

(2019) 07 BOM CK 0157

In the Bombay High Court

Case No : Criminal Application (ABA) No. 475, 476 Of 2019

Kiran

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 149, 406, 409, 420, 465, 467, 468, 471, 477A
Maharashtra Protection Of Interest Of Depositors Act, 1999 — Section 3
Information Technology Act, 2000 — Section 65, 65B
Code Of Criminal Procedure (Maharashtra Amendment) Act, 2015 — Section 438, 438(4), 439, 498

Citation : (2019) 07 BOM CK 0157

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : Sunil Manohar, Z.Z. Haq, N.B. Jawade

Final Decision : Allowed/Dismissed

Judgement

1. These applications have been filed by the applicants apprehending arrest in connection with first information report (FIR) dated 15.05.2019 registered against them and other accused persons in Police Station Dhantoli, district Nagpur City, for offences punishable under Sections 420, 406, 409, 120-B, 465, 467, 468, 471 and 477-A of the Indian Penal Code as also Section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999 and Sections 65 and 65(B) of the Information Technology Act, 2000. The FIR has been lodged at the behest of one Shrikant Supe, who was appointed as Special Auditor for Navodaya Urban Sahakari Bank Limited, of which the applicant in Criminal Application (ABA) No. 476 of 2019 is the Chairman/Director and the applicant in Criminal Application (ABA) No. 475 of 2019 is a Director. The applicant in the Criminal Application (ABA) No. 476 of 2019 is the husband of the applicant in the accompanying Criminal Application (ABA) No. 475 of 2019.

2. It is alleged that the applicants, in connivance with other accused persons,

indulged in activities causing large scale misappropriation of money of innocent depositors and investors allegedly to the tune of about Rs.38,75,20,641/- only. It is found from the material placed on record that as per a directive of the Reserve Bank of India (RBI) dated 15.12.2016, banking transactions of the aforesaid Cooperative Bank came to a standstill. On 04.01.2017, the aforesaid Special Auditor was appointed for conducting audit for the years 2015-2016 and 2016-2017, in order to ascertain the reasons and the details of such alleged misappropriation. The Special Auditor was appointed by the Director of Cooperative Societies at Pune. On 27.04.2018, the Special Auditor submitted his report recording details of the manner in which the applicants and other accused persons had acted in connivance with each other to cause such large scale misappropriation of money. On 17.05.2018, permission was granted to the Special Auditor to register an FIR in pursuance of the findings in the audit report and intimation regarding the same was given to the Economic Offences Wing of the Crime Branch on 08.06.2018. On 08.10.2018, a Liquidator was appointed on the aforesaid Bank.

3. Thereafter, on 15.05.2019, FIR was finally registered wherein the applicants and others were shown as accused persons. The investigation into the matter was undertaken and the applicants herein approached the Sessions Court at Nagpur, seeking anticipatory bail. On 01.06.2019, interim protection was granted to the applicants by the Sessions Court. But, by order dated 04.07.2019, the application for anticipatory bail filed by the applicants stood rejected. Pursuant thereto, the applicants have filed these applications, in which notice was issued to the non-applicant/State represented through the Crime Branch of Economic Offences Wing. In response to the notice, replies have been filed in the present applications and the non-applicant/State has strongly opposed grant of relief.

4. Mr. Sunil Manohar, learned Senior Counsel appearing for the applicants, submitted that the sequence of events in the present case indicated that while the report of the Auditor was submitted as far back as on 27.04.2018, FIR in the present case stood registered after more than a year on 15.05.2019. It was further submitted that the very nature of allegations made against the applicants were such that the investigation entailed analysis and sifting of documentary material, which was already in custody of the investigating agency. It was submitted that when the investigating agency had possession of the entire documentary material, including computers, hard disk and other such material, there was no need for any custodial interrogation of the applicants. It was submitted that after ad-interim protection was granted to the applicants on 01.06.2019, they had abided by the conditions imposed by the Sessions Court, by attending the Police Station twice a week. It was further submitted that despite the applicants cooperating with the investigating agency, the Sessions Court had rejected their applications for grant of anticipatory bail, being influenced by the absence of the applicants before the Sessions Court on certain specific dates of listing. It was submitted that the adverse impression that the Sessions Court carried because of the said absence of the applicants on few

dates during the course of proceedings, coloured the approach of the Sessions Court due to which the merits of the contentions raised on behalf of the applicants were not considered at all.

