, Mahabir Nagar, Malegaon Camp, Dist. Nashik, 2) Mrs. Smita Prashant Hire, President Renukadevi Yantramag Industrial Cooperative Society Limited, 3) Smt. Surekha Dinesh Shirude Vice President, Renukadevi Yantramag Industrial Cooperative Society Limited,4) Mrs. Sasikala Dilip Kedar, Director Renukadevi Yantramag Industrial Cooperative Society Limited, 5) Mrs. Kamalbai Suresh Thackeray, Director, Renuka Devi Yantramag, Industrial Cooperative Society Limited, 6) Shakila Ashraf Mansuri, Director, Renukadevi Yantramag Industrial Co-operative Society Limited, 7) Mrs. Hirabai Bhausaheb Shinde, Director, Renukadevi Yantramag Industrial Co-operative

Society Limited, 8) Mrs. Shobha Sunil Wagh, Director Renukadevi Yantramag Industrial Cooperative Society Limited, 9) Mrs. Bhimabai Bhimrao Borse, Director, Renukadevi Yantramag Industrial Co-operative Society Limited, 10) Mrs. Maltibai Ravindra More Director, Renukadevi Yantramag Industrial Cooperative Society Limited, 11) Sau. Mainabai Vishwanath Dasnoor, Director, Renukadevi Yantramag Industrial Cooperative Society Limited, 12) Mrs. Tulsabai Ananda Ahire, Director, Renukadevi Yantramag Industrial Cooperative Society Limited 13) Mrs. Pramila Bhagwan Singh Bagul, Director, Renukadevi Yantramag Industrial Cooperative Society Limited, 14) Mrs. Indubai Rajaram Ahire, Director, Renukadevi Yantramag Industrial Co-operative Society Limited Accused Nos.2 to 14 Residing at : Madhurmurli, Mahaveer Nagar, Malegaon Camp, Tt. Malegaon, Dist. Nashik 15) For Shri. Venkatesh Co-op. Bank Ltd. Malegaon, the founder and Chairman Dr. Prashantdada Venkatrao Hire Address Market Yard, Malegaon Dist. Nashik, 16) Shri. Prashantdada Venkatrao Hire, Founder and Chairman of Shri. Venkatesh Co-op. Bank Ltd. Malegaon 17) Shri. Ravindra Gorakh Patil, Vice Chairman Venkatesh Co-op. Bank Ltd. Malegaon 18) Mrs. Smitai Prashant Diamonds, Director Venkatesh Co-Op Bank Ltd. Malegaon 19) Shri. Prabhakar Supadu Pawar, Director Venkatesh Co-op. Bank Ltd. Malegaon 20) Shri. Ashok Muralidhar Bachhaw, Director Venkatesh Co-op. Bank Ltd. Malegaon 21) Shri. Dharma Ganpat Shirole, Director Venkatesh Co-op. Bank Ltd. Malegaon 22) Shri. Apoorva Prashant Diamonds, Director, Venkatesh Co-op Bank Ltd. Malegaon 23) Shri. Advaya Prashant Diamonds, Director, Venkatesh Co-op Bank Ltd. Malegaon 24) Shri. Ramesh Somsingh Patil, Director, Venkatesh Co-op. Bank Ltd. Malegaon 25) Shri Ramesh Ratan Desle, Director, Venkatesh Co-op Bank Ltd. Malegaon 26) Smt. Sampada Prashant Hire, Director, Venkatesh Co-op. Bank

Ltd. Malegaon 27) Shri. Sanjay Jagannath Marathe, Director, Venkatesh Co-op. Bank Ltd. Malegaon 28) Shri. Vankar Lasha Gavit, Director, Venkatesh Co-op. Bank Ltd. Malegaon 29) Smt. Yogita Apurva Diamonds, District Bank Representative, Venkatesh Co-op. Bank Ltd. Malegaon 30) Shri. Bhausahev Shravan Thakre, Chief Executive Officer, Venkatesh Co-op. Bank Ltd. Malegaon.

