

**RCC No. 121/2018**  
**Police Station Risod**  
**U/S.406, 409, 420, 468, 470,**  
**471 r/w 34 of IPC**  
**CNR NO. MHWS080008612018**

**ORDER BELOW EXH-05**  
**(Date:26.11.2018)**

Not on board. However, taken on board for disposal of application Exh-05 by which accused no.01 is craving regular bail under section 437 of the Criminal Procedure Code.(CrPC)

**02** The crime bearing no. 3/2018 is registered on the information given by one Vitthal Gulab Vasu who is the General Head Manager of Sant Amardas Credit Co-operative Society, Risod ("The Society" in short). The society is having its branch at Haral Tq- Risod Dist-Washim. The present applicant was working as a Manager there. It is alleged that the applicant and co-accused Ratnakar Tayade committed misappropriation of an amount of Rs. 88,46,862/- belonging to the society. Both have mis-utilized the authority given to them and withdrew huge sums of money from the account of the society maintained with ICICI bank. The applicant has transferred the amount withdrawn into his own account maintained with other banks. He further transferred this amount in various accounts of his relatives. The applicant committed various acts of forgery as well in order to achieve his dishonest intention of misappropriating the public money and defrauding the society.

**03** Upon registration of the FIR, the applicant seems to have approached the Hon'ble Sessions Court, Washim for anticipatory bail by way of Misc. Criminal Bail Application No. 19/2018. Vide order

dated 12/03/2018, the Hon'ble Sessions Court, Washim rejected his application. Thereafter, by way of Criminal Application No. 254/2018, the applicant prayed for anticipatory bail before the Hon'ble High Court of Bombay bench at Nagpur. Vide order dated 19/04/2018, the Hon'ble High Court rejected his application. On 29/08/2018, the applicant *sue-moto* surrendered himself before this court vide Criminal Misc. Application No. 183/2018. After grant of some days police custody, the applicant was remanded to Judicial custody. During investigation, he had preferred a similar application for bail which got rejected vide order dated 14/09/2018. Aggrieved with this order, the applicant approached the Hon'ble Sessions Court vide M.C.A. No. 332/2018. Vide order dated 09/10/2018, the Hon'ble Sessions Court rejected his request for enlarging him on bail. Thereafter, on 26/10/2018, the charge sheet bearing RCC No. 121/2018 is filed. With this change in circumstance, the present application is filed.

**04** Heard Mr. M.K. Undal, the Ld. Advocate for the applicant. Also heard Ld. APP Mr. Y.P. Sarode who is assisted by Ld. Advocate Mr. D.V. Mahajan. Perused the entire record.

**05** The ld. Advocate for the applicant has submitted that he is working as a Branch Manager at Haral since 2009. Every year, the branch has to undergo from audit and none of the audit report implicates him. The crime is registered in January 2018 and the informant on 02/06/2018 made statements before media that there is no misappropriation of any fund in the society. It is further urged that the applicant's accounts were being operated by the informant. The applicant did not object doing so as the informant was in an

influencing position. The applicant's previous record shows that he is an honest person and the honorary certificates issued to him by the society are the evidence of this fact. It is further urged that section 409 of IPC cannot be made applicable in the facts and circumstance of the case as the applicant was not a public servant. To substantiate this contention, he has relied on a judgment of Hon'ble Apex Court in **State of Maharashtra V/s Laljit Rajshi Shah 2000(2) Mh.L.J. 801**. Further, another judgment of Hon'ble Apex court in **Dataram Singh V/s State of UP 2018 (2) B Cr C 611 (SC)** is also pressed into service and it is urged that humane attitude is required to be adopted while deciding bail application. According to applicant, not a single original document is present in record. In the circumstance, the prosecution would not be able to prove misappropriation as alleged. Lastly, it is submitted that the applicant is ready to abide by any condition, howsoever stringent it may be. Besides him, there is no other male member in his family. His mother remains ill and he has to take care of her along-with other family members.

**06** To the contrary, ld. APP has urged that the applicant was absconded since January 2018. He is involved in a socio economic offence wherein the hard earned money of public is misappropriated. There is *prima facie* evidence against the applicant which shows that he got the huge sums of money transferred in his account and thereafter converted it for his own use. They have also placed their reliance on judgments in **Dr. Arun Bhimrao Rathod V/s State of Maharashtra Criminal Application No. 1058/2015** filed before Hon'ble High Court of Bombay bench at Aurangabad, **State of Bihar V/s Amit Kumar @ Bacha Rai in Criminal Appeal No. 767/2017**

before Hon'ble Supreme Court and Nimmagadda Prasad V/s CBI (2013) 7 SCC 466.

