

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-34

(Date:28.01.2020)

The applicant is accused no.01 in present case and by way of this application he is craving regular bail under section 437 of the Criminal Procedure Code.(CrPC)

02 The crime bearing no. 3/2018 is registered with Risod Police Station 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 head office at Risod and branches in Washim district at villages like Haral, Shelu Bazar etc. The applicant was working as the Manager of the Haral branch situated at Haral Tq-Risod district-Washim. The society was also maintaining its account in ICICI Bank, Washim. For effective functioning of the society, the applicant had authority to transfer the amount from the societies account maintained with ICICI bank to head office Risod and then to get the amount distributed for purposes related to his branch.

03 It is alleged that the applicant has mis-utilized the authority given to him and transferred (through RTGS) Rs. 41,63,800/- from the account of the society maintained with ICICI bank to his personal accounts maintained at Risod in the

Bank of Maharashtra and Washim Urban Co-operative Society. The informant has set out details of these transactions in schedule 'D' annexed with his first information report (FIR). It is also alleged that the applicant further transferred this amount into the accounts of Rupali Hajare, Pushpabai Hajare, Chhagan Hajare, Rameshwar Dange and Santosh Dange. Rupali is the wife, Pushpabai is the mother and Chhagan Hajare is the father of applicant and their accounts in which the applicant has transferred amount are maintained in the societies branch at Haral.

04 The allegations also report that the society is having its warehouse at village Sawad Tq-Risod Dist-Washim. The farmers store their agricultural produce in the warehouse and then the supervisor and warehouse keeper issue warehouse receipts to them. The farmers in need of loan get it by depositing those warehouse receipts in the society. The society keeps original warehouse receipt until the farmer has cleared the entire loan amount due against him. The supervisor and warehouse keeper were under the control and supervision of the applicant. However, the applicant using his position, released the agricultural produces of the farmers named in Schedule-B though the loan amount was still due against them. It is also alleged that the applicant sanctioned loan to the farmers named in Schedule-C without keeping their agricultural produce in the warehouse as a security. He issued false warehouse receipts and misappropriated the entire loan amount by himself.

05 This apart, it is further alleged that the applicant has pretended to have issued loan against 'Fix Deposits' to some persons named in Schedule-A. However, none of them had claimed loan as such and all are having their original F.D. receipts with them. Thus, the applicant has prepared forged F.D. receipts for issuance of the loan amount and misappropriated the same. He has also taken with him the entire record relating to these fix deposits, warehouse receipts and the loan accounts.

06 Upon filing of charge sheet the applicant had filed a bail application vide Exh-05 which got rejected vide order dated 26.11.2018. Thereafter, he approached the Hon'ble High court of Bombay, Nagpur Bench vide Cri. Application (BA) No. 271/2019. Vide order dated 02-07-2019, the Hon'ble High Court allowed the applicant to withdraw his application. The order of the Hon'ble High Court reveals that it was inclined to reject the application. Thereafter, the applicant had filed a discharge application vide Exh-10. This court perused the entire charge sheet and rejected his discharge application vide order dated 06.11.2019. Thereafter, he filed adjournment applications vide Exh-29, 30 and 31 and prayed that the charge may not be framed against him as the order rejecting his discharge application is under challenge. In the meantime, the prosecution had also filed an application vide Exh-18 seeking further investigation as per section 173(8) of CrPC. This court vide order dated 21.01.2020 rejected that application as well. On that day,

applicant filed a pursis vide Exh-37 informing that his revision petition bearing no. 45/2019 filed against the order rejecting his discharge application is dismissed by the Hon'ble Sessions Court.

