

PIMPRI
RUNE
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PUNE - PIMPRI
BAIL ORDER -
DT - 21/8/2002

Order below bail application dt/-21/8/2002, filed
by an accused namely Sanjay Agarwal, in crime
No.102/2002, U/ss-465, 467, 468, 471, 406, 408 and
420 of I.P.C.

Perused application. Also perused say of
I.O. and Ld.A.P.P. Heard Shri.Thakkar Advocate for
the accused. Shri.Sangle Ld.A.P.P. for the State.

This accused is claiming bail on the following
grounds :-

- a. That the applicant is innocent and has been
falsely implicated in the present crime.
- b. That there is no cogent or positive evidence
against the present applicant as to involve
him in the present crime.
- c. That the P.I.R. does not disclose any
incriminating act against the applicant.
- d. That it is a matter of record that the
complainant bank had agreed to purchase the
Government Securities through M/S.Home Trade
Ltd., of which the present applicant/accused
was the C.E.O., however it is a matter of
record that out of the total transaction
around 65 Crores M/S.Home Trade Ltd., had
already delivered the physical delivery of
the securities to the extent of around 35
Crores and the balance securities amounting
to Rs.30 Crores were under process of delivery.
However the fact that the delivery of
Government Securities worth Rs-35 Crore were

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- handed over and delivered to the bank goes to show that there was no malafide intention or any intention to cheat and deceive the bank. Merely a delay in delivering the securities can not be considered as the malafide intention or the intention to cheat and deceive.
- d. That there is nothing on record to show or establish that the applicant had any intention to cheat and deceive the bank right since inception of the contract with the bank.
- e. That even if it is a matter of record that the applicant is the C.E.O of M/S.Home Trade Limited but any act done or alleged is not his individual act but the same was an act of the "Board" of M/S.Home Trade Ltd.,
- f. That on the same set of fact, that other accused persons who also were concerned with M/S. Home Trade have been released on bail therefore on law of parity the applicant is also entitled to be release on bail.
- g. That if the prosecution is coming out with the charge of conspiracy between the bank officials and the management of M/S.Home Trade Ltd., then on same set of fact and charge of conspiracy the bank officials have been released on bail and therefore even on this count the law of parity will apply in favour of the applicant and he is entitled to be released on bail.

- i. That it is also matter of record that the police machinery in the present crime as well as at other places have already seized 98 bank accounts ^{sealed} / the head office and branch office of M/S.Home Trade Ltd., and have seized entire documents, computers and registers, therefore even the police cannot come out with the ground that the applicant, if granted bail shall tamper with the documents or records of M/S.Home Trade Limited.
- j. That it is also a matter of record that during the police custody nothing has been recovered or discovered at the instance of the applicant which can be used as an incriminating evidence against him.
- k. That it is also a matter of record that the higher courts in much bigger alleged scam than the present case have released the applicants on bail the instances of which are as follows :-
 - (a) The State V/s. Mr. Harshad Mehta
 - (b) The State V/s. Mr. Ketan Parikh,
 - (c) The State of Tamil Nadu V/s. Jaylalita
 - (d) Union of Delhi V/s. Mr. Narsimha Rao
 - (e) The State of Bihar V/s. Jagannath Mishra
 - (f) The State of Bihar V/s. Laloo Prasad Yadav

The above said decisions are definitely the guidelines and the ~~be~~ ^{is} binding to this court as in the above said cases the amount involved was around more than 500 Crores. Therefore considering these judgments the applicant can be released on bail on law of parity.

Both I.O. and Ld.A.P.P. raised an objection to release the accused. In his say I.O. has raised an objection on the grounds that :-

- (1) This accused is a Chairman of M/S. Home Trade Ltd., and he has committed the similar offence at different places in the State of Maharashtra as well as in other States.
- (2) This accused is a main accused and he has misappropriated the amount of Rs. 36.25 Crores of Government securities alongwith interest and premium, total to the tune of Rs. 42.82 crores with the help of Directors of the Bank through contract notes.
- (3) Police has to recover the present file of the transaction i.e. after the date of 31/7/2001 from the accused.
- (4) Two directors namely N.C. Privedi and Subodh Bhandari are absconding and yet they are to be arrested.
- (5) Police has to verify as to whether accused has diverted the mis-appropriated amount in his other sister-companies.
- (6) Accused has mis-appropriated the amount of depositors.
- (7) If the accused is released on bail, then there is chance of his abscondance.

Ld. A.P.P. also raised similar objections to release the accused on bail.

During the course of argument Ld. Advocate appearing for the accused submitted that the entire prosecution case is based upon the documentary evidence and when the case is based on documentary evidence there is no point to detain the accused in Magistrial custody. In support of his contention, he placed his reliance upon a un-reported ruling of the Bombay High Court in Cri. Appln. No. 605 of 1988., and another ruling of the Bombay High Court reported in 1998 Bombay C.R. (Cri.)-735. He further submitted that, police machinery in the present crime as well as at other places have already seized 98 bank ^{sealed} accounts of the accused, his head-office and branch-office and have also seized a entire documents, computers and registers and in the circumstances it cannot be said that there is a chance of the abscondance of accused, if he is released on bail.