5. The learned senior counsel further submitted that if the law laid down by the Hon'ble Supreme Court and followed by this Court on various occasions was to be applied in the correct perspective to the facts of the present case, it would be evident that the Sessions Court had erred in rejecting the application filed by the applicants herein and that so long as the applicants continued to cooperate with the investigation, their custody was not warranted in the present case. The learned senior counsel placed reliance on judgment of the Hon'ble Supreme Court in the case of Siddharam Satlingappa Mhetre .vs. State of Maharashtra and others reported in (2011) 1 Supreme Court Cases 694.

6. On the other hand, Mr. N.B. Jawade, learned Additional Public Prosecutor, strongly opposed the present applications, pointing out that the applicants and the co-accused persons were responsible for large scale misappropriation of money of innocent investors and depositors and that the scam pertained to more than Rs.38 crores. It was pointed out by the learned APP that the time taken between the report submitted by the Special Auditor and registration of FIR in the present case was because the investigating agency was gathering material pertaining to the present financial scam so as to ensure that there was sufficient material on record before registration of offences against the accused persons. It was submitted that the applicants, particularly applicant in Criminal Application (ABA) No. 476 of 2019, being the Chairman of the said Bank, was responsible for misappropriating money in the present case by adopting ingenious ways. It was submitted that large amounts of money were withdrawn from the Bank by debit vouchers under the head of Bank expenses from two branches of the said Bank specifically at the behest of Chairman of the Bank and such amounts instead of being utilized for bank expenses, were made over to a co-accused person, who had taken huge amounts of loans from the Bank. It was pointed out that the detailed procedure for withdrawing amounts towards bank expenses through the Branch Manager, the Chief Executive Officer and the Board of Directors, was circumvented and amounts to the tune of Rs.3.5 crores were withdrawn in such a manner at the behest of the Chairman of the Bank. The learned APP also pointed out in detail as to how cheque holding was resorted to by the Chairman of the Bank in connivance with co-accused persons so as to defraud the Bank and innocent investors as well as depositors. It was further submitted that the Chairman of the Bank as President of the one time settlement committee of the Bank deliberately extended benefits to co-accused persons who were wilful defaulters, thereby causing huge loss to the Bank. Such other illegal activities were also highlighted by the learned APP to show that the wife of the Chairman of the Bank was also involved in facilitating a property to be given in mortgage for loans taken by co-accused persons when the same property had been already mortgaged in another case.

7. Apart from highlighting all such illegal activities of the applicants, the learned APP pointed out that during the period when the applicants were enjoying ad-interim protection granted by the Sessions Court, the applicant/Chairman of the Bank had forced one of the employees of the Bank to give shelter to an officer of the Bank by exercising influence. It was emphasized that the applicants had misused the ad-interim protection granted by the Sessions Court. It was further highlighted that the adverse inference drawn by the Sessions Court against the applicants in the present case was justified because despite specific orders of the Sessions Court to the applicants to remain present before the Court as per Section 438 (4) of the Maharashtra Amendment to the Cr.P.C., the applicants had chosen to remain absent on 29.06.2019, 01.07.2019 and 03.07.2019. It was submitted that such applicants did not deserve any discretion to be exercised in their favour. The learned APP submitted that the Sessions Court had not merely held against the applicants by drawing the aforesaid adverse inference, but the material on record was taken into consideration while rejecting the application. The learned APP placed reliance on a number of judgments to emphasize that the parameters for custodial interrogation did exist in the present case and that, therefore, the applications deserve to be dismissed. Reference to some of the judgments relied upon by the learned APP shall be made at appropriate place hereinafter.

