

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1782/2021  
ALONGWITH  
INTERIM APPLICATION NO. 2092 OF 2021

Milton Manvel Gonsalves	.....Applicant
V/s.	
The State of Maharashtra & anr.	....Respondents

ALONGWITH  
ANTICIPATORY BAIL APPLICATION NO. 1780/2021  
ALONGWITH  
INTERIM APPLICATION NO. 2093 OF 2021

Richard Peter Gonsalves	.....Applicant
V/s.	
The State of Maharashtra & anr.	....Respondents

ALONGWITH  
ANTICIPATORY BAIL APPLICATION NO. 1783/2021  
ALONGWITH  
INTERIM APPLICATION NO. 2091 OF 2021

Audrin Austin Perira	.....Applicant
V/s.	
The State of Maharashtra & anr.	....Respondents

ALONGWITH  
ANTICIPATORY BAIL APPLICATION NO. 1784/2021  
ALONGWITH

INTERIM APPLICATION NO. 2089 OF 2021

Leo Robert D'silva

.....Applicant

V/s.

The State of Maharashtra & anr.

....Respondents

ALONGWITH  
ANTICIPATORY BAIL APPLICATION NO. 1785/2021  
ALONGWITH  
INTERIM APPLICATION NO. 2088 OF 2021

Viraj John Gonsalves

.....Applicant

V/s.

The State of Maharashtra & anr.

....Respondents

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Mr. Aabad Ponda, Senior Advocate i/by. Karan Jain, Advocate  
for the applicant in all matters.

Mr. Raja Thakare i/by. Akash Kavade, Advocate for the  
Intervenor in all Interim Applications.

Ms. Anamika Malhotra, APP for State.

Dr. Ashwini Patil, ACP-EOW, M.B.V.V. Commissionerate present.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 31<sup>st</sup> August, 2021.

P.C. :

1. Heard Mr. Ponda, learned Senior Counsel for the applicants, Ms. Malhotra, learned APP for State and Mr. Thakare, learned Senior Counsel for the complainant.

2. Applicants are employees of Bassein Catholic Co-operative Bank Limited. They are apprehending arrest in Crime No.84/2020 registered with Vasai Police Station for the offences punishable under Section 406 read with Section 34 of the Indian Penal Code and Section 7 of the Prevention of Corruption Act.

3. Complainant, is Bassein Catholic Co-operative Bank Ltd. ("Bank" for short). It is Bank's case that, being the Corporate Agent and Associates of TATA AIG General Insurance Company Ltd. and IFFCO TOKIO General Insurance Company Ltd. ("Insurance Companies" for short), besides commission/remuneration, it also receives Over-Riding Commission (ORD). The amount of Over-Riding Commission, has been diverted and siphon off, by the Insurance Companies, through its Vendors, Rudolf D'mello, Raxina D'mello and Ceasar

D'mello ("Vendors" for short) under sham and nominal service contracts, executed with them. These Insurance Companies projected, that Vendors have rendered services to the Companies and in consideration thereof, they were paid Rs.20,00,000/-. These vendors in, turn transferred Rs.20,00,000/- in the Accounts of the applicants and appropriated the amount to themselves. On these set of allegations, offences were registered against the applicants.

4. Mr. Ponda, learned Senior Counsel for the applicants submitted that, there is no nexus between the commission amount payable to the Bank by the Insurance Companies and the amount transferred by the Vendors in the Accounts of the applicants. He further submitted that, Bank is Corporate Agent of the Insurance Companies. Being Corporate Agent, Bank receives commission/remuneration from the Insurance Companies on the premium generated by the Bank. Payment of commission is subject to regulations framed under the Insurance Regulation Development Authority Act and regulated by the Insurance Regulatory and Development Authority (IRDA). Mr. Ponda submitted, Insurance Companies paid commission to

the Bank due for the Financial Years 2016-17, 2017-18, 2018-19 and 2019-20. He submitted, for these financial years, no commission/remuneration was due and payable to the Bank. In support of this contention, he has produced on record, two Certificates issued by the Insurance Companies in the form Schedule -VIA. Copies of Certificate are reproduced hereunder :

**TATA AIG GENERAL INSURANCE CO.LTD**

Schedule VI-A Certificate (Reg.31)	(Due Date 31 <sup>st</sup> March)
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Certificate to be submitted by the Insurer duly signed by the CEO and CFO of the Company on the remuneration and other payments made to a Corporate Agent
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<p>“We hereby and confirm that we have paid an amount of Rs.928.503 to <u>M/s. BASSEIN CATHOLIC COOP BANK LTD.</u> (name of the Corporate Agent and associates) for the period from May 2016 to March 2017 under the following heads (to be annexed as an attachment) as commission/remuneration towards the business of Rs.10,021,944 procured during the FY 2016-17. The amount includes all payments paid directly or indirectly to this effect and the company (insurer) is in compliance with the regulations prescribed by IRDAI, RBI and other applicable regulations to this effect.</p>
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<p>We also confirm that we have not paid incentives (cash or non-cash) to the principal officer, specified persons and other</p>
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employees of the corporate agent either directly or indirectly."