It is not indispute that, police machinery at other places in the State of Maharashtra have already seized the bank accounts of the accused, ^{sealed} his head-quarter, branch-office and also have seized the entire documents, computers and registers. The Advocate appearing for the accused further submitted that, till the registration of crime against this ^{i.e.} accused/his company has already delivered the Government Securities to the extent of around 35 crores to the bank and balance securities were under process of

delivery. Delivery of Government securities worth Rs.25 crores hand d over and delivered to the bank goes to show that, there was no malafide intention or any ill-intention to creat the bank. simply there was a delay in deliver^{ing}, the securities and in the circumstances, it cannot be said that there was any malafide intention or ill-intention to cheat and deceive the bank. He further boldly submitted that, similar offence i.e.offence regarding Government Securities Scam is registered against the Directors of M/S.Home Trade company.. at Nagpur, in N.D.C.C.Bank Scam, Usmanabad in O.D.C.C. Bank scam, Amravati in A.D.C.C.Bank Scam and Bombay in Semense Provident scam and in the aforesaid crime the present accused was arrested and has undergone the substantive period of police custody and during his period in police custody all police authorities have taken the search of his house and office and during search nothing was found incriminating. The police authorities referred above have attached and seized his all bank accounts i.e. the bank a/c. of M/S.Home Trade company and also Home Trade Company has been sealed by the police authorities referred above. In the circumstances, though the present accused is intending to deliver the remaining Government Securities to the bank he became helpless as ~~he~~ his all bank accounts are seized and also his Head-office and Branch-office are sealed by the different police authorities

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in the State of Maharashtra.

Investigation in this crime is based on documentary evidence. In a case of Sham Bhatiya V/S. State of Maharashtra (Cri.Appln.No.605/1988). The Hon'ble Bombay High Court, observed that, in a case of documents there is no need for police custody or custodial investigation as "A man may lie but documents will not". These observations were passed by the Hon'ble High Court while disposing an application for anticipatory bail which was granted considering the facts of the matter which was based on documents. In another ruling reported in 1998 Bom.C.R.(Cri.)135 the Hon'ble Bombay High Court observed that,

"Code of Criminal Procedure, 1973, Sec-438 - Indian Penal Code, 1860, Secs-467, 468 and 471 - Anticipatory bail - Justification for rejection - for rejection - in joint family settlement different properties allotted to different sharers - some of the sharers charged with preparing false forged documents like Wills or showing transfer of properties prior to settlement and several complaints filed in Magistrate's Courts - Sessions Judge rejecting the applications for anticipatory bail - Held, anticipatory bail cannot be refused as a measure of punishment unless it can be shown that it would hamper investigations, Facts show it is a family dispute, concerned parties have made clean breast of all the documents and are prepared to produce them for investigation. It is a fit case where powers for grant of anticipatory bail can be exercised".

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APP.

Admittedly, at present the Board of Directors of the bank is dismissed by the Registrar of the Co-operative Societies and the Administrator is appointed to look after the affairs of the bank. Every black and white record of the alleged transaction i.e. to say purchasing Government securities with the bank itself and the police authorities in the State of Maharashtra at different places where the similar type of offence is registered against this accused. This fact is nowhere disputed by the investigating officer. In the circumstances, Investigating officer can take recourse from those police authorities and the bank authorities to collect the documentary evidence in the present crime. Already this accused was in police custody for a considerable period at different police authorities at Nagpur, Usmanabad, Amravati and Mumbai.

Firstly, on 17/8/2002, this accused was produced before me for seeking police custody. He was remanded in police custody till 21/8/2002. Again on 21/8/2002, he was produced before me for seeking further P.C. However, as the grounds shown for further P.C. were not well founded and no satisfactory progress was seen, request of the I.O. for further P.C. of the accused was rejected, and accused was taken in M.C. On the same day accused was handed over to P.I. P.R. Patne, Crime Branch, Pune for investigating purpose of, crime No. 65/2002, U/Ss-406, 409 and 420

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of I.P.C. registered at Vishrambaug Police station. Pune
 In the circumstances it can be said that, investigating officer in the present crime is aware that accused is still in the Magistrial custody in crime No.65/02 registered at Vishrambaug police station, as well as he is in Magistrial custody in Crime No.4E/2002, U/S-406, 409, 468 and 420 of I.P.C., registered at Mumbai. Accused was produced before me for seeking P.C. from Mumbai. Really if the I.O., wanted to investigate further from this accused, he would have gone at Mumbai where accused is in M.C., in crime No.4E/2002., and interrogate with the accused in respect of the present crime. Absolutely there is nothing on record to show that after this accused was transferred to Crime Branch Pune, for investigation purpose in crime No. 65/2002, registered at Vishrambaug Police station., investigating officer, tried to investigate with this accused by going at Mumbai or at Pune itself, if the accused is kept in M.C., in crime No.65/2002. In the circumstances the objections raised by I.O., and A.P.P. appear to be vague.

Another accused persons who were arrested and produced before me are already released on bail. In the circumstances, so far as this accused is concerned, parity needs to be maintained as the entire investigation in this crime is based on the documentary evidence. In this background and also relying upon the ruling cited supra, I inclined to release the accused on bail, as bail is a rule and jail is exception. Thus I pass following order.


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Order

1. Accused be released on bail on his executing a P.R. bond of Rs.15000/- with one surety in the like amount.
2. He shall not leave India prior to the permission of the court.
3. He shall co-operate with the Investigating agency.
4. He shall not tamper with the prosecution evidence.
5. He shall give his attendance before Investigating Officer, after he is released from the different crimes registered at different police stations in the State of Maharashtra, if I.O., requires his attendance for investigation purpose.


(P. D. Thakare)
Judicial Magistrate, First Class,
Pimpri.

Date/- 24/10/2002.

*Sub. Investigator
M. S. Patil
24/10/02*

Inspected by the
Assisted by the

} *Patil*



TRUE COPY
Patil
25/10/02