8. Heard the learned counsel for the parties and perused the material brought on record. The material presently on record does indicate that there has been large scale financial misappropriation leading to serious financial loss to the aforesaid Bank and consequently to the investors and depositors. It is evident that the trouble in the Bank was brewing since the year 2016 when the R.B.I. issued a directive on 15.12.2016 to the Bank to cease its Banking activities. The report of the Special Auditor also shows the details of the large scale misappropriation and consequent loss to the Bank. There is no dispute about the fact that the applicants are Chairman/Directors of the said Bank and that they are husband and wife. As the Chairman of the Bank, the applicant was certainly responsible for the activities of the Bank and ultimately for the aforesaid misappropriation of huge amounts of money, although the details of the same and the evidence against him would be a matter for trial.

9. Although the learned APP has referred to a number of documents and material to oppose the present applications, this Court is not going into each and every detail because the investigation is still underway and presently this Court is concerned with the question as to whether the applicants are entitled to grant of anticipatory bail.

10. Before embarking upon the exercise of taking a prima facie view on the basis of the material on record in the context of the contentions raised by the rival parties, it would be relevant to refer to the position of law as enunciated by the Hon'ble Supreme Court in some of the judgments referred to and relied upon by the learned counsel appearing for the rival parties.

11. In the case of Gurbaksh Singh Sibbia .vs. State of Punjab reported in (1980) 2 Supreme Court Cases 565, a Constitution Bench of the Hon'ble Supreme Court considered in detail as to the manner in which judicial discretion was to be exercised by the Court considering an application for grant of anticipatory bail. After considering various aspects of the matter including the balancing act that the Court is required to undertake between the needs of an efficient, free and fair investigation on the one hand and the rights of an accused on the other, the Hon'ble Supreme Court in the aforesaid judgment observed as follows:-

"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true.

That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail.

The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interest of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in The State vs. Captain Jagjit Singh, which, though, was a case under the old Sections 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

32. A word of caution may perhaps be necessary in the evaluation of the consideration whether the applicant is likely to abscond. There can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. In his charge to the grand jury at

Salisbury Assizes, 1899 (to which Krishna Iyer, J. has referred in Gudikanti), Lord Russel of Killowen said : (SCC p.243, para 5)

... it was the duty of magistrates to admit accused persons to bail, wherever practicable, unless there were strong grounds for supposing that such persons would not appear to take their trial. It was not the poorer classes who did not appear, for their circumstances were such as to tie them to the place where they carried on their work. They had not the golden wings with to fly from justice.

This, incidentally, will serve to show how no hard and fast rules can be laid down in discretionary matters like the grant or refusal of bail, whether anticipatory or otherwise. No such rules can be laid down for the simple reason that a circumstance which, in a given case, turns out to be conclusive, may have no more than ordinary signification in another case.

33. We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application. It is customary, almost chronic, to take a statute as one finds it on the ground that, after all, "the legislature in its wisdom" has thought it fit to use a particular expression. A convention may usefully grow whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected."

12. In the case of State represented by the C.B.I. .vs. Anil Sharma, reported in AIR 1997 S.C. 3806, while considering the said aspect of the matter and the manner in which discretion is expected to be exercised by a Court, while considering an application for grant of anticipatory bail under Section 438 of the Cr.P.C., the Hon'ble Supreme Court observed as follows:

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all

criminal cases. The court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

7. High Court has approached the issue as though it was considering a prayer for granting regular bail after arrest. Learned Single Judge of the High Court reminded himself of the principle that it is well-settled that bail and not jail is a normal Rule and then observed thus:

"unless exceptional circumstances are brought to the notice of the Court which may defeat the proper investigation and fair trial, the Court will not decline bail to a person who is not accused of an offence punishable with death or imprisonment for life. In the present case, no such exceptional circumstances have been brought to the notice of this Court which may defeat proper investigation to decline bail to the applicant."

8. The above observation are more germane while considering an application for post-arrest bail. Consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest. At any rate learned Single Judge ought not have side-stepped the apprehension expressed by the CBI (that respondent would influence the witnesses) as one which can be made against all accused person in all cases. The apprehension was quite reasonable when considering the high position which respondent held and in the nature of accusation relating to a period during which he held such office."

