IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3054 OF 2024

Vishal Sadashiv Gurudu ...Applicant
Versus
The State of Maharashtra ...Respondent

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- Mr. Hitesh Mutha, for the Applicant.
- Mr. Mayur S. Sonavane, APP for Respondent – State.
- Mr. Sachin Daga, for Informant (Through V.C.).
- Mr. Sakharam Pawar, PSI, Matunga Police Station

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CORAM : MANISH PITALE, J.
DATE : 30th August, 2024.

P. C. :

1. Heard, Mutha, learned counsel for the application and Mr. Sonavane, learned APP for the State.

2. The applicant has filed the present application seeking bail, as he was arrested on 16.01.2022 in connection with First Information Report No.12 of 2022, dated 16.01.2022, registered at Police Station Matunga, Mumbai, for offences under Sections 408, 409 and 467 of the Indian Penal Code (IPC).

3. The informant in the present case is the Regional Head of a Bank. The applicant was working as Deputy Branch Manager of the Poonawadi Branch of the Bank at Dadar in Mumbai. The informant has alleged that it came to light on 06.11.2021 that there was a huge shortfall of cash to the tune of ₹ 1.85 Crores in the said Branch, as amount of ₹ 2,05,16,845/- was shown

as available cash amount in the Branch, but in reality an amount of only ₹20,16,845/- was available. It is claimed that when the Manager confronted the applicant i.e. Deputy Manager of the said Branch, he confessed that he had misappropriated amounts from various accounts in the Branch and spent them in pursuance of his addiction of betting. In that context, reference was made to certain bank account numbers and the amounts that were allegedly misappropriated, totaling ₹ 1.85 Crores.

4. The applicant was arrested. The investigation was completed and charge-sheet was filed.

5. The learned counsel for the applicant submits that in the present case, only the applicant is arraigned as an accused. The scale of misappropriation alleged in the present case itself would show that such an exercise is impossible at the hands of one single person and despite the fact that the investigation has revealed the role of others, only the applicant has been arraigned as an accused. It is submitted that even if the material, upon which the Investigating Authority relies, is taken into consideration, none of the ingredients of the offences under Sections 409 and 467 of the IPC are made out. It is submitted that, in the first place, there is no entrustment of property as contemplated under Section 409 of the IPC and therefore, there is no question of the basic ingredient of the offence being even *prima facie* made out in the present case. Reliance is placed on the judgments of the Supreme

Court in the case of *Rasul Mohammed Hanif Gulandaj Vs. The State of Maharashtra*[1] *and Jiwan Dass Vs. State of Haryana*[2].

6. It is further submitted that general, vague and *omnibus* allegations made only against the applicant, who was working as Deputy Branch Manager, do not make out the ingredients of the offence of forgery of valuable security etc., under Section 467 of the IPC. It is submitted that a perusal of Section 405 of the IPC, which defines criminal breach of trust would further show that none of the offences i.e. offences under Sections 408, 409 or 467 of the IPC are made out even *prima facie* in the present case.

7. It is submitted that the applicant has remained incarcerated for 2 Years and 8 Months and therefore, this Court may consider enlarging the applicant on bail.

8. On the other hand, learned APP submits that considering the duties and responsibilities of the applicant, it is clear that he is correctly alleged to have committed offences under Sections 408, 409and 467 of the IPC. It is submitted that as a Deputy Branch Manager, the applicant was responsible for not only the proper functioning of the Branch, but also for ensuring compliance, including submitting Cash Balancing Reports and Balancing Reports concerning the said Branch. The applicant indulged in forgery and he

1 (1972) 4 SCC 650
2 (1999) 2 SCC 530

also breached the trust imposed by the Bank upon him by diverting amounts in the accounts of various account holders of the Branch, further siphoning them off into his personal accounts, which he himself stated as having been utilized in pursuance of his addiction of betting. It is submitted that necessary ingredients of the offences are made out, the applicant does not deserve any indulgence.

