

ORDER BELOW EXH.6
(Dated 16/10/2023)

Accused No.2 has filed the instant application for release him on bail. He submitted that he is innocent person and falsely implicated in the present crime. The allegation made by the informant are base less and false. The alleged fraud made by the accused No.1 as per F.I.R. and not by him. It has only alleged that he introduce the informant with accused No.1 and thereafter whatever transaction took place in between accused No.1 and informant. There is no necessity to custodial interrogation. He is ready to abide all the conditions. Finally, prayed for application be allowed.

2] Learned APP filed say at Exh.7. Wherein she submitted that the accused persons are actively involved in commission of crime. Offences are punishable with imprisonment which may extend to life. Accused if released he will misuse his liberty. Hence, application be rejected.

3] Perused the application and say of learned APP. Heard both sides at length.

4] The prosecution has alleged that accused No.1 and 2 were serving in the Nirmal Urban Co-operative Bank, Branch Kamptee as a Manager and Assistant Manager respectively. Accused No.2 introduced accused No.1 with the informant. The informant through accused No.2 open recurring and cash credit account in the year 2017 in Nirmal Urban

Co-operative Bank Ltd. Nagpur, Branch Kamptee. The informant in order to repair marriage hall asked accused No.1 for loan. At that time accused No.1 agreed to give loan by mortgaging the property. The informant relied on accused No.1 gave documents of the property at Bhilgaon and Kamptee. After 8 to 10 days accused No.1 came to the house of informant and by saying money difficulty and by saying the reason of less valuation of the property demanded Rs.1,00,000/-. Accused No.2 had given loan to the informant of Rs.21,00,000/-. Accused No.1 instead of making cash credit limit of Rs.19,00,000/- prepared limit of Rs.9,00,000/-. Accordingly the informant told accused No.1 that she did not need loan and cancelled the same and returned all the documents. Then accused No.1 told about one scheme and asked the informant to invest Rs.21,00,000/- in that scheme and upon such amount he would give interest of Rs.5,250/- per day except holiday. On assurance given by accused No.1 the informant given Rs.19,00,000/- to accused No.1. Thereafter the informant needs money of Rs.10,00,000/- for purchasing one flat, therefore she approached to accused No.1, at that time accused No.1 invested Rs.8,00,000/- in one scheme and told within 15 to 20 days he would repay Rs.27,00,000/-. After some days the informant went into the bank and she came to know that accused No.1 has transferred to Nandanvan Branch as he committed misappropriation. The informant met with accused No.1 and assured that he would repay Rs.27,00,000/- to her and after some days accused No.1 repaid Rs.2,00,000/-. After some days accused No.1 without intimation ran away from Nagpur city. After some days accused No.1 told the informant that he is serving at Ratnagiri and after request he has given Rs.3,00,000/- to the informant. Thus, accused No.1 committed misappropriation of Rs.16,91,750/-.

5] On perusal of recitals of F.I.R. there is no specific allegations

against accused No.2 being Assistant Branch Manager pertaining to the offences punishable under section 420, 409 and 406 of the Indian Penal Code. The only allegations is that accused No.2 has introduced accused No.1 to the informant and not more than that. The informant made every allegations accused No.1 only. On perusal of F.I.R. as well as the final report, there is no specific allegations rather active involvement of accused No.2 in the present crime being Assistant Branch Manager.

6] Apart from that the investigation is completed the entire allegations are base on documentary evidence. Further accused No.2 is in police custody since 28/04/2023. Considering the nature of offence as well allegations made against accused No.2 I am inclined to release accused No.2 on bail by imposing certain conditions.

7] Learned APP while argument relied on following judgments.

[I] **Himanshu Chandravadan Desai and others -versus- State of Gujrat, A.I.R. 2006, SC 179**, wherein the Hon'ble High Court while dismissing the appeal observed that if there is danger of absconding of the appellant or attempting the tamper with the evidence by pressurizing witness, in that circumstances order of refusing bail not proper.

In the case in hand there is no active participation of accused No.2 more particularly there is no specific allegations against accused No.2 being Assistant Branch Manager pertaining to the alleged offence. Further the prosecution never brought any circumstances which shows that there is possibility of tampering evidence. Because the investigation is completed and all the relevant documents have been seized by the investigation agency. Thus, with due respect to the ratio laid down in judgment of **Hinmanshu** is not helpful to the prosecution.

8] In the light of aforesaid discussion the application deserves to be allowed. With this I pass following order.

ORDER

- 1] Accused No.2 is released on executing PB and SB of Rs.50,000/-.
- 2] Accused No.2 shall not tamper the prosecution evidence in any manner.
- 3] Accused No.2 shall attend the court each and every date without fail.

Date: 16/10/2023
Kamptee

(Amit A.Kulkarni)
Judicial Magistrate First Class,
Court No.1, Kamptee