13. In the case of Sudhir .vs. State of Maharashtra reported in (2016) 1 Supreme Court Cases 146, while considering question of grant of anticipatory bail, in a similar case involving misappropriation of public funds and corruption, the Hon'ble Supreme Court held that anticipatory bail granted by the Sessions Court, was rightly cancelled by the High Court, looking to the gravity of the offences. It was observed by the Hon'ble Supreme Court in the said judgment as follows:-

"12. Having considered the submissions made by learned counsel for the parties, and after considering the gravity of the offence, circumstances of the case, particularly, the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the appellants and the fact that the investigation is held up as the custodial interrogation of the appellants could not be done due to the anticipatory bail, we are of the opinion that the High Court has rightly cancelled the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon. Therefore, we are not inclined to disturb the same."

14. In the judgment in the case of Siddharam Satlingappa Mhetre .vs. State of Maharashtra (supra) relied upon by the learned senior counsel appearing for the applicants, the Hon'ble Supreme Court, after considering various judgments in detail, observed as follows:-

"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences.
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

15. In the case of Sunil Gulabchand Jain .vs. State of Maharashtra reported in 2009 (2) Mh.L.J. (Cri) 495, concerning an application for anticipatory bail moved by a Director of a Bank accused of cheating and committing financial irregularities in the Bank , this Court applied the position of law enunciated in the Constitution Bench judgment in the case of Gurbaksh Singh Sibbia .vs. State of Punjab (supra) and observed as follows:-

"28. Though the applicant has not borrowed the loan for himself or for his relatives, still the applicant cannot escape from his responsibility/ liability for huge loss sustained to the bank due to non-payment of loan amounts by the

borrowers. The present applicant has not opposed any of the bogus loan cases during the meetings in which he attended and signed the proceedings. The other two Directors namely Durgaprasad Kaluram Daima and one other Director have consistently opposed sanctioning of loan proposals contrary to the by-laws of the Bank or guidelines of the R.B.I. The present applicant should have opposed such proposals during the meetings, if he was really innocent. Not only that the applicant has attended the number of meetings and signed the proceedings of the meetings. The argument of the learned A.P.P. that the present applicant is vicariously liable for all the bogus loans, sanctioned during his period, has considerable substance and said contention cannot be rejected at outright. If the arguments of the learned A.P.P. are carefully perused, various instances have been cited by the A.P.P. to show that how the loans are advanced illegally to the persons contrary to the Rules and Regulations of R.B.I., provisions of Maharashtra Co-operative Societies Act and Rules thereunder and relevant directions issued by the Government from time to time."

16. The aforesaid position of law makes it clear that the Court is supposed to strike a balance in such cases to ensure that no prejudice is caused to free, fair and full investigation, while ensuring that there is no harassment, humiliation and unjustified detention of the accused persons. It is also relevant that in the said judgments of the Hon'ble Supreme Court as well as this Court, the nature and seriousness of the offences and the proposed charges, is held to be a relevant factor. It is also a relevant consideration as to whether the applicant would be influencing the investigation by misusing protection granted by the Court, which would ultimately interfere with a full investigation into the matter. By applying the aforesaid parameters, the present applications are now being considered.

17. The documents handed over by the learned APP to this Court which have been unearthed during the investigation do indicate that there has been large scale misappropriation of funds in the said Bank. The applicant/Chairman of the Bank was obviously in the know of the happenings in the Bank from the year 2015 and even earlier, which ultimately led to the R.B.I. directive closing down all banking activities and appointment of Liquidator on the Bank. But, that alone cannot be a reason to conclude that custodial interrogation of the said applicants would be mandatory.

18. But, the material on record to which the learned APP has invited attention of this Court, clearly indicates that the applicant/Chairman of the Bank had actively connived with co-accused persons in causing loss and misappropriation of crores of rupees. This prima facie finding can be rendered on the basis of the material presently on record, only limited to deciding the question as to whether the present application of the Chairman of the Bank can be granted. There is no doubt about the fact that offences alleged against the applicants are of an extremely serious nature because there has been large scale misappropriation of funds of the Bank, which has ultimately caused serious financial loss to innocent

depositors and investors. Such scams have been spread like cancer in our society and persons responsible for such scams have multiplied by the dozen in the recent past.