9. This Court has perused the material on record in the light of the rival submissions. In the present case, it is an admitted position that the applicant was the Deputy Manager of the Branch. The allegation is of misappropriation of huge amount of ₹ 1.85 Crores from the said Branch. The FIR was registered when it was noticed that while in reality there was limited cash available in the aforesaid Branch of the Bank, on paper huge amount of availability of cash was depicted .

10. It is significant to note that as the Deputy Branch Manager of the Bank, as per the material brought to the notice of this Court by the learned APP, the applicant was responsible to ensure all compliances, including submitting Cash Balancing Reports and Balancing Reports. The discrepancy and huge shortfall in the cash was noticed later, but the material on record does indicate that such discrepancy did not come to notice immediately, as the reports being submitted for which the applicant was responsible, indicated inflated availability of cash amounts in the said Branch of the Bank. When the

huge shortfall of ₹ 1.85 Crores was noticed, the Regional Head of the Bank i.e. the informant immediately approached the police and the FIR was registered.

11. The details of the debit and credit entries placed before this Court on the basis of material that has come to light during the course of investigation, show that substantial cash amounts were shown as transferred to the bank accounts of certain account holders of the said Branch and from such accounts amounts were credited to the Postal Account and Paytm Account of the applicant. The figures show transfer of substantial amounts in this manner.

12. The aforesaid material does make out a *prima facie* case against the applicant with regard to the offences registered against him. The ingredients of the offence under Section 409 of the IPC are *prima facie* made out, because the applicant is certainly in the business of banking and considering the duties and responsibilities of the applicant brought to the notice of this Court, it can be said that he was not only entrusted with the responsibility of ensuring compliances but also with the property of the Bank in the sense of ensuring the integrity of the accounts held in the said Bank and particularly submitting Cash Balancing Reports and Balancing Reports. The applicant *prima facie* committed criminal breach of trust of such property and hence, it cannot be said that the basic ingredients of the offence under Section 409 are not made out.

13. Reliance placed on the aforementioned judgments of the Supreme Court in the case of **Rasul Mohammed Hanif Gulandaj Vs. The State of Maharashtra** *(supra)* and **Jiwan Dass Vs. State of Haryana** *(supra)* is misplaced, for the reason that both the judgments pertained to a situation where the Supreme Court was dealing with appeals after conviction on merits and in any case, the law laid down therein eventually turned on the facts of the those individual cases. The principle that can be distilled from the said judgments, when applied to the facts of the present case, does make out a *prima facie* case against the applicant, insofar as offence under Section 409 of the IPC is concerned.

14. As regards Section 467 of the IPC, as noted hereinabove, the allegation pertains to submission of Cash Balancing Reports and Balancing Reports by the applicant as the Deputy Branch Manager, which were not in consonance with the actual position of availability of cash in the said Branch of the Bank, thereby indicating falsification of figures and hence the *prima facie* case of forgery against the applicant.

15. The seriousness of the offences registered against the applicant and the fact that the material does indicate that *prima facie* ingredients of the said offences are made out against the applicant, demonstrates that no indulgence can be shown to the applicant. The contention that other persons

have not been arraigned as accused cannot inure to the benefit of the applicant, so long as there is material to indicate that insofar as the applicant is concerned, particularly because of his role as the Deputy Branch Manager, the basic ingredients of the alleged offences are made out. It would be inappropriate to show indulgence to such an accused who has breached the trust of the Bank, which deals with amounts belonging to innocent bank account holders. The offences under Sections 409 and 467 of the IPC provide for maximum punishment of imprisonment for life, thereby indicating that the applicant has failed to make out the case in his favour.

16. In view of the above, the application is dismissed. It is made clear that the observations made hereinabove are limited to deciding the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

17. Considering the fact that only 8 witnesses have been cited in the charge-sheet, the concerned Court is directed to expedite the trial.

(MANISH PITALE, J.)