07 The application in hand was filed on 04.01.2020 when the prosecution's application for further investigation was pending. It reveals that the fact that prosecution wants further investigation is a change in circumstance. Therefore, at this stage it is necessary to evaluate the need of keeping him in custody. Filing of application for further investigation itself shows that there is insufficient evidence against him. This apart, the application also reveals that the accused is having multiple health problems. He is suffering from Typhoid, Fissure in ano, Fistula in ano, Piles and Kidney Stone. The doctors have advised him to undergo a surgery for Piles and Fistula. In Washim prison, the post of medical officer is vacant and the applicant is facing difficulties to get the medical treatment. The learned APP has filed his say vide Exh-35 and resisted the application on the ground that necessary medical treatment is being given to the applicant.

08 Heard Mr. R.C. Choumwal, the learned advocate for the applicant and Mr. G.B. Khillare, the learned APP. Perused the entire record including medical documents filed by the applicant. His learned advocate in support of contentions relied on following judgments;

1. Laxman Irappa Hatti and another Vs State of Maharashtra 2004 (4) Mh.L.J. 415

2. Amarjeet Sing Vs State of Jammu & Kashmir 2016
Cri.L.J. (NOC) 129 (J. & K.)
3. Gangula Suryanarayana Reddy Vs State of A.P.
2010 (2) Crimes 704 (A.P.)
4. Dipak Subhashchandra Mehta Vs CBI and another
2012 CJ (SC) 1464

09 After filing charge sheet, this court has already rejected a bail application on merits. The change in circumstance for filing present application is shown as filing of application Exh-18 by prosecution for further investigation. It is relevant to note that in charge sheet Exh-01, the investigation officer has mentioned that the collection of other evidence is ongoing and a provision has been made to file supplementary charge sheet as per section 173(8) of CrPC. This fact was highlighted by the learned advocate for the applicant while submitting against the application Exh-18. He had also urged before the court that the investigation officer is not prevented from filing supplementary charge sheet as per section 173(8) of CrPC if some new material or evidence comes to fore. Paragraph no. 03 of his say Exh-20 also revealed that the investigation officer has power to make further investigation under section 173(8) of CrPC even if charge sheet has been filed. By this time, this court has rejected the prosecution's application Exh-18. While doing so, this court has accepted the contentions of the learned advocate for applicant and observed that section 173(8) of CrPC does not preclude the investigation agency to conduct

further investigation even after the charge sheet has been filed and the court has taken cognizance.

10 Thus, for exercising power u/s 173(8) of CrPC, it was really unnecessary for the investigation officer or even to learned APP to make an application and seek specific orders in that regard. This legal position was well aware to the applicant and he himself had emphasized on it. It is not the case that the original informant or co-accused has made an application for further investigation and the same is allowed by the court. Mere fact that an application has been made by the prosecution for exercising a power which is already available to investigation officer cannot operate as a change in circumstance in the opinion of this court.

11 This apart, the application is also pressed on medical grounds. Upon perusing medical documents, it cannot be denied that the applicant is suffering from Piles with Fissure in ano. A calculus in upper pole of his right kidney is also depicted. The doctors have advised him to undergo MRI Fistulogram. He was admitted in government medical college (GMC) and hospital, Akola on 22.01.2020 and was discharged on 25.01.2020. The medical documents also shows that he was taken to GMC, Nagpur as he was referred there for MRI Fistulogram by GMC, Akola. Today, he was produced before this court through Video Conferencing. I have learnt from the Superintendent of Jail, Washim that he was taken to Nagpur and on 30.01.2020, his MRI Fistulogram is scheduled there in GMC. The Superintendent of Jail, Washim has also told that

he is about to dispatch a letter informing this fact to the court. Thus, it appears that necessary medical treatment is being given to the applicant. His medical documents does not show that a medical treatment involving constant care and monitoring is necessary to be given to him. The facts in the citations relied upon by the applicant and the medical condition of the accused therein is different from the facts of the present case, medical condition of the applicant and medical treatment required by him. In view of the entire discussion, this court has passed following order.

ORDER

The application is rejected.

Date: 28.01.2020

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 : 28-01-2020
Judgment/Order signed by the Presiding Officer : 28-01-2020
Judgment/Order uploaded on : 30-01-2020