19. The material on record indicates that apart from loss caused to the Bank by the loans being advanced without proper verification to co-accused persons, cash amounts were withdrawn to the tune of about Rs.3.5 crores at the behest of the applicant/Chairman of the Bank, through the means of debit vouchers ostensibly towards bank expenses. Such expenses could have been withdrawn only by employees of the Bank strictly for bank expenses and that too only after proper sanctions were obtained from the Branch Manager, Chief Executive Officer and finally the Board of the Directors of the Bank. But, no such procedure was followed and from the material presently on record, it appears that at the behest of the applicant/Chairman of the Bank, huge amounts in cash were withdrawn and made over to co-accused persons, who were not employees of the Bank and in fact they were the persons who had taken large scale loans from the Bank and they had defaulted.

20. The material on record also indicates that the applicant/Chairman of the Bank, as President of the one time settlement committee of the Bank, had extended benefit of one time settlement scheme to certain entities, who were wilful defaulters, thereby causing huge loss to the Bank. It appears that the said co-accused persons, as office bearers of such entities, were hand in glove with the applicants herein. The material on record also indicates that there were manipulations done in the account books and back dated entries were made so as to ensure that the financial loss caused to the Bank was not immediately detected. All this could not have been done without the involvement of responsible persons of the Bank including the applicant/Chairman of the Bank.

21. The aforesaid material on record does indicate that huge amounts of money in cash were facilitated to be siphoned off in connivance with co-accused persons. In this context, it would be futile to take the view that since investigation in such a case necessarily involves documentary material, the custodial interrogation of the applicants would not be necessary. The money trail in such cases can be unearthed only after proper interrogation and investigation is carried out by the investigating agency. In this context, the above quoted view taken by the Hon'ble Supreme Court in the case of State represented by C.B.I. .vs. Anil Sharma (supra), assumes significance wherein it has been held that success in such an interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time when he is being interrogated. There can be no doubt about the fact that there would be attempts by the accused persons to stall the investigation and to ensure that money trail is lost. This is particularly significant when there is prima facie material to show that large scale manipulations have been undertaken in account books as well as computer data entries at the behest of accused like the applicant/Chairman of the Bank herein.

22. The other important consideration in such cases is the likelihood of an applicant influencing witnesses during the course of investigation, thereby resulting in crucial leads being lost. It is also to be analysed as to whether there is clear possibility of the applicant interfering with the course of free and full investigation by influencing witnesses, while enjoying protection of pre-arrest bail order from the Court. In this regard, the conduct of the applicant becomes important and if there is any material to indicate that such behaviour of the applicant is a distinct possibility, the application for anticipatory bail has to be rejected.

23. In the present case, the applicants were granted ad-interim protection by the Sessions Court by order dated 01.06.2019, wherein they were directed to remain present before the concerned Police Station twice a week. The applicants were also directed to cooperate with the investigating officer. It is pointed out by the learned APP that during the period when such ad-interim protection was operating in favour of the applicants, it came to light that the applicant/Chairman of the Bank had made attempts to influence investigation by pressurising one of the employees of the said Bank into giving shelter to an Officer of the Bank, who also could be involved in the activities of the Bank leading to registration of the offences in the present case. In this connection, the learned APP invited attention of this Court to a statement dated 21.06.2019 recorded of a person who was working as a Peon in the said Bank. In the said statement, it is recorded that the said employee of the Bank, who had been working with the applicant/Chairman of the Bank, was pressurised and influenced by the said applicant into giving shelter to an officer of the Bank, without making the said employee aware that such Officer of the Bank could be arrested in connection with the aforesaid offences registered against the applicants and other accused persons. Such material does indicate that the applicant was making efforts to influence the investigation, even while enjoying the ad-interim protection granted by the Sessions Court. This clearly indicates propensity of such an applicant, to misuse such protection even in the future.

