



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

CRIMINAL APPLICATION (BA) NO.372/2025

Smt.Sujata w/o Vilas Mahajan

..VS..

The State of Maharashtra, thr.PSO PS Awadhoot Wadi, Yavatmal,
Tahsil and District Yavatmal

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri S.V.Manohar, Senior Counsel assisted by Shri Atharva Manohar, Adv.
for the Applicant.
Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) assisted by Shri
Anant Ghongre, Addl.P.P.for the State.

CORAM : **URMILA JOSHI-PHALKE, J.**

CLOSED ON : **07/07/2025**

PRONOUNCED ON : **11/07/2025**

1. By this application under Section 483 of the BNSS, the applicant seeks regular bail in connection with Crime No.922/2024 registered with the non-applicant/police station for offences punishable under Sections 109, 120-B, 406, 409, 417, 420, 421, 424, 467, 468, 471, and 477-A of the IPC and under Section 3 the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (the MPID Act).

2. The applicant came to be arrested on 30.9.2024 and since then she is in jail.

3. The crime is registered on the basis of report lodged by the Special Auditor on an allegation that the applicant was working as Chief Executive Officer of “Babaji Date Mahila Sahakari Bank Limited, Yavatmal”. Initially, she worked as Clerk and Branch Manager of the said bank. During Audit, the Auditor noted some irregularities and illegalities and it revealed to the Auditor that various loans were obtained by applicant’s husband and also in names of her relatives. Her husband stood as Guarantor to the loans of the relatives. The said loans are sanctioned without following due process and sanction of the Board of Directors. Thus, the applicant was instrumental to loss of Rs.1.88 Crores. During her tenure, total fraud committed was Rs.2,42,31,21,019/-. On the basis of the said report, the police registered the crime against the applicant along with other co-accused.

4. Heard learned Senior Counsel Shri S.V.Manohar for the applicant and learned Public Prosecutor Shri D.V.Chauhan for the State.

5. Learned Senior Counsel for the applicant submitted that perusal of chargesheet, except allegation that the applicant's husband has obtained the loans which were due and the loans are obtained in the names of her relatives, no other allegation is levelled to show her direct involvement. The investigation papers show that loans outstanding against the husband of the applicant are already repaid. As far as responsibility of her husband as Guarantor is concerned, the house in the name of mother of her husband is mortgaged. He also invited my attention to the Auditor's Report which shows that there were no illegalities and irregularities while disbursing the loan amounts. Thus, as far as involvement of the applicant as to misappropriation is concerned, the same does not reveal.

The another ground raised by learned Senior

Counsel for the applicant is that grounds of arrest are not communicated to the applicant.

At the same time, he submitted that as issue regarding grounds of arrest whether to be communicated in each case either before the arrest or forthwith after the arrest is pending before the Larger Bench of the Hon'ble Apex Court and, therefore, he is not pressing for the same.

He submitted that the arrest of the applicant is after sunset which, in view of Section 46 of the CrPC, is illegal. The grounds of arrest are not communicated to nearest relatives who can arrange for her defence. He submitted that even report of the Special Auditor nowhere discloses the role of the applicant in the above said misappropriation.

In support of his contentions, he placed reliance on following decisions:

- 1. Aleksander Kurganov vs. State of Maharashtra, (2021) SCC OnLine Bom 150; and**

**2. Vihaan Kumar vs. State of Haryana and anr,
reported in 2025 SCC OnLine SC 269.**

6. *Per contra*, learned Public Prosecutor for the State submitted that the entire material collected by the investigating agency during investigation revealed that the applicant was mainly associated with supervising and disbursement of loan and verification of loan proposals. The loans granted in the name of the applicant though closed, other loan accounts in the names of her relatives were in fact utilized by her husband. The total amount of Rs.188.00 Crores came to be sanctioned without sanction of the Board of Directors. The said amount came to be deposited in the loan account of the applicant's husband. The loan proposals and the relevant documents are not available in the bank or with the liquidator. As per Rules, the record of the proposal requires to be preserved for a period of 8 years as per guidelines of the RBI dated 16.11.2009. The said record is destroyed. The statements of witnesses,

statements of bank employees, Audit Report, and documents *prima facie* show involvement of the applicant in commission of the crime. The offence is socio-economic offence and victimization of depositors in a very pre-planned manner. The present offence is a serious economic fraud and the applicant being the Chief Executive Officer is the main accused. Considering the nature of the offence, wherein approximately 37000 investors are involved and total misappropriation is of Rs.242,31,21,019/-. In view of that, the application deserves to be rejected.