07 The record depicts that the applicant is having his personal accounts at Bank of Maharashtra branch Risod and Washim Urban Credit Cooperative Society branch Risod. The statements of these accounts vividly show that the applicant has time and again transferred huge sums of money from the account of society maintained with ICICI bank. Further, the documents also show that the amount is transferred into the account of one Rupali Hajare, Pushpabai Hajare, Chagan Hajare, Rameshwar Dange and Santosh Dange. Rupali is the wife, Pushpabai is the mother and Chagan Hajare is the father of applicant. Some Fixed Deposits are also lying in the name of applicant's mother. The statements of applicant's wife, father and mother have been recorded and they evince that they had no knowledge of these accounts and they were not operating it. The statement of Rameshwar Dange also shows that the applicant is his friend and he insisted him to open an account in the society. He never operated that account and had no knowledge about any transaction. The only explanation about all these transactions given by the applicant is that his account was being operated by the informant. However, this explanation is not plausible as it is beyond the understanding of this court as to how the informant was operating the accounts of the siblings of applicant. The record has ample evidence to show *prima facie* involvement of the applicant with the present crime. It is true that no original document is present on record. However, the admissibility of the documents is an aspect of trial and the prosecution is not prevented from filing necessary

documents to prove its case. On this ground alone, the *prima facie* evidence against the applicant does not get absolved.

**08** It is true that bail is rule and jail is an exception. However, this is a case wherein huge public money is misappropriated. There is *prima facie* evidence against applicant which directly connects him with the alleged misappropriation. Hence, this case does not appear to be a general case wherein the bail can be granted as a matter of rule. In State of Maharashtra supra, the Hon'ble High Court of Bombay has observed that “*the officers exercising powers under specific sections of Maharashtra Co-operative Societies Act do not become 'public servants' under the penal code so as to be prosecuted for having committed offence under the penal code.*” However, it cannot be ignored that the applicant was carrying on a business as a banker. The Hon'ble High Court of Bombay while disposing the applicant's application for anticipatory bail has observed that '*a manager of the society who accepts funds from the members for the purpose of investment and promises payment of interest thereon would be a person, who accepts the funds for the purpose of carrying on to the business of a banker.*' In this view, it cannot be said that section 409 of IPC is inapplicable to the facts and circumstance of this case. In **Balasaheb Satbhai Merchant Cooperative Bank Ltd. V/s State of Maharashtra, 2012 All MR (Cri) 2558**, the Hon'ble High Court has observed that Magistrate is empowered to grant bail when the offence under section 409 of IPC is triable by him. However, this cannot be a sole criterion to consider bail applications. Having power to grant bail does not necessarily mean that the bail should be granted in every case. When this court

has already observed in the foregoing para that there is ample evidence connecting the applicant with the crime, it is not desirable to allow the application only because the offence is triable by this court.

**09** In **Arun Rathod** supra, it is observed that *“Even after misappropriation of huge amount by the public servants in some cases, ld. Judges make order of bail without imposing any condition like depositing of some amount as condition for getting them released. This creates bad image of the judiciary.”* The applicant has not submitted before this court that he is ready to deposit some amount. Even otherwise, this court is of the opinion that the case can be tried at the earliest instead of granting bail to accused. If the applicant is released, there is every possibility that he may tamper with the prosecution witnesses and the evidence. Another possibility of his fleeing away cannot be ruled out in view of the statements of his siblings that applicant did not meet them since the registration of crime. In the circumstance, this court thinks that the present case is not fit for using discretion in favour of the applicant at this stage. In the entire backdrop, the court is convinced to pass the following order.

**ORDER**

The application is disposed off as rejected.

Date: 26.11.2018

Sd/-  
(Prashant P Giri),  
Judicial Magistrate First Class,  
Risod

**CERTIFICATE**

I affirm that the contents of this P.D.F. File Judgment/Order are same word to word, as per the original Judgment/Order.

Name of the Stenographer	:	P.D. Rudrakshawar
Name of court	:	C.J.J.D.& JMFC;Risod
Date	:	26-11-2018
Judgment/Order signed by the Presiding Officer	:	26-11-2018
Judgment/Order uploaded on	:	28-11-2018