Thereafter the investigation was assigned to Mr.Ashish Rohi, Assistant Police Inspector, attached to Ramjanpura Police Station, Malegaon, Nashik Rural, Dist.: Nashik and he conducted investigation from 29.03.2023 to 07.04.2023."

4. Mr. Ponda, learned Senior Counsel for the Applicant raised the following contentions:-

(i) Although, there are 31 Accused persons mentioned in the F.I.R., the Charge-sheet was filed only against 3 Accused persons namely (1) Advay Prashant Hiray i.e. present Applicant, at the relevant time he was the Chairman of the Nashik District Central Co-operative Bank ("**NDCC Bank**"), (2) Smita Prashant Hiray, the mother of the present Applicant, who was the Chairman of the Renukadevi Sahakari Soot Girni Ltd., District – Nashik ("**Textile Mill**"), and (3) Prashant Hiray, the father of the present Applicant, who was the Chairman of Shree Vyankatesh Co-Operative Bank Ltd., Malegaon. He submitted that the other co-Accused i.e. the father and mother of the Applicant have been granted anticipatory bail by the learned Sessions Court.

(ii) He submitted that the gist of the prosecution case is that the present Applicant was the Chairman of the NDCC Bank in the year 2013 and during that time Textile Mill applied for loan to set up a Textile Plant. Accused No.2 - Smita Prashant Hiray, the mother of the present Applicant was the Chairman of the said Textile Mill. Loan was given in three tranches totally amounting to Rs.7,46,00,000/- to said Textile Mill by NDCC Bank. Loan of Rs.2,80,00,000/- was sanctioned on 5th January 2013, loan of Rs.2,20,00,000/- was sanctioned on 16th March 2013, loan of Rs.2,46,00,000/- was sanctioned on 16th April 2013. For said three loans which were given, three separate Mortgage Deeds were executed as a security against the three loans. At the time when the loan was sanctioned, the Textile Mill was headed by Smita Hiray, mother of the present Applicant. While disbursing the loan amount, the same was deposited in the account of the Textile Mill with Vyankatesh Co-operative Bank Limited. The said Bank was headed by Prashant Hiray, father of the present Applicant.

(iii) There are three basic allegations made in the Complaint viz. (1) loan was given on insufficient security; (2) the loan amount was not utilized for the purpose for which it was granted and (3) the loan has not been repaid.

(iv) To bring the case under the provisions of the *Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999* ("**MPID Act**"), the Investigating Authorities have recorded statements of some persons who have deposited their money in the NDCC Bank and it is there case that as the loan amount has not been recovered, it has eventually resulted in they not being able to withdraw their deposits.

(v) In the year 2018 the same complaint was made by one of the Officers of the NDCC Bank in respect of the very same loan account, however, the Police on investigation, submitted a Report to the effect that the issue pertains to the provisions of the Maharashtra Co-operative Societies Act, 1960 ("**MCS Act**") and therefore no F.I.R. was lodged.

(vi) The F.I.R. was registered on 30th March 2023 at 1:31 a.m. due to the political rivalry. The Applicant is supporting the political parties who are forming opposition group and the F.I.R. was lodged at the insistence of a local MLA who is also the Minister and in fact also the Guardian Minister of Nashik district.

(vii) Malafides can be seen from the fact that, although F.I.R. was lodged against 31 Accused, Charge-sheet is filed only against 3 Accused persons i.e. present Applicant and his father and mother. He submitted that the other co-Accused i.e. Applicant's parents have been granted anticipatory bail by the learned Sessions Court, Nashik.

(viii) The decision to grant loan to the Textile Mill was taken by all the Members of the Managing Committee of the NDCC Bank and only the Applicant was made an accused for the non-repayment of loan by the Textile Mill. He submitted that, apart from the non-payment of loan by the Textile Mill, loan to the extent of over Rs.300/- Crores has seen classified as NPA by the NDCC Bank. However, no criminal complaint was lodged on behalf of NDCC Bank in respect of said loans.

