MHSO090007552022	**<u>Special Case No.8/2022</u>** State V/s. Nitin Ughade {CNR No.MHS009000755-2022}

<u>ORDER BELOW EXH.31</u>

(Passed on 03/01/2024)

1] This is an application filed on behalf of accused No. 4 under Section 439 of the Code of Criminal Procedure for their release who have been arrested by Akluj Police Station in C.R.No. 811/2021 for the offence punishable under Sections 409, 420, 467, 471, 477(A) read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors(In Financial Establishments) Act,1999.

2] The informant is the Chartered Accountant, the partner in G.B.Rathi & Company Pune. According to informant the Sahakar Maharshi Shankarrao Mohite-Patil Co-operative Bank Ltd., Akluj (hereinafter referred as said bank) has appointed their company as Chartered Accountant to audit for the year 2020-2021 by resolution No.16 dated-27.11.2020. As per informant it has been approved by the Annual General Meeting dated 22.02.2021 vide resolution No.6 and thereby it is informed to them on 13.06.2021. It has been contended on behalf of informant that audit ought to have completed upto 30.09.2021, but the bank has informed to start audit from 12.10.2021. As per informant while conducting audit it reveals that even though the bank has secured insurance of Rs.5,00,000/-, the balance as on 31.03.2021 was found to be Rs.26,37,03,898/- and said amount found as cash in hand. The informant has alleged that during inspection it was found that (i) on 03.04.2021 in current account bearing No.00070380001252 of HDFC Bank, Dr. Bhandarkar Road Branch, Pune an amount of Rs.3,55,00,000/- and an amount of Rs.4,67,07,454/- in current account No. 0142009046400 of IDBI Bank Akluj and an amount of Rs.7,58,39,399/- in current account No.5204 of ICICI Bank Akluj Branch has been shown deposited, but those amounts were neither deposited nor transferred (ii) an amount of Rs.53,84,000/- is said to be deposited in current account No.4 at Akluj District Co-operative Bank, Branch-Tembhurni, however it is not deposited in said bank (iii) an amount of Rs.10,59,000/- is said to be deposited on 18.10.2021 in District Central Bank Solapur Branch, however it is not deposited, (iv) on 19.10.2021 an amount of Rs.42,75,000/- shown to be deposited in current account No.4435 on 03.04.2021, but said amount is not deposited in Solapur District Central Co-operative bank, (v) on 19.10.2021 an amount of Rs.8,13,24,622/- is shown to be in cashbook, however only amount of Rs.15,24,622/- found i.e. amount of Rs.7,98,00,000/- found less, (vi) on 20.10.2021 inspection was carried out at Kotharud Branch and found that even though amount of Rs.27,68,340/- shown to be deposited in current account No.20020200609, said amount was not deposited (vii)On 20.10.2021 cash in hand was verified at Kotharud Branch and amount of Rs.5,77,460/- found less (viii) on 20.10.2021 record of Karmala Branch verified and it reveals that amount of Rs.95,05,000/- shown to be deposited in current account No.1168 and an amount of Rs.45,79,161/- shown to be deposited on 03.04.2021, but amount of Rs.1,40,84,161/- not found deposited in Solapur District Central Co-operative Bank and State Bank of India Branch, Karmala. Lastly, the informant has claimed that the branch manager of main Akluj branch and managers of other branches i.e. Tembhurni branch, Karmala branch, Solapur branch, Indapur branch and Kotharud branch have misappropriated total amount of Rs. 27,06,19,814/- and thereby report has been submitted on 01.11.2021 to the Co-operative Commissioner, Maharashtra Pune and as per directions report has been lodged with Akluj Police Station against six accused.

3] As per accused he has taken charge of Solapur Brach on 01.05.2019 and prior to that Samir Sudhakar Joshi was working in between 01.08.2018 and before him Sadhu Kondiba Gaikwad was working who has submitted his resignation on 01.08.2018. It has been contended on behalf of accused that he has been arrested on 24.02.2024 and after completion of Police Custody period, he is in judicial custody since 01.03.2024. As per accused his previous application has been rejected on 26.04.2024 and since supplementary chargesheet filed on 21.05.2024, he has preferred present application on the ground of change circumstances.