24. Another statement recorded during the course of investigation to which the learned APP invited attention of this Court shows that a person working as I.T. Manager in the said Bank was presurised into making manipulations in data recorded in the computers of the said Bank at the behest of the applicant/Chairman of the Bank, so as to fudge figures and to continue activities of misappropriation of funds, thereby causing serious financial loss to the Bank. Although such statements recorded during the course of investigation are subject to rigours of being tested during the course of trial, at this stage, when a prima facie opinion is to be drawn in the context of considering the prayer for grant of anticipatory bail, such material does become relevant.

25. As regards the question of adverse inference drawn by the Sessions Court due to absence of the applicants before the said Court on three dates despite specific orders to remain present, it cannot be said that such an adverse

inference was wrongly drawn by the Sessions Court. Section 438 (4) of the Cr.P.C. (Maharashtra State Amendment) clearly provides that the presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice. In the present case, there is no dispute about the fact that the Sessions Court had directed the applicants to remain present before the Court on a specific application moved by the prosecution. Yet, they chose to remain absent and hence there was nothing wrong in the Sessions Court drawing an adverse inference against them. In any case, the final decision of the Sessions Court in the present case was not coloured by merely the aforesaid adverse inference and in the context of the material on record, the Sessions Court came to a considered conclusion that the applicants did not deserve to be granted anticipatory bail.

26. Since the investigation in the present case is still underway and the FIR itself was registered only on 15.05.2019, the material presently on record does indicate that insofar as the applicant in Criminal Application (ABA) No. 476 of 2019 i.e. the Chairman of the Bank is concerned, the prayer for grant of anticipatory bail cannot be accepted. On the touchstone of the law laid down by the Hon'ble Supreme Court in the above quoted cases and particularly the view taken by the Hon'ble Supreme Court and this Court in the context of accused responsible in cases of financial misappropriation, it becomes clear that the applicant/Chairman of the Bank does not satisfy the parameters laid down for grant of anticipatory bail. Hence Criminal Application (ABA) No. 476 of 2019 is dismissed.

27. But, insofar as the applicant in Criminal Application (ABA) No. 475 of 2019 is concerned, although she is a Director of the said Bank, it appears from the material presently on record prima facie that she might not have been actively involved in each and every aspect of misappropriation of funds, as is prima facie evident in the case of the applicant/Chairman of the Bank. In fact, as per the material presently on record, it appears that the said applicant in Criminal Application (ABA) No. 475 of 2019, is said to be involved only in facilitating mortgage of a specific property for grant of loan, when such property was already mortgaged for an earlier loan taken against the same property. Apart from this, it appears that being the wife of the applicant/Chairman of the Bank, she was shown as a Director of the Bank and for that reason she is alleged to be responsible for the large scale misappropriation of funds. Apart from this, the learned APP could not point out any material to show that the said applicant had sought to influence the investigation during the period when she was enjoying ad-interim protection as per order dated 01.06.2019 passed by the Sessions Court. Considering these facts and the absence of any indication that the said applicant will flee the process of law, this Court is of the opinion that her application can be granted by imposing appropriate conditions.

28. In view of the above, Criminal Application (ABA) No. 475 of 2019 (Kiran w/o Ashok Dhawad .vs. State of Maharashtra) is allowed. Accordingly, in the event the said applicant is arrested in Crime No. 181 of 2019 registered at Police Station Dhantoli, district Nagpur City, dated 15.05.2019, she shall be released on bail on the following conditions:-

(a) She shall furnish P.R. bond of Rs.1,00,000/- (Rs. One Lakh) and a surety in the like amount.

(b) She shall cooperate with the investigation.

(c) She shall attend concerned Police Station once a week i.e. on Monday between 10 a.m. and 5 p.m.

(d) She shall not tamper with the evidence or influence witnesses.

29. Needless to say that if the said applicant violates any of the conditions stated above, the relief of anticipatory bail granted to her shall stand recalled.

30. Accordingly Criminal Application (ABA) No. 475 of 2019 is allowed in the above terms and Criminal Application (ABA) No. 476 of 2019 is dismissed.

31. It is made clear that the observations made in this order, are limited to the question of grant or refusal of anticipatory bail to the applicants.