

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2994 OF 2024

Amit Harish Dave	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Sandeep Karnik, Advocate for Applicant.
 - Mr. Mayur S. Sonavane, APP for Respondent – State of Maharashtra.
 - Mr. Chetan Pacherwal, API, Unit – III, EOW, Mumbai.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 09, 2025

P.C.:

1. Heard Mr. Karnik, learned Advocate for Applicant and Mr. Sonavane, learned APP for Respondent – State of Maharashtra.

2. This Application seeks grant of bail. Applicant is arrested on 07.05.2022. First Information Report (for short '**FIR**') is filed on 07.10.2016 initially registered with Amboli Police Station in C.R. No.413 of 2016 and thereafter transferred to the Economic Office Wing as Crime No.97 of 2016 for offences punishable under Sections 406, 409, 465, 467, 468, 471, 120B, 411 and 414 of the Indian Penal Code, 1860 (for short '**IPC**').

3. The allegation against the Accused – Applicant before me is that he in collusion with the principal Accused who was working as

Branch Manager of the State Bank of India siphoned substantive funds with respect to overdraft facility and fixed deposits in the name of Railway Goods Clearing and Forwarding Establishments Labour Board, Mumbai. On receiving a detailed complaint from the Bank's Administrator that the interest due on the aforesaid overdraft facilities which was availed on the fixed deposit was fraudulently transferred, investigation was set into motion.

4. FIR came to be lodged on 07.10.2016. Investigation thereafter took place leading to some money trail in the Bank Account of the Applicant. Applicant was arrested six years thereafter on 07.05.2022. It is stated by Mr. Karnik that his role even according to the Complaint as pleaded is only after the amount is transferred to some third party by the principal conspirator and it is argued that those very third parties have not been investigated nor they have been implicated in the present offence.

5. Despite the Applicant been behind bars and the investigation having progressed, there is no case of recovery made against Applicant. It is also argued by Mr. Karnik that in the prosecution case it is not pleaded that Applicant was anyway involved in the case of forgery with respect to opening of the overdraft accounts in which the amounts from the bank were transferred by the principal Accused for onward transmission to the third party and then to the Applicant.

6. The investigation has been completed and the charge-sheet has been filed. Mr. Sonavane, learned APP points out that the charge-sheet is very bulky which can be seen with the naked eye also. He has vehemently opposed the grant of Bail Application arguing that there is ample material against the Applicant on merits by pointing out to the bulky charge-sheet. Though, at the outset, he would submit that he may be given an opportunity to go through the charge-sheet and prepare a compilation on the basis of the statement of the witnesses and the documentary material on record so as to show the direct involvement of the Applicant in the present offence, he is not able to show any *prima facie* nexus of the Applicant to the role of the principal Accused. All that the prosecution has to show to the Court is the nexus of the Applicant with the Branch Manager of the State Bank of India i.e. the Bank Official who indulged in the serious act of fraud of siphoning and diversification of the amounts as delineated in the complaint. If that is not shown to the Court, there is nothing on merits at this stage *prima facie* which persuades me to keep the Applicant behind bars any longer.

7. There is remote possibility that trial would commence much less that it shall be completed within a reasonable period of time. Applicant is incarcerated since 07.05.2022 i.e. two years eight months and two days days. The Supreme Court has held in a series of judgements and orders that looking at the gravity of the offences of the

Applicants, in such situations where undertrials have suffered long incarceration and the possibility of the trial been completed in the foreseeable future not been there, Constitutional Courts can exercise powers to release the Accused undertrials on bail, as bail is the rule and jail is the exception.

8. Once the investigation is complete and charge-sheet is filed, no purpose whatsoever would be served with the judicial custody of the Applicant. As any further incarceration of the Applicant would affect his personal life and would amount to punishing him even before his case is considered in trial or on merits.

9. Mr. Karnik would refer to and rely upon the decision of the Supreme Court in the case of *Abdulmajid Abdulsattar Memon Vs. State of Gujarat*¹ wherein the Supreme Court has taken note of the fact that despite the Petitioner in that case having several criminal antecedents, considering his long incarceration the Supreme Court had granted bail. He has also referred to the decision of the learned Single Bench of this Court (Coram: Manish Pitale, J.) in the Bail Application Nos.2917 of 2024 and 2747 of 2024 filed by the present Applicant in another crime.

10. Be that as it may, the Applicant is already been released on bail in the other five cases which are more or less related to the same

¹ Criminal Appeal No.3535 of 2014 decided on 27.08.2024.

offence in one way or the other. Having considered the submissions made by Mr. Karnik and in view of incarceration of Applicant for substantial period of time, I am inclined to allow bail to the present Applicant. Hence, the following order:-

- (i) Applicant – Amit Harish Dave is ordered to be released on bail in connection with Crime No.97 of 2016 in the sum of Rs.1,00,000/- (Rs. One Lakh only) with one or two sureties of the like amount;
- (ii) Applicant shall report to the EOW, Mumbai on second and fourth Tuesday of every month during pendency of the trial.;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted for reasons to be recorded in writing;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicant shall not influence with witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall surrender his passport, if any, with the Trial Court within a period of four weeks after his release since the passport is presently in the custody of

Saratkal Police Station in Mangalore in another crime;

(vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time, as applicable; and

(viii) Any infraction of the above conditions shall entail revocation of this order.

11. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and shall not be considered as an expression of opinion by this Court and is only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

12. In the above terms, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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