4] As per accused he is permanent resident of village Akluj and no way concerned with the offence in hand. According to accused no single customer has filed complaint regarding misappropriation of deposited amount in bank and therefore the provision of Section 3 of the Maharashtra Protection of Interest of Depositors(In Financial Establishments) Act,1999 is not attracted. It has been contended on behalf of accused that the appointment of informant as auditor is itself illegal as the appointment for continuous three years cannot be made to same auditor. Furthermore the accused has claimed that only on the basis of audit of six months, the FIR has been filed hurriedly without granting opportunity to be heard to the accused. The accused by referring the statements of Nikhil Sawant, Dipali Mehta, Maruti Naigude has submitted that since he joined Solapur branch on 01.05.2019, he is not related to the offence allegedly taken place prior to his appointment. So also by referring the documents produced by informant regarding audit the accused claims that the FIR is itself premature and the offences mentioned in FIR are not attracted. It has been contended that there are different branches and thereby the accused No. 1 to 6 being branch managers of respective branches, they have not committed the offence in furtherance of their common intention. The accused has referred the vouchers which have been produced alongwith supplementary chargesheet and claims that those vouchers do not bears his signatures and thereby prima-facie no offence is made out against him.

5] The investigating officer by filing say at Exh.51 has objected the application by demonstrating the role of present accused and reproduced his line of investigation upto filing of supplementary' chargesheet against present accused. The investigating officer while objecting present application has submitted that the General Manager and Branch Managers in furtherance of their common intention have misappropriated huge amount of Rs.27,06,19,814/- of the bank and thereby the offence being serious wherein the further investigation under Section 173(8) of the Code of Criminal Procedure is going on. So far as allegation and role of present accused is concerned the investigating officer has claimed that it appears that by misusing own post the accused has prepared vouchers showing that amount of Rs.42,75,000/- deposited on 03.04.2021 and amount of Rs.10,59,000/- deposited on 18.10.2021 in Solapur District Central Co-operative Bank Ltd., Branch-Solapur in current account No.4435, but in reality said amount of Rs.53,34,000/- not deposited in that account and the accused has misappropriated said amount which is yet not recovered. So also the investigating officer has claimed that during investigation it reveals that bogus credit and debit vouchers have been prepared by the accused and since suspected vouchers of 2019-2020 noticed, further investigation is going on to ascertain with whose assistance/help such kind of fabricated vouchers have been prepared. The investigating officer has raised different kinds of apprehensions stating that the accused may destroy the evidence as well as he may abscond.

6] Heard the learned advocate for the accused and the learned APP. Perused the material available on record through chargesheet and supplementary chargesheet. The learned advocate for accused has placed reliance on following judgments and submitted that material does not disclose strong case to connect the accused with the crime and thereby detention cannot be pre-trial punishment. So also the learned advocate for accused has submitted that an undertrial cannot be subjugated to indefinite incarceration

I] Raj Mohhammad Mumtaj Chowdhari Vs. State of Maharashtra reported in 2022 ALL MR(Cri.)2901

ii] Abhishek Ashok Malave Vs. The State of Maharashtra and ors. reported in 2022 All MR (Cri.) 2801

iii] Raushan Singh Vs. State of Bihar and antr. From petition (s) for special leave to appeal (Crl) No.(s)14611/2024, judgment dated 06.12.2024

7] So also the learned advocate for accused has claimed that he is entitled for bail under Section 167(2) of the Code of Criminal Procedure as the prosecution has failed to file chargesheet within stipulated period since the direction given by Hon'ble High Court, regarding "chargesheet not to be filed without the leave of this Court" was only relating to co-accused Sachin Anantrao Sawant.