(ix) The Applicant's liability is fixed at Rs.35,00,000/- under the provisions of the MCS Act. The Applicant has deposited an amount of Rs.25,00,000/- pursuant to order passed in the Anticipatory Bail Application in this Court and it has now been kept in a fixed deposit with a nationalised bank.

(x) Insofar as the Mortgage Deeds and allegation regarding insufficient security is concerned, Mr. Ponda, learned Senior Counsel submitted the Applicant alone cannot be held responsible, and the Managing Committee of the NDCC Bank have to be held responsible.

(xi) He submitted that the Charge-sheet shows that the loan amount sanctioned by the NDCC Bank was paid to the suppliers of the Textile Mill and therefore it cannot be said that the said amount was not utilised for the purpose for which it was obtainted.

(xii) As far as the allegation that the Textile Mill has not paid the loan amount, he submitted that the dispute under Section 91 of the MCS Act is filed by the NDCC Bank against the Textile Mill for recocvery of the loan amount and the said dispute is pending till date.

(xiii) Mr. Ponda, learned Senior Counsel relied on the Affidavit of the Applicant dated 12th July 2024. In said Affidavit, it is submitted that certain property of the said Textile Mill was attached and subsequently sold and accordingly, amount of Rs.1,78,26,922/- has been recovered by the NDCC Bank. He submitted that remaining movable and immovable property of the Textile Mill has also been attached by the NDCC Bank and the valuation made by the NDCC Bank is to the extent of Rs.2,23,00,000/-. He submitted that the Applicant and his relatives are ready to furnish security in the form of different immovable properties to the NDCC Bank to the tune of Rs.7,43,41,533/-.

5. When this matter was placed before this Court on 5th August 2024, Mr. Ponda, learned Senior Counsel submitted that Mortgaged

Deeds will be executed within a period of 1 week of the immovable properties which are proposed to be given as security to the NDCC Bank by the Applicant and his relatives as more particularly set out in the Affidavit dated 1st July 2024. Today, Mr. Ponda, learned Senior Counsel for the Applicant states that accordingly 9 Mortgage Deeds were executed concerning 9 immovable properties by the Applicant and his relatives mortgaging the said properties in favour of the NDCC Bank. Mr. Bubna, learned Counsel for the Intervenor confirms the said position.

6. Mr. Ponda, learned Senior Counsel submitted that the Affidavit dated 12th July 2024 has been executed by the Applicant and the aforesaid 9 Mortgage Deeds were executed by the Applicant and his relatives, in terms of the observations of the Supreme Court in the decision of ***Ramesh Kumar v. State of NCT of Delhi***[1].

7. Mr. Ponda, learned Senior Counsel submitted that due to political rivalry, in the year 2023, six offences have been registered against the Applicant. He submitted that it has been done to ensure that the Applicant is not released on bail. He submitted that as far as four such offences are concerned, the same are under investigation and the Anticipatory Bail Applications are pending in this Court. He submitted that as far as one case is concerned, the Applicant has been granted interim bail by the learned Sessions Court. He submitted that all these

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offences are registered in the year 2023 due to political rivalry.

8. On the other hand, Mr. Gaikwad, learned APP strongly opposed the Bail Application. He pointed out detailed Affidavit dated 22nd April 2024 of Dhanyakumar Changdeo Godse, Superintendent of Police, Economic Offences Wing, Nashik Rural, District – Nashik. He submitted that the Applicant had played a significant role in the offence in question. He pointed out Paragraph No.25(c) of the Affidavit-in-Reply, which reads as under:-

