IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE AND SPECIAL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU.

Dated this the 26th day of June 2021

PRESENT:

Sri T.N. Inavally, B.A.L., LL.B.
Principal District & Sessions Judge
and Special Judge,
Bengaluru Rural District,
Bengaluru.

Special Case No.191/2021

Complainant	:	State of Karnataka by C.I.D. Police, Bengaluru. ***(Represented by the learned Prosecutor)***

Vs.

Accused	:	Kanva Souharda Co-operative Credit Limited and others.
Applicant/ Accused No.9	:	Hareesh S., S/o late Seetharamaih, Aged about 43 years, R/at No.139/2, Srinivasa Nilaya, 7th cross, 4th main, Govindarajanagara, Bengaluru – 560 040. ***(Represented by Sri P.H., Advocate)***

Applicant/ Accused No.17	:	Surendra T.M. S/o Madarajappa Aged about 31 years, Deputy General Manager, Kanva Mathikere Branch, R/at No.314, Shashank Apartment, 2nd main road, 7th Cross, Tindlu, Bengaluru – 560 097.
Applicant/ Accused No.19	:	Anil Kumar K. S/o Kyathaiah, Aged about 34 years, Branch Manager of Kanva Souharda Co-operative Society, Malleswaram, R/at No.41, Samrudhi Nilaya, 9th cross, 1st main road, B.H.E.L. Layout, Doddabettahalli, Ward No.3, Yalahanka, Bengaluru – 560 064. ***(Represented by Sri S.T.N., Advocate)***

ORDER ON THE BAIL APPLICATIONS FILED UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE

These applications are filed by the accused No.9 and the accused No.17 and 19 under Section 439 of the Code of Criminal Procedure ('Cr.P.C.' for short), praying for an order to enlarge them on bail in the case in the interest of justice.

2. The accused No.9 has filed the bail application contending that he is innocent of the alleged against him and he never participated in terms of any financial irregularities or creation or alienation of the assets of the Company. He is solely responsible for the affairs as a person of the Board wherein he was benefited only in terms of meeting expenses and the salary for having worked for the Company. Apart from that he is in no manner responsible for the affairs of the Company or its financial transactions.

3. The contention of the accused No.17 and 19 in their bail application is that they are working employees of the accused No.1 – Kanva Souharda Co-operative Credit Limited ('the accused No.1' for short) and hence, they are in no way connected with the transactions alleged in the case. They are innocent of the offence alleged against them in the case. Therefore, the accused No.9 and the accused No.17 and 19, for the grounds

urged in their respective bail applications, have prayed for allowing their applications and thereby to enlarge them on bail in the interest of justice.

4. The notice of these bail applications is furnished to the learned Prosecutor for the complainant police and he has filed common objection to both the bail applications, submitting that these bail applications are not maintainable in law. There is prima facie case against the accused No.9, 17 and 19 for the offences charge-sheeted and thereby, for the reasons mentioned in the objection, the learned Prosecutor has prayed for dismissal of the bail applications.

5. Heard the arguments of the learned counsel for the accused No.9 and the accused No.17 and 19 and also the learned Prosecutor on the respective bail applications. Perused the relevant materials on record. Now the points that arise for my consideration are:

1) *Whether the accused No.9 and also the accused No.17 and 19 have made out any*

ground for enlarging them on bail under Section 439 of Cr.P.C., as sought for in their respective bail applications?

2) *What order?*

6. After hearing the arguments of both the parties and on considering the relevant materials on record, my findings on the above points are as hereunder:

Point No.1	:	In the affirmative
Point No.2	:	As per final order
		For the following

REASONS

7. **POINT No.1**: The case alleged against the accused No.9, 17 and 19 along with the other accused persons is that the accused No.1 took Fixed Deposit of Rs.3 Lakh from the informant assuring that they would pay interest at 12% per annum on the said amount. The Fixed Deposit was made on 03.05.2019 by the informant and the accused No.1 gave interest to the informant on the said Fixed Deposit only for the period of 2 months. Thereafter, from the month of July 2019,

the accused No.1 did not pay interest on the Fixed Deposit. Hence, the accused No.1 cheated the informant, he being one of the depositors. On the first information of the informant Sri Srinivas S/o late Sathyanarayana, the Varthur police registered the case against the accused No.1 to 4 and took up investigation. During the investigation, the further investigation of the case was taken up by the C.I.D Police (the complainant police) and after completion of the investigation, the complainant police filed charge sheet against the accused No.1 to 7 Company and the accused No.8 to 19 including these accused No.9, 17 and 19 the offences punishable under Sections 403, 406, 409, 418, 420, 120-B of Indian Penal Code ('IPC' for short) and Section 9 of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 ('the KPID Act' for short).

