



ORDER BELOW BAIL APPLICATION (EXH.15) IN
RCC No.281/2022
(CNR : MHAH2500 2089 2022)

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The accused through the present application has contended that the accused had surrendered himself in the police station on 12.05.2022. The charge-sheet was filed against the said accused on 10.08.2022. Charge was framed against him on 21.10.2022 vide Exh12. Since 10.08.2022 till 02.12.2022, the case was pending against the accused and the prosecution has failed to secure the presence of any witness. The present accused is tried as under trial prisoner and it is necessary that the directions of Hon'ble Supreme Court be followed. Considering the rights of the accused he be released on bail.

2. The say of the Ld. APP and I.O. was called on the present application.

SAY OF LEARNED APP :

3. The Ld. APP has filed his say to the present application vide Exh.16A stating that the accused is prosecuted for the offences punishable under Sections 406, 408, 420, 464, 465, 467, 468, 471 of the Indian Penal Code (hereinafter to be referred as 'The IPC'), such offences being serious in nature and is an economic offence.

The said accused was a bank friend in Central Bank Of India, branch Vadzire. He used to perform duties like encashing cash from the customers account, depositing of fixed deposits and other deposits, depositing of cash etc. However, the accused accepted money from the account holders towards fixed deposits and prepared forged receipts, made forged signature of the bank officials and misappropriated such amount for his use. He was removed from the bank as a bank friend and yet he misrepresented himself to the customers of the bank and accepted money from them in that capacity and misappropriated the money for his own use. The charge-sheet has been filed against the said accused after completion of the investigation and it has been revealed through the documents that he has committed the said offence. The anticipatory bail of the said accused was rejected by the Hon'ble District Court as well as the Hon'ble Bombay High Court, Bench at

Aurangabad. All the bail applications filed by the accused till date have been rejected by the concerned court as well as the higher courts. The offence punishable under Section 467 of the IPC is punishable with life imprisonment. The said application filed by the accused is not as per section 437(2) and hence, is not tenable. The Ld. APP has cited the following authorities ;

- i) Sandip Kumar Bafana Vs. State of Maharashtra, AIR 2014 SC 1745
- ii) The State of Maharashtra Vs. Rajkumar Kunda Swami, (2002) 104 Bom. LR 567.
- iii) Nimmagadda Prasad Vs. CBI, AIR 2013 SC 2821
- iv) State of Gujarat Vs. Mohanlal Jitamalji Parwal, AIR 1987 SC 1321.
- v) Harshad Purushottam Mehta Vs. State of Maharashtra, AIR Online 2020 Bom. 729

If the said accused is released on bail, there are chances that he would directly or indirectly tamper the prosecution evidences and witnesses. After the committal of the said offence, the accused was absconded for about a year and hence, there are chances that if he is released on bail, he would abscond and his presence could not be secured in the court and the proceeding would remained pending for his appearance. The said accused has committed an economic offence by misappropriating the amount of Rs.49,33,900/-. The said application shall be rejected considering the grounds of seriousness so attached to the present crime.

SAY OF I.O. :

4. The I.O. to the present application has filed his say vide Exh.16 stating that the said accused has worked as a bank friend in Central Bank of India and he used to perform duties like encashing cash from the customers account, depositing of fixed deposits and other deposits, depositing of cash etc. However, accused accepted money from the account holders towards fixed deposits and prepared forged receipts, made forged signature of the bank officials and misappropriated such amount of Rs.49,33,900/- for his own use. If he is released on bail even after committing an offence of such magnitude, he would again take undue advantage of he being released on bail, to commit such like nature of

offences. The accused was absconded for a year after the commission of offence and chances cannot be ignored of he absconding again if released on bail thereby creating a hindrance in adjudication of the present matter. He might tamper the prosecution evidences and witnesses.

WRITTEN ARGUMENT OF ACCUSED :

5. The arguments of the Ld. APP and the Ld. Advocate was heard as well as the Ld. Advocate for the accused submitted his written argument on Exh.17 thereby stating that after the framing of the charge against the accused, the witness summons were served on 18.11.2022. The accused is in jail since 12.05.2022 till date i.e. 03.01.2023 (for about 232 days). As per the Code of Criminal Procedure, if the accused is in jail and if the charge is framed and witness summons have been served then it is necessary to conclude the trial within two months and relied upon Section 437 clause 6 of the Cr.P.C. He relied upon the authorities as stated below ;