> " *c. That the main role of the present Applicant/Accused is that he alongwith co-accused cheated the orig. complainant/informant i.e. Bank by hatching criminal conspiracy. I say that prima facie it revealed the involvement of the present Applicant/Accused in commission of the aforesaid offence. I say that the mother of the applicant was the Chairperson of the spinning mill, whereas his father was the Chairman of Vyanketesh Co-operative Bank. I say that the present Applicant/Accused was its Director. I say that the present Applicant/Accused was the Chairman of the N.D.C.C. Bank. I say that the informant bank recommended Rs.2,35,00,000/- only, whereas Rs.2,80,00,000/- were sanctioned as the first loan. I say that there was no sanction from the informant Bank for the second and the third loans. I say that there was no sanction from the Competent Officers of the N.D.C.C. Bank, which was necessary. I say that the valuation of the property, purchased out of the loan amounts and mortgaged, was Rs.1,51,74,650/- only. I say that the same property was mortgaged to the bank repeatedly. I say that the total amount of loans sanctioned was Rs.7,46,00,000/-. I say that the amount of Rs.6,24,00,000/- was diverted to Vyanketeshwar Co-*

operative Bank. I say that the investigation in respect of misappropriation of the amount is still going on. I say that not a single installment is repaid to the informant bank. The informant bank has been duped, due to which, depositors are unable to get back their deposits. I say that the fraudulent intention existed, since the inception. I further say that it is an economic offence. I say that apart from that there are six criminal antecedents against the present Applicant/Accused. I say that the applicant was the chairman of Nashik District Central Co-operative Bank, the officer whereof is the first informant. I say that the mother of the applicant was the Chairperson of the society, namely Renuka Devi Yantra Mag Audyogik Sahakari Sanstha. I say that the said society raised a total sum of Rs.7,46,00,000/- as a loan from the informant bank in the year 2013. I say that the same properties were mortgaged, although loans were applied for thrice and got sanctioned accordingly. I say that no repayment of the loan amounts was made at any point of time by the society. Certain movable properties of the society came to be sold out, from out of which, the informant bank could be successful in recovering a sum of Rs.1,78,26,922/-. I say that the valuation of the remaining property of the society is shown to be Rs.2,23,00,000/-. I say that thus, even if the remaining property is sold out, the entire recoverable amount would come to the tune of Rs.4,01,26,922/-. I say that there are six crimes registered against the applicant in the year 2023 itself. The said total amount is said to be Rs.31,40,76,000/-, which includes the interest accrued thereon. I say that indisputedly, a loan of Rs.2,80,00,000/- was initially raised by the society, on the basis of mortgage of three immovable properties with the bank, although there was a recommendation for Rs.2,35,00,000/- only, from the bank. Thereafter, additional loans of Rs.2,20,00,000/- and 2,46,00,000/- were raised, by mortgaging the same properties. There *was no recommendation from the bank for the said additional loans, and yet, the Board of Directors sanctioned the additional loans. Undisputedly, the applicant was the chairman. The total valuation of the mortgaged properties was less than the amount of the first loan itself, as sanctioned. I say that the above factual scenario prima facie reflects that the applicant misused his position as the Chairman of the informant bank, and got the first loan amount sanctioned, to the tune of the amount, exceeding the market value of the mortgaged property. The factum of sanction of two more loan amounts, without seeking for any new properties for being mortgaged per se reflects an intention to abstain from securing the loan amounts, stricto sunsui. The want of any recommendation from the bank for the said two additional loans and the sanction thereof, de hors the same, ipso facto speaks in volumes, qua the mala fide intention of the applicant herein. The abstention from the repayment of the loan amount renders the said intention crystal clear, if one is called upon to lift the veil, inter se the applicant and his real mother, who was the chairperson of the society, which had raised the loan amounts. Indisputedly, the applicant, being the chairman of the informant bank, was, either entrusted with the funds of the bank or was having sufficient dominion over those funds, which prima facie appear to have been misappropriated by the applicant, by abusing his position as the Chairman of the informant bank. It is an economic offence, whereby a huge sum of money, belonging to the public at large, has been misappropriated, by duping the informant bank, de hors any political intervention in the registration of the crime or the investigation into the crime. The applicability or otherwise of the other various provisions of law need not be addressed to herein, at this stage. It cannot also be lost sight of, that the investigation is in progress. The possibility of tampering with the evidence or influencing the* *witnesses cannot be ruled out, altogether."*

He therefore submitted that as the Applicant is involved in a serious crime, the Bail Application be rejected.