7. On hearing both the sides and perusing investigation, it reveals that initially the applicant was appointed as Clerk in the said Bank. Subsequently, she was promoted as Branch Manager and at the time of the incident she was working as Chief Executive Officer. The Audit of the Bank was conducted and it revealed that there are various illegalities and irregularities and, therefore, a Special Auditor was appointed and was directed to conduct

Special Audit. During the Special Audit, it revealed that initially loans were disbursed in the name of her husband without sanction of the Board of Directors. Admittedly, he has repaid the loan amount, but subsequently loans were sanctioned in the names of various relatives and the said loan amounts disbursed in the names of various relatives was deposited in the loan accounts of the husband of the applicant. Though the husband of the applicant mortgaged his property, no charge was created on the said mortgaged property. The said loans are sanctioned without sanction of the Board of Director. Though the applicant's husband executed the mortgage deed, it was not registered in the Registrar's Office. Though the record of the said loans was required to be preserved for 8 years, as per the guidelines, it was not preserved. The statements of witnesses and the bank employees disclose involvement of the applicant in the alleged misappropriation.

8. Another ground raised by learned Senior

Counsel for the applicant is that the applicant was arrested after sunset at about 22.39 hours. He invited my attention to notice as to the arrest, at page No.1239 of chargesheet, wherein timing is shown as 22.39 hours. Whereas, other documents show timing of arrest as 17.58 hours.

9. Learned Public Prosecutor for the State also invited my attention to Arrest Form and the Notice under section 35(2) of the BNSS which show the timing of arrest as 5:30 pm. Thus, he submitted that the arrest was at 5:30 pm and not after sunset. Though he submitted that the arrest was at 5:30 pm, pre-arrest medical report shows that it was conducted on 13.9.2024 at 6:45 pm. There are various documents contrary to each other which showing different timings of the arrest. The requisition issued to the Medical Officer of Vasantrao Naik Shaskiya Vidyalaya, Yavatmal discloses date as 14.9.2024 and her pre-arrest medical at 6:45 pm. Another requisition is of 13.9.2024 which shows her pre-arrest medical examination at 5:30

pm. The Notice as to the arrest on page No.1230 of chargesheet filed on record shows her arrest at 22.39 hours. Thus, there is inconsistent record as to the arrest of the applicant. Notice of arrest also nowhere discloses grounds of arrest.

10. As far as the arrest after sunset is concerned,, Section 46(4) of the CrPC was inserted by Act 25 of 2005 w.e.f.23.6.2006.

11. The 135th Report of Law Commission Report of India on Women in Custody (1989) recommended that, ordinarily, no women shall be arrested after sunset and before sunrise and in exceptional cases calling for arrest during these hours, prior permission of the immediate, superior officer shall be obtained or if the case was of extreme urgency, then after arrest report with reasons shall be made to the immediate superior officer and to the Magistrate.

12. The 154th Report of Law Commission Report of

India on Women in Custody (1989) suggested incorporation of the following provisions in Section 46 of the CrPC, as “save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the police officer shall, by making a written report, obtain the prior permission of the immediate Superior Officer for effecting such arrest, or if the case is one of extreme urgency and such prior permission cannot be obtained before making such arrest, he shall, after making the arrest, forthwith report the matter in writing to his immediate superior officer explaining the urgency and the reasons for not taking prior permission as aforesaid and also shall make a report to the Magistrate within whose local jurisdiction the arrest had been made.”

13. In Section 46(4) of Cr.P.C/43(5) of BNSS, 2023 the expression “Shall” is inserted. Thus, an enactment in Form is mandatory.

