

**ORDER BELOW BAIL APPLICATION EXH.5 IN
R.C.C.NO.281/2022 (C.R.NO.I-180/2021) OF PARNER POLICE
STATION (C.N.R.NO. MHAH250020892022)**

This is an application filed by the accused praying to release him on bail.

2. It is submitted that accused is arrested in crime No.I-180/2021 registered at police station, Parner, Dist. Ahmednagar for offences punishable under section 406, 408, 464, 465, 467, 468, 471 and 420 of the Indian Penal Code. Accused was arrested on 12.05.2022 and after police custody remand till 16.05.2022, he was remanded into Magisterial custody. It is submitted that the investigation is over and final report has been filed. There is no prima facie evidence to show that accused has committed alleged offence. It is further submitted that accused was employee of Vakrangee company and he was not employee of Central bank of India. It was not the responsibility or duty of accused while working in Central bank to accept amount from depositors, to withdraw the amount from their account or to prepare Fixed Deposit receipts. Therefore, accused has not committed criminal breach of trust as alleged. It is further submitted that in nationalized banks, access code is provided to Cashiers which is required while withdrawing amount from the accounts of customers. Such access code is secret. So also while withdrawing amounts, signature of Cashier, Assistant Manager and Chief Manager is required, which falsifies allegations leveled against accused that he withdrawn huge amounts from the accounts of customers. It is submitted that in the internal audit, bank employees of concerned bank were also found guilty, however

they are not arraigned as accused. It is submitted that the concerned bank has paid the amount which is alleged to be withdrawn by accused from the accounts of customers and hence, no recovery is left to be made from accused. It is submitted that accused is the only earning member in the family and as final report is filed, there is no purpose to keep the accused behind the bars. Accused is ready to abide conditions as may be imposed. On these submissions, it is prayed that the accused be released on bail.

3. Say of learned A.P.P. and investigating officer was called for. The investigating officer opposed the application on the submissions that during investigation, it has been found that accused has committed defalcation of Rs.49,33,900/-. After registration of crime, for about one year, accused was absconding. Despite commission of such serious offence, if the accused is released on bail, there are chances of influencing the witnesses and he may flee from jurisdiction of court to avoid trial. On these submissions, investigating officer has prayed for rejection of application.

4. Learned A.P.P. has submitted that the offences leveled against accused are serious and non-bailable in nature. The offences are against society. The offence punishable under section 467 of the Indian Penal Code is punishable with imprisonment for life. It is submitted that accused was acting as a mediator between Central bank and its account holders to facilitate bank transactions. However, accused accepted money from account holders towards Fixed Deposit and by preparing forged receipts, he

misappropriated such amount for his own use. The accused has thus misappropriated amount of Rs. 49,33,000/-. It is further submitted that this is second bail application before this court and although the final report is filed, it can not be change in circumstance to entertain the application. In support of said submissions, he relied on following judgments;

(i) **Virupakshappa Gouda and Anr. Vs. State of Karnataka and Anr. 2017 Cri.LJ 2769**, wherein in para No.13 it is held that;

“13. On perusal of the order passed by the learned trial judge, we find that he has been swayed by the factum that when a charge-sheet is filed, it amounts to change of circumstances. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons.”

(ii) **Nimmagadda Prasad Vs. C.B.I. A.I.R. 2013 S.C. 2821** wherein in para No.27 and 28 it is held that,

“27. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of 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 interests of the public / State and other similar considerations.”

“28. Economic offences constitute a class apart and need to be visited with different approach in the matter of bail. The economic offences 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.”

(iii) **State of Gujarat Vs. Mohanlal Jitamalji Porwal**, wherein in para No.5, it is held that,

“5. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

5. Learned A.P.P. lastly submitted that considering economic offence, if accused is released on bail, there is every possibility that accused may abscond and misuse the liberty to tamper evidence and indulging in similar type of activities.

6. Heard learned advocates for accused and learned A.P.P. at length. Learned advocate for accused submitted that the allegations against accused are false. He submitted that even otherwise investigation is complete, therefore, tampering of evidence is not probable. He submitted that, as accused is in jail since long, he be released on bail on conditions as court may deem fit. Learned A.P.P. on the other hand, submitted that considering the seriousness of offence and the amount which is alleged to be misappropriated by accused, anticipatory bail application as well as regular bail applications filed earlier were rejected. He submitted that even this is first application after filing of charge-sheet, considering gravity of offence and possibility that accused may abscond and may not face the trial, he prayed for rejection of application.

7. While considering the aspect of bail, certain considerations and factors are required to be seen which ultimately depends upon the specific facts and circumstances of each case. As observed in the judgment of *Nimmagadda Prasad (cited supra)*, prima facie involvement of the accused, nature and gravity of the offence, severity of the punishment and the character and position of the accused is required to be considered. At the same time, at the stage of bail, the court is not required to go into the detailed analysis of the evidence of the case.

8. It appears from the nature of allegations that accused was working as a bank friend in the Central Bank of India, Branch at Vadzire, Tal. Parner, Dist. Ahmednagar since 2014. The

allegations speak that accused was familiar with the customers / bank account holders in Central Bank and by taking benefit of said fact, he accepted amount from customers which were entrusted for preparing fixed deposit receipt. The allegations further speak that accused prepared forged Fixed Deposit receipts, issued them to customers without depositing it in their names and thus, wrongfully utilized said amount for his own gain. The allegations speak that accused has accepted such amount from number of account holders in Central bank without preparing Fixed Deposit receipt and misappropriated huge amount.

9. It appears that the final report has been filed. Perusal of report prima facie shows involvement of accused in the alleged offence. It is submitted by learned advocate for accused that as charge-sheet has been filed, there is no need to keep accused behind the bar. On the contrary, according to learned A.P.P., filing of charge-sheet is not change of circumstance. As observed in the judgment of *Virupakshappa Gouda* (cited supra), filing of charge-sheet does not amount change of circumstance and it does not in any manner lessen the allegations made by the prosecution. As observed in the said judgment, filing of charge-sheet establishes that after due investigation the investigating agency having found material has filed charge-sheet for trial of accused.

10. Considering the totality of circumstances in the light of the nature and seriousness of offence, the final report shows prima facie evidence and involvement of accused in the alleged crime. The alleged offence is against society where defalcation or

misappropriation has been committed by accused who was entrusted with duty to assist customers to facilitate them to ease the banking, has instead accepted huge amounts entrusted with him for preparing fix deposit receipt, and has misappropriated it for his own gain. It appears that during investigation, there is no recovery of single amount at the hands of accused and in fact, the bank itself compensated the customers for the wrongful gain of accused.

11. The offences punishable under section 467 of the Indian Penal Code is punishable with imprisonment for life or imprisonment of either description for a term which may extend to ten years. In view of economic offence and seriousness of accusations against accused, possibility of his absconding to avoid trial, can not be ruled out, as the report speaks that after registration of crime, he was absconding for one year. Therefore, in view of aforesaid observations, I pass following order;

ORDER

Application is rejected.

Sd/-

Date: 02.09.2022.
Parner

(**R. K. Deshpande**)
Judicial Magistrate, First Class
Parner