8] With due respect to the observations in above referred judgments it is necessary to scrutinize the material available on record. It is matter of record that the present accused has been arrested on 24.02.2024 and after completing his period of Police Custody he is in jail. It is true that indefinite incarceration of the accused is not expected, otherwise it would be pre-trial detention. However, in present case let us see the role assigned to present accused and material collected by the investigating machinery. On perusal of FIR dated 08.11.2021 it reveals that the material allegation has been made against present accused that while working at Solapur Branch the amount of Rs.42,75,000/- shown to be deposited on 03.04.2021 and an amount of Rs.10,59,000/- shown to be deposited on 18.10.2021 in Solapur District Central Co-operative Bank. Ltd., Branch-Solapur in current account No.4435 through vouchers signed by present applicant, but in reality said amount was not deposited in the bank and thereby the accused has misappropriated amount of Rs.53,34,000/-. It is relevant point to be noted that before filing chargesheet the accused has preferred application at Exh.20 and my Predecessor has rejected the same on 26.04.2024. It appears that the grounds raised in application at Exh.20 have been again raised in present application and thereby further analysis of same material is not expected. It is significant to note that the learned advocate for the accused has referred the statements of witnesses which have been dealt with while deciding application at Exh 20. It appears that the learned advocate for accused has referred some documents which find place in supplementary chargesheet and argued that those vouchers do not bear the signatures of present accused and at the relevant period he was not working at Solapur branch. It is true that some vouchers and documents in between 31.05.2017 to 01.02.2019 have been produced alongwith supplementary chargesheet. But the material allegations against present accused relates to two amounts which have been shown to be deposited on 03.04.2021 and 18.10.2021 which are not actually credited in the current account No.4435 of Solapur District Central Co-operative Bank Ltd.,Branch-Solapur. So the documents collected after commencement of investigation on the basis of report dated 08.11.2021 are very much relevant.

9] After perusal of chargesheet it is seen that the investigating officer has placed on record different seizure panchanamas which have been prepared at different branches. As stated supra, the allegations against the present accused are relating to Solapur Branch and admittedly he was working there since 01.05.2019. After perusal of seizure panchanama dated 02.12.2021 which is drawn at Solapur Branch situated at 205, Gold fintchpathe near District Central Bank, Navi-peth, Solapur it reveals that debit voucher of Rs.42,75,000/- dated 03.04.2021 and debit voucher of Rs.10,59,000/- dated 18.10.2021 seized having signatures of then branch manager i.e. of present accused. As stated supra, those amounts not found to be physically deposited. So the panchanama dated 02.12.2021 and seizure of two debit vouchers are sufficient to point out the involvement of present accused.

10] It is relevant point to be noted that the investigating officer has claimed that there is misappropriation of Rs.53,34,000/- at the instance of present accused and admittedly nothing has been recovered to adjust the loss suffered by the bank. On perusal of statements of witnesses even though it reveals that the amounts have been withdrawn during the span of 3 to 4 years, those witnesses have clarified that those amounts have been withdrawn by cash by Branch Managers and General Manager. So when misappropriated amount is not recovered and further investigation as regard to absconding accused as well as modus-operandi to commit crime is going on, present accused cannot be released on bail. Hence, I proceed to pass the following order.

ORDER

The application at Exh. 47 is hereby rejected.

DISTRICT COURTS MAHARASHTRA

Digitally signed by RAJENDRA VITHOBA TAMHANEKAR
Date: 2025.01.03 17:38:45 +0530

(R.V. Tamhanekar)

Dt. 03/01/2025. Additional Sessions Judge, Malshiras.

CERTIFICATE

I affirm that the contents of this PDF file Order /Judgment are same word to word, as per the original Order /Judgment.

Name of Stenographer	:	A.S.Yadav. (Stenographer Grade-3)
Court	:	District Judge-1, Malshiras.
Dated	:	03/01/2025
Judgment /order signed by the Presiding Officer on	:	03/01/2025
Judgment / order uploaded on	:	03/01/2025