9. Mr. Bubna, learned Counsel for the Intervenor submitted that the Informant is the Officer of the NDCC Bank. He submitted that the F.I.R. has been lodged on the basis of the decision taken by the NDCC Bank. He submited that the F.I.R. was lodged on 30th March 2023 pursuant to the decision taken by the NDCC Bank on 20th October 2018. He submitted that from 2018 to 2023, F.I.R. had not been lodged as the Applicant is a very influential person. He submitted that a huge amount of money is involved in the offence in question. He pointed out the contentions raised from Paragraph No.2 to Paragraph No.7 of the Intervention Application. He submitted that the amount exceeding Rs.31 Crores was due and payable on the date of filing of the F.I.R. He submitted that the F.I.R., investigation papers and various documents contained in Charge-sheet, clearly show that the Applicant is involved in a very serious offence. He submitted that as a huge amount of public money is involved in the offence in question, the Bail Application be rejected.

10. Perusal of the record shows that the alleged loan was granted in the year 2013, NDCC Bank decided to lodge the F.I.R in the year 2018, and a complaint was lodged with the Police in the year 2018. However, the Police, on investigation submitted the Report to the effect that the issue pertains to the provisions of the MCS Act and no further steps were taken. It further shows that the F.I.R. was again lodged on 30th March 2023.

11. Although it is the contention of Mr. Ponda, learned Counsel for the Applicant that the F.I.R. has been lodged due to political rivalry and some of the factual aspects show that there may be some substance in the said contention, however, perusal of the F.I.R. as well as various documents which are part of the Charge-sheet, shows that the Applicant is involved in a very serious offence. However, it is required to be noted that the incident in question has taken place during the period January, 2013 to April, 2013, the FIR has been lodged on 30th March 2023 and the Applicant was arrested on 15th November 2023. It is also important to note that the investigation is completed and that the Charge-sheet has been filed on 9th February 2024. It is also required to be noted that as per the Charge-sheet there are a total of 33 witnesses proposed to be examined by the prosecution. There is no further progress in the trial and even the charge is also not framed yet. Accordingly, the tiral will take a considerable time to conclude. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to device such a procedure as would ensure speedy trial to the Accused.[2]

12. It is also required to be noted that although F.I.R. has been lodged against 31 persons, Charge-sheet was filed only against 3 Accused persons i.e. present Applicant and his parents.

13. Mr. Ponda, learned Senior Counsel for the Applicant submits that the dispute has been filed by the NDCC Bank against the said Textile Mill and others under Section 91 of the MCS Act for the recovery of the amount from the Textile Mill and the same will be decided in the said proceedings. However, Mr. Ponda, learned Senior Counsel submitted that in the light of the observations of the Supreme Court in Paragraph Nos.25 and 26 of the decision of *Ramesh Kumar* (supra), the Applicant has filed above referred Affdiavit dated 12th July 2024, showing readiness to create security with the NDCC Bank of 9 immovable properties belonging to the Applicant and his near relatives to the tune of about Rs. 7,43,41,533/-. The said Paragraph Nos.25 and 26 of said decision in *Ramesh Kumar (Supra)* reads as under:-

> "***25.*** *Law regarding exercise of discretion while granting a prayer for bail under Section 438CrPC having been authoritatively laid down by this Court,* ***we cannot but disapprove the imposition of a condition of the nature under challenge****. Assuming that there is substance in the allegation of the complainants that the appellant (either in connivance with the builder or even in the absence of any such*

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2 Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

connivance) has cheated the complainants, the investigation is yet to result in a charge-sheet being filed under Section 173(2)CrPC, not to speak of the alleged offence being proved before the competent trial court in accordance with the settled procedures and the applicable laws. Sub-section (2) of Section 438CrPC does empower the High Court or the Court of Session to impose such conditions while making a direction under sub-section (1) as it may think fit in the light of the facts of the particular case and such direction may include the conditions as in clauses (i) to (iv) thereof. ***However, a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed must not be onerous or unreasonable or excessive. 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. However, inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for grant of bail.***