14. Chapter V of the CrPC deals with arrest of persons. The word “arrest” has not been defined in the CrPC, but it defines as to how the arrest is to be made.

15. Section 46(4) of the CrPC, undoubtedly, creates an embargo on arrest of a woman who is an accused in an offence to be arrested after sunset and before sunrise. However, in the backdrop of the exceptional circumstances, it is for a woman police officer making written report to obtain prior permission of the JMFC and then effect arrest.

16. The Division Bench of this court in the case of in **Christian Community Welfare Council of India vs. Government of Maharashtra and anr. reported in 1995 CRILJ 4223**, prior to the amendment to the Code had given a deep consideration to the matter regarding custodial violence and the arrest of a female persons in the State. This Court directed the constitution of committee to have an introspection of custodial violence committed by the police in the State and to suggest comprehensive measures.

In the said judgment, the Court also directed the State Government to issue instructions that no female persons shall be detained or arrested without presence of lady constable and in no case after sunset and before sunrise. The said direction came to be issued by the Division Bench of this Court with an expectation that the State Government would rise to the occasion by striking the balance between the life of a person in police custody and the power of law enforcing agencies to bring the criminals to book by making appropriate rules or providing guidelines to the police personnels.

Thus, these directions are issued to ensure safeguards regarding before the arrest of women in the State. Subsequent to this judgment, by the amendment Act 2005, by which the provisions were incorporated, Section 46(4) was incorporated.

17. Perusal of Section 46(4) would make it amply clear that it mandates that no woman shall be arrested after

sunset and before sunrise, except in exceptional circumstances for which also prior permission of judicial magistrate is required.

18. Thus, it is clear that no woman shall be arrested beyond the prescribed schedule of time and where in exceptional circumstances, by Lady Police Officer by making a written report and obtaining permission from the Judicial Magistrate First Class.

19. The mandate of sub-section (4) of Section 46 is that no woman be arrested after sunset and before sunrise and in the exceptional circumstances, she may be so arrested by a Lady Police Officer by making a report and obtaining permission of the Judicial Magistrate First Class for effecting such an arrest.

20. This Court in the case of **Bharati S.Khandhar vs. Maruti Govind Jadhav**, reported in MANU/MH/2076/2012 had an occasion to deal with identical situation and concluded that the arrest of the petitioner at 8:45 pm was

totally illegal and cannot be accepted. It is further held that the arrest was in violation of Section 46(4) of the Code and the act of the police officer detaining the petitioner from 5:30 pm till the petitioner was produced before the JMFC was in utter violation of the said provisions.

21. The case of the applicant is squarely covered by the said judgment.

22. Though learned Public Prosecutor for the State has placed reliance on the communication and additional affidavit filed by the investigating officer to show that the applicant was arrested at 5:30 pm, the communication on record are contrary to the same.

As such, the contention of learned Public Prosecutor cannot be accepted.

23. The guarantee of 'life and liberty' as enshrined under Article 21 of the Constitution of India available to citizen of this country cannot be denied even to an accused who is in custody and surely not to a suspect who is sought

to be converted to an accused on an investigation and then from an accused to a convict on trial. It is an obligation upon the State as well as on the court to ensure that there is no infringement of indefeasible right of citizen to life and liberty, which he cannot be deprived of without following the procedure established by law. The CrPC describes the manner and to the extent of what a person can be denuded of his liberty and, therefore, needs a strict compliance. Any violation of the prescribed procedure in the matter of arrest can, therefore, liable to be declared as illegal.

24. The another ground raised by the applicant is that the grounds of arrest are not communicated to the relatives of the applicant so as to prepare themselves to arrange the defence of the applicant

Learned Senior Counsel for the applicant invited my attention to communication dated 13.9.2024 and submitted that in view of Section 48 of the BNSS, one of relatives Sunil Punwatkar was informed as to the arrest of

the applicant, however the grounds of arrest are not communicated along with the said communication.