Signed by

CFO

CEO

Name and Seal

Name and Seal

Place: MUMBAI

Date: 29<sup>th</sup> April, 2017.

Note :

(1) The attachment shall contain the details of payments made to the corporate agent and its associates (specify the name of the associate) under various heads and shall be signed by both the CEO and CFO of the insurer.

(2) Separate certificates to be submitted for each corporate agent.

## **IFFCO TOKIO GENERAL INSURANCE CO. LTD**

Schedule VI-A Certificate (Reg.31)

(Due Date 31<sup>st</sup> March)

Certificate to be submitted by the Insurer duly signed by the CEO and CFO of the Company on the remuneration and other payments made to a Corporate Agent

"We hereby and confirm that we have paid an amount of Rs.8,45,179/- to M/s. BASSEIN CATHOLIC CO-OPERATIVE BANK LTD. (name of the Corporate Agent and associates) for the period from 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017 under the following heads (to be annexed as an attachment) as commission/remuneration

towards the business of Rs.91,93,490/- procured during the FY 2016-17. The amount includes all payments paid directly or indirectly to this effect and the company (insurer) is in compliance with the regulations prescribed by IRDAI, RBI and other applicable regulations to this effect.

We also confirm that we have not paid incentives (cash or non-cash) to the principal officer, specified persons and other employees of the corporate agent either directly or indirectly.”

Signed by

CFO

Sanjeev Chopra

CEO

Warendra Sinha

Name and Seal

Place: Gurugram

Date: 27/04/ 2017

Name and Seal

Note :

(1) The attachment shall contain the details of payments made to the corporate agent and its associates (specify the name of the associate) under various heads and shall be signed by both the CEO and CFO of the insurer.

(2) Separate certificates to be submitted for each corporate agent.

5. Mr. Ponda submitted that, in terms of the Certificates, no payment was due and payable by the Insurance Companies to the Bank either in the form of remuneration or

other payments directly or indirectly. It is therefore contended that, complainant's claim for Over-Riding Commission has no basis or foundation. It is submitted that the Certificates in the form of Schedule-VIA were issued in compliance of the statutory regulations. Mr. Ponda further submitted that Certificates being issued under the regulations, its correctness is to be presumed and it cannot be disputed or overlooked in these proceedings. He further submitted that, these two Certificates render prosecution's case indefinite and therefore the allegations do not make out an offence under Section 406 of the Indian Penal Code or Section 7 of the Prevention of Corruption Act. Mr. Ponda, submitted the investigation would largely be based on the documents and therefore custodial interrogation of the applicants is not necessary. He would submit that, applicants have firm roots in the Society and their presence for trial can be secured by imposing conditions.

6. The Certificates in the form of Schedule VI-A, issued under Regulation-31 cannot be overlooked and its correctness cannot be gone into in these proceedings. Thus, I have to presume that, Insurance Companies paid commission to the

Bank, due for the Financial Years 2016-17 to 2019-20. As to whether the Bank was entitled to receive the Over-Riding Commission or not and whether that has been siphon off by the applicant in connivance with the officers of the Insurance Companies through these Vendors, is a matter of investigation and evidence.

7. It may be noted that, the Vendors have been granted pre-arrest protection by the Division Bench of this Court.

8. Mr. Thakare, learned Senior Counsel appearing for the complainant has placed on record, bunch of emails to submit that one of the emails received in 2018 from the Insurance Companies indicates that Commission or Over Riding Commission payable to the Bank has been routed through the Vendors of the Insurance Companies. Therefore, it is apparent that since 2018 Bank was aware of mode of 'rerouting the Over Riding Commission'.

9. In consideration of the facts aforesaid, in my view, custodial interrogation of the applicants may not further the

prosecution case. The applications are allowed. Hence, the following order :

### ORDER

(i) In the event of arrest of the applicants in Crime No. 84/2021 registered with Vasai Police Station, they shall be released on bail on executing P.R. bond for the sum of Rs.50,000/- (Rs. Fifty Thousand only) each with one or more sureties in the like sum.

(ii) The applicants shall report to the Investigating Officer as and when called till further orders and co-operate in the investigation.

(iii) The applicants shall furnish their permanent residential address and contact number to the Investigating Officer forthwith.

(iv) The applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

10. The applications are accordingly allowed and disposed off.

11. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

NEETA  
SHAILESH  
SAWANT

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signed by  
NEETA  
SHAILESH  
SAWANT  
Date:  
2021.09.02  
13:50:00  
+0530

(SANDEEP K. SHINDE, J.)