8. Now the contention of the accused No.9 is that he is not aware of the financial transactions regarding

the assets of the accused No.1 and therefore, he is innocent of the offences alleged against him. The contention of the accused No.17 and 19 is that they are employees of the accused No.1 and they are not at all concerned with the business of the accused No.1. However, as submitted by the learned Prosecutor, the investigation is already over and the complainant police have filed the charge sheet against 19 accused persons including these accused No.9, 17 and 19. The accused No.1 to 7 are Company. It is not disputed by the accused No.9 that he is the President of the accused No.1. Hence, any of the contentions of the accused No.9, 17 and 19 that they are innocent of the offences alleged against them does not merit consideration at this stage.

9. However, for the sake of argument, even if it is accepted that there is sufficient material against the accused No.9, 17 and 19 for the alleged offences, any of the offences charge-sheeted is not punishable with death or imprisonment for life. Moreover, except for the

fact that the offence under Section 9 of the KPID Act, all the offences charge-sheeted are exclusively triable by the Magistrate. Only for the reason that this Court is Special Court as per the KPID Act and there is offence punishable under Section 9 of the KPID Act also, the matter is before this Court for consideration. Moreover, the maximum punishment for one of the offences alleged the accused persons is imprisonment for life, which is punishable under Section 409 of IPC.

10. Further, the contention of the learned counsel for the accused No.9 and also of the accused No.17 and 19 is that the prime accused is the accused No.8, who is already on bail in the case on hand. Moreover, the allegations made against the accused persons clearly go to show that the entire investigation of the case is mainly based on the concerned documents. The charge sheet is already filed. Hence, even if it is mentioned in the charge sheet that the additional charge sheet will be filed under Section 173(8) of the Cr.P.C., it does not

disentitle the accused No.9, 17 and 19 to be enlarged on bail at this stage.

11. It is pertinent to note that the learned counsel for the accused No.9 has drawn the attention of this Court to the decision of the Hon'ble Supreme Court in the case in ***Criminal Appeal No.699/2020 (M. Ravindran v. The Intelligence Officer, Directorate of Revenue Intelligence).*** Even though the facts of the case of the said decision are different from the facts of the case on hand and the principle of law laid down in the said decision is regarding Section 167(2) of Cr.P.C., if the said decision is considered, it is clear that even though charge sheet is filed with permission to file additional charge sheet under Section 173(8) of Cr.P.C. and in such case if the original charge sheet is not filed within the stipulated period, the concerned accused is entitled to default bail under under Section 167(2) of Cr.P.C. The learned counsel for the accused No.9 has also relied on the decision of the Hon'ble Apex Court in ***Criminal Appeal***

No.681-682/2020 ***(Saravanan v. State represented by the Inspector of Police)***. The said decision is also regarding default bail under Section 167(2) of Cr.P.C.

12. In the case on hand, as discussed herein above, there is mention in the charge sheet that the additional charge sheet will be filed under Section 173(8) of Cr.P.C. Such contention of the I.O. would clearly show that he has not done complete investigation in the case and only to avoid the period mentioned in Section 167(2) of Cr.P.C., as some of the accused persons including the accused No.9, 17 and 19 are still in judicial custody, the I.O. might have filed the charge sheet. Hence, on this ground also, the accused No.9, 17 and 19 are entitled to bail in their favour at this stage.

13. It is true that the learned Prosecutor in the objection has contended that the movable and immovable properties of the accused No.1 attached in the case are of the value of Rs.426 Crore, but the

amount involved in the case is about Rs.464 Crore and there is prima facie case against the accused No.9 for the alleged offences, he being one of the partners of the accused No.1 Company. However, as discussed herein above, the investigation in the case is based on the documents. Hence, no purpose would be served by keeping the accused No.9, 17 and 19 in custody, that too after filing of the charge sheet.