- i) Mangesh Bhiva Thorve Vs. State of Maharashtra in Criminal Bail Application No.848/2017, The Hon'ble Bombay High Court held that “no doubt, *prima-facie* there is a material against accused. However, the investigation is complete and charge-sheet is filed. All documents have been seized in the said case. The accused deserves to be enlarged on bail on following terms and conditions”.
- ii) Balasaheb Satbhai Merchant Vs. State of Maharashtra, The Hon'ble Bombay High Court held that “ taking into consideration the legal position, one do not find any substance in the contention of Mr. Bhatt, Ld. Counsel for the intervenor that nearly, because the offence is under Section 409 & 467 of IPC, Magistrate did not have jurisdiction to hear and grant the bail and further, Hon'ble Bombay High Court also referred the observations in Ishan Vasant Deshmukh Vs. State of Maharashtra, that Magistrate would have jurisdiction to grant bail further, it is pointed out that offence complained against the accused is triable by the magistrate and not by the court of Sessions. Therefore, in view of observations of Hon'ble Court in Ambarish Rangssti Patnigere Vs. State of Maharashtra (supra) it is to be held that Magistrate has the jurisdiction to entertain the bail applications.
- iii) Sanjay Chandra Vs. CBI, 2011, The Hon'ble Bombay High Court held that “we are conscious of the fact that accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offence alleged, if proved may jeopardize the economy of the country. At the same time, we cannot loose site of the fact that, the

investigation agencies has already completed investigation and the charge-sheet has already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to grant of bail pending trial on stringent conditions in order to allow the apprehension expressed by CBI.

- iv) Shri Tarkeshwar Gorakhnath Pade Vs. State of Maharashtra, 2011 ALL MR (Cri.) 1608.
- v) Pralhad Singh Bhati Vs. NCT, Delhi, Hon'ble Supreme Court of India held that the Magistrate has ample powers to exercise under section 437 of Cr.P.C.
- vi) Manlana Mohd. Aamir Rashidi Vs. State of Uttar Pradesh, The Hon'ble Supreme Court of India held that Magistrate have jurisdiction to hear and grant the bail in offences under Section 409, 467 of the IPC.
- vii) Anokhilal Vs. State of Uttar Pradesh in Second Bail on 30.03.2022 The Hon'ble Supreme Court of India held that pending the trial one cannot keep a person in custody for an indefinite period of time and taking into consideration the period of custody, there is no possibility to conclude the trial in near future and accused is in jail for a substantial long period then a period of concentration may be considered as a fresh ground and it is no fault on the part of accused but, on the part of prosecution, accused may be released on bail.
- viii) Supreme Court Legal Aid Committee representing under trial prisoners Vs. Union of India, The Hon'ble Supreme Court of India held that under trial prisoners get enlarged on bail if the trial is not concluded within prescribed criteria.

The applicant / accused is languishing in jail since more than seven months. Therefore, there is no purpose to keep the accused behind the bar, but the trial of the accused has not concluded in the view of the provisions of Section 437(6), when an accused in non-bailable case triable by Magistrate is in jail and trial is not concluded within 60 days from the first date fixed for taking evidence, accused is entitled to be released on bail and has quoted Section 437(6) of the Cr.P.C.

REASONS :

6. Considering the facts and circumstances of case, the accused may

kindly be released on bail and if application would be allowed by this Hon'ble Court, then accused shall not tamper or abscond with prosecution evidence, and applicant is ready and willing to furnish surety as per the order and to remain present as and when order and shall abide conditions which will be put on him by this Hon'ble Court.

7. At the outset it is necessary to observe that a bail application was filed by the accused before filing of the final report and one later to the filing of final report which have been rejected by my Ld. Predecessor. Yet again this application is filed submitting that the prosecution has not examined a single witness since 10.08.2022. It is necessary to observe that after filing of the final report, the accused had filed an application seeking discharge of the accused and his application was rejected on 14.10.2022. Thereafter, on 21.10.2022, charge was framed against the accused. Record shows that witness summons were issued. The case is pending as the informant wants to submit the hand-writing analysis report. It nowhere appears on record that the prosecution is not taking steps and the directions of the Hon'ble Supreme Court are not followed by the prosecution. The final report shows complicity of the accused in the crime as alleged. Considering the grounds that there is the possibility of absconding of the accused or tampering of the prosecution evidence and witnesses, if he is enlarged on bail, the earlier bail application was rejected. I do not see to my naked eyes any change in the circumstances. Also, there are no other grounds, to allow the present application at this stage, as they are not valid, legal and even not reasonable. The Hon'ble Supreme Court has time and again stated, also in the authorities cited above by the Ld. Advocate of the accused that the accused can be released if the investigation is complete and that were the presence of the accused may not be necessary for further investigation. In the present case in hand, it is necessary to note that the accused has been charged for an massive economic offence requiring detail adjudication and investigation. Also accused is facing trial for offences as stated above and maximum punishment under Section 467 IPC is life imprisonment. In addition to this, considering the amount alleged of misappropriation i.e. Rs.49,33,900/-, I find that even if the trial is not concluded within the period of 60

days from first date of evidence as required by Section 437(6) of the Cr.P.C., I am of the view that the economic offence involving such a huge and massive transaction would definitely require examination of evidences involving examination of hand-writing report, bulky documents, examination of listed witnesses, etc. Accused cannot be enlarged just by taking benefit of said section. On perusal of said section it is not mandatory upon the court to release the said accused on bail if the trial is not concluded within a period of 60 days. But, has left a discretion upon the Magistrate to reject only upon giving reasons recorded in writing which has been stated above. Hence, I proceed to pass the following order ;

ORDER

The application (Exh.15) is rejected.

Date : 21/01/2023

Sd/-
(Uma Y. Borade-Kapoor)
Judicial Magistrate First Class,
(Court No.2), Parner.