He placed reliance on **Vihaan Kumar vs. State of Haryana and anr** *supra*, wherein the Hon'ble Apex Court has dealt with this issue and observed that the stand taken before the High Court was that the appellant's wife was informed about the arrest. Information about the arrest is completely different from the grounds of arrest. The grounds of arrest are different from the arrest memo. The arrest memo incorporates the name of the arrested person, his permanent address, present address, particulars of FIR and Section applied, place of arrest, date and time of arrest, the name of the officer arresting the accused and name, address and phone number of the person to whom information about arrest has been given. We have perused the arrest memo in the present case. The same contains only the information stated above and not the grounds of arrest. The information about the arrest is completely

different from information about the grounds of arrest. Mere information of arrest will not amount to furnishing grounds of arrest.

It is further observed in para No.31 that all courts, including the High Court, have a duty to uphold fundamental rights. Once a violation of a fundamental right under Article 22(1) was alleged, it was the duty of the High Court to go into the said contention and decide in one way or the other. When a violation of Article 22(1) is alleged with respect to grounds of arrest, there can be possible two contentions raised: (a) that the arrested person was not informed of the grounds of arrest, or (b) purported information of grounds of arrest does not contain any ground of arrest.

25. As far as the first contention is concerned, the person who is arrested can discharge his burden by simply alleging that grounds of arrest were not informed to him. If such an allegation is made in the pleadings, the entire

burden is on the arresting agency or the State to satisfy the court that effective compliance was made with the requirement of Article 22(1). It is further observed that aforesaid provision of requirement for communicating the grounds of arrest, to be purposeful, is also required to be communicated to the friends, relatives or such other persons of the accused as may be disclosed or nominated by the arrested person for the purpose of giving such information as provided under Section 50A of the CrPC. The purpose of inserting Section 50A of the CrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would be able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends and relatives.

26. Learned Senior Counsel for the applicant submitted that the communication issued to the friend/relative of the applicant nowhere discloses as to the grounds of arrest. Being it is violation of fundamental rights of the applicant, requirement of communicating the grounds of arrest is not complied with. In view of Article 22(1) of the Constitution, such arrest may be rendered illegal.

27. As far as merits of the matter is concerned, involvement of the applicant reveals in an economic offence. As regards economic offence, while granting bail, the court has to take into consideration nature of accusations, nature of evidence in support thereof, and severity of the punishment.

28. The Hon'ble Apex Court, while dealing with offence, involving conspiracy to commit economic offences of huge magnitude, in the case of **Y.S.Jagan Mohan Reddy vs. CBI, reported in (2013)7 SCC 439** laid down following

parameters:

i) economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country, and

ii) while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other similar considerations.

29. As observed earlier, involvement of the applicant

reveals in the economic offence. At the same time, it reveals that the arrest of the present applicant is after sunset, which is illegal, as observed earlier.

30. The grounds of arrest are also not communicated to the friends/relatives of the applicant and, therefore, such arrest, in the light of the judgment in the case of **Vihaan Kumar vs. State of Haryana and anr *supra***, is illegal.

31. In the light of the above facts and circumstances, the applicant has made out a case for grant of bail. Hence, I pass following order:

ORDER

(1) The Criminal Application is **allowed**.

(2) The applicant shall be released on bail, in connection with Crime No.922/2024 registered with the non-applicant/police station for offences punishable under Sections 109, 120-B, 406, 409, 417, 420, 421, 424, 467,

468, 471, and 477-A of the IPC and under Section 3 the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, on her executing a P.R.Bond in the sum of Rs.1.00 lac with two solvent sureties of the like amount.

(3) The applicant shall attend the police station twice a month i.e. 1st and 15th of every month, till conclusion of the trial, and shall cooperate with the investigating agency.

(4) The applicant shall surrender her passport, if any, before the investigating agency.

(5) The applicant shall not leave the jurisdiction of Yavatmal District without prior permission of the District Judge at Yavatmal.

(6) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case and shall not indulge in similar type of activities.

(7) The applicant shall attend the proceeding before the trial court without seeking any exemption, unless there are exceptional circumstances.

(8) The applicant shall furnish her cell phone number(s) and residential address along with names of two relatives along with their address proof.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!