14. The contention of the learned Prosecutor in the objection that the amount involved in the alleged offence is Rs.464 Crore does not merit consideration at this stage, as it is mentioned in the charge sheet itself that the I.O. intends to take up further investigation of the case and file additional charge sheet under Section 173(8) of Cr.P.C. Hence, the above mentioned contention of the learned Prosecutor in his objection cannot be a ground to deny bail to the accused No.9, 17 and 19 at this stage. It is not in dispute that the accused No.17 and 19 are only employees of the accused No.1

Company. Therefore, there is absolutely no reason to keep the accused No.9, 17 and 19 in custody in the case on hand.

15. Moreover, the accused cannot be allowed to remain in custody as under-trial prisoners as punishment to them regarding the offences charge-sheeted, as it is well settled principle of law that the accused should be presumed to be innocent until he is proved guilty. Proving of the guilt of the accused arises only after completion of trial of the case. Moreover, considering the veracity of the allegations and the gravity of the offences alleged in the case, it would be clear that the trial of the case will take its own time. Therefore, on this ground also, it is not desirable to allow the accused No.9, 17 and 19 remain in judicial custody in the case on hand.

16. The learned counsel for the accused No.17 and 19 has produced copy of the order dated 18.06.2020 of

the learned IX Additional District & Sessions Judge, Bengaluru Rural District, Bengaluru in Crl.Misc. No.103/2020, wherein the learned Additional Sessions Judge has granted anticipatory bail in favour of the accused No.1 to 4 shown in the FIR, who are the prime accused. Those accused are concerned with the concerned accused No.1 to 7 Companies. The accused No.1 shown in the FIR is the accused No.8 as per the charge sheet. Hence, when the prima accused No.8 is on bail, the accused No.9, 17 and 19 are also entitled to bail on the ground of parity.

17. Further, as per the address of the accused No.9, 17 and 19 mentioned in the charge sheet, the accused No.9 is resident of Vijayanagar, Bengaluru, the accused No.17 is resident of Thindlu, Bengaluru and the accused No.19 is resident of Yalahanka, Bengaluru. Therefore, the apprehension of the learned Prosecutor that there is chance of the accused No.9, 17 and 19 absconding, in case they are released on bail, does not

merit consideration on the facts of the case. Any of the contentions of the learned Prosecutor put forth in the objection can be suitably met with by imposing proper and necessary conditions on the accused No.9, 17 and 19 while granting bail in their favour. Hence, the accused No.9, 17 and 19 have made out sufficient ground for enlarging them on bail as sought for in their respective applications. Consequently, the point No.1 is answered in the **affirmative**.

18. **<u>POINT NO.2</u>:** From the discussion made herein above, it is clear that these bail applications deserve to be allowed. In the result, therefore, I proceed to pass the following:

<u>ORDER</u>

These bail applications filed by the accused No.9 and the accused No.17 and 19 under Section 439 of Cr.P.C. are hereby allowed.

Consequently, the accused No.9, 17 and 19 shall be enlarged on bail on their executing personal bond for Rs.2,00,000/- (Rupees Two Lakhs only) each with one solvent surety for the like sum, to the satisfaction of this Court, subject to the conditions that:

1) The accused No.9, 17 and 19 shall appear before this Court in the case as and when directed.

2) They shall appear before the I.O. as and when required and they shall assist the I.O. in further investigation, if any, in the case.

3) They shall not directly or indirectly make any inducement, threat or promise to the informant or any other prosecution witnesses so as to dissuade them from disclosing any facts to the Court or to the I.O.

4) They shall not commit similar offences or any offence during pendency of the case, and

5) If the accused No.9, 17 and 19 violate any of the conditions of bail during the pendency of the case, the bail granted in their favour shall stand cancelled.

(Dictated to the Judgment Writer, transcribed by him and corrected and then pronounced by me through Video Conference on this ***the 26th day of June 2021)***

(T.N. Inavally)
Principal District & Sessions Judge
and Special Judge
Bengaluru Rural District,
Bengaluru.