26. We may, however, not be understood to have laid down the law that in no case should willingness to make payment/deposit by the accused be considered before grant of an order for bail. In exceptional cases such as where an allegation of misappropriation of public money by the accused is levelled and the accused while seeking indulgence of the court to have his liberty secured/restored volunteers to account for the whole or any part of the public money allegedly misappropriated by him, it would be open to the court concerned to consider whether in the larger public interest the money misappropriated should be allowed to be deposited before the application for anticipatory bail/bail is taken up for final consideration. After all, no court should be averse to putting public money back in the system if the situation is conducive therefor. We are minded to think that this approach would be in the larger interest of the

> ***community. However, such an approach would not be warranted in cases of private disputes where private parties complain of their money being involved in the offence of cheating.***"
>
> (Emphasis added)

14. Mr. Ponda, learned Senior Counsel submitted that in furtherence of the statements made in the said Affidavit dated 12th July 2024, the Applicant and his relatives have executed 9 registered mortgage deeds mortgaging 9 immovable propeties having aggregate value to the tune of Rs. 7,43,41,553/- in favour of the NDCC Bank.

15. The Supreme Court in the decision of ***Manish Sisodia v. Directorate of Enforcement***[3], in Paragraph Nos.51 and 52 held has follows:

> "***51.*** *Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra and Another wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, Hussainara Khatoon and Others (I) v. Home Secretary, State of Bihar, Union of India v. K.A. Najeeb and Satender Kumar Antil v. Central Bureau of Investigation and Another. The Court observed thus:*
>
> > *"**19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting***

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> ***agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”***

52. *The Court also reproduced the observations made in* ***Gudikanti Narasimhulu*** *(supra), which read thus:*

> *“10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:*
>
> > *“What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:*
> >
> > > *“I* ***observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.*****”””**

(Emphasis added)

Thus, the Applicant is entitled to be released on bail in the light of law laid down by the Supreme Court in ***Manish Sisodia(Supra)***.

16. Insofar as an apprehension of Mr. Gaikwad, learned APP that there is a possibility of tampering the evidence, it is required to be noted the observations in Paragraph No.57 of the decision of *Manish Sisodia* (supra). The said paragraph reads as under:

> “***57.*** *Insofar as the apprehension given by the learned*

> *ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the c**ase largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant.***"
>
> (Emphasis added)

The observations in said Paragraph No.57, also apply to the present case. The present case also largely depends on the documentary evidence which is already seized by the prosecution. Insofar as the concern with regard to influencing the witnesses, stringent conditions can be imposed upon the Applicant while granting bail.

17. Although there are six antecedents, all offences are registered in the year 2023. It is the submission of Mr. Ponda, learned Senior Counsel that all the offences are registered as a result of political rivalry to ensure that the Applicant is not released on bail. In any case, as far as the facts of the present case are concerned and in view of the law laid down by the Supreme Court, the Applicant is entitled to be released on bail in the present case.

18. The Applicant does not appear to be at risk of flight.

19. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

20. In view thereof, the following order:-

O R D E R

(a) The Applicant—Advay Prashant Hiray be released on bail in connection with C.R. No.I- 51 of 2023 registered with the Ramjanpura Police Station, District – Nashik on his furnishing P.R. Bond of Rs.5,00,000/- with one or two local solvent sureties in the like amount.

(b) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(c) The Applicant shall report to the Ramjanpura Police Station, District – Nashik once in a week i.e. on every Monday between 11.00 a.m. and 2.00 p.m. until the conclusion of the trial.

(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 such a person from disclosing the facts to the Court or to any Police personnel.

(e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.

(f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

21. The Bail Application is disposed of accordingly.

22. In view of disposal of the Bail Application, nothing survives in the

Interim Application and the same is also disposed of.

23. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

[MADHAV J. JAMDAR, J.]