

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1481 OF 2023

Mr. Pruthviraj Vijay urf Vijaykumar Dandnaik Applicant

Versus

The State of Maharashtra Respondent

Mr. R. F. Totala, Advocate instructed by Ms. R. M. Jariwala & Mr. S. V. Lohiya, Advocates for the Applicant.
Mr. S. P. Sonpawale, APP for Respondents.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1482 OF 2023

Mrs. Surekha Vijay urf Vijaykumar Dandnaik Applicant

Versus

The State of Maharashtra Respondent

Mr. R. F. Totala, Advocate instructed by Ms. R. M. Jariwala & Mr. S. V. Lohiya, Advocate for the Applicant.
Mr. S. P. Sonpawale, APP for Respondents.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1476 OF 2023

1. Ganesh Datta Bandgar
2. Ramling Dhondiappa Karajkhede
3. Shubhangi Prashant Gandhi Applicants

Versus

The State of Maharashtra and Others Respondents

Mr. A. S. More, Advocate for the Applicants.
Mr. S. P. Sonpawale, APP for Respondents.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1485 OF 2023

Kamlakar Baburao Aakoskar

Applicant

Versus

The State of Maharashtra and Another

Respondents

Mr. P. R. Katneshwarkar, Advocate for the Applicant.

Mr. S. P. Sonpawale, APP for Respondents.

CORAM : R. M. JOSHI, J.

RESERVED ON : 13th SEPTEMBER, 2023

PRONOUNCED ON : 15th SEPTEMBER, 2023.

ORDER

1. On the basis of First Information Report lodged by the Secretary of Prabhat Co-operative Credit Society Limited, Osmanabad against the Directors of Vasantdada Nagari Sahakari Bank Limited, Osmanabad (for short "bank") and other accused persons, present applications are filed for seeking pre-arrest bail.

2. Applicant in Anticipatory Bail Application No. 1482/2023, Surekha is wife of the Chairman of the Bank whereas applicant in Anticipatory Bail Application No. 1481/2023, Pruthviraj is his son. Other applicants in Anticipatory Bail Applications No. 1476/2023 and 1485/2023 are Directors of the bank.

3. On 27th July, 2023, vide First Information Report No. 279/2023 registered with Osmanabad police station, offence came to be registered against the applicants and other accused persons punishable under Sections 420, 406, 409 read with Section 34 of Indian Penal Code and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999. The Secretary of the Prabhat Co-operative Credit Society Limited reported to the police about the said society investing sum of more than Rs. 15,00,000/- with the bank and on its maturity the said amount not being returned to the society. There are allegations against the Chairman and the management of the bank of abusing their powers by granting over draft / loans without taking necessary precautions for recovery of the said amounts. It is also alleged that the money deposited in the bank by the informant as well as other account holders has been illegally disbursed by way of loan to the relatives of the management of the bank. It is alleged that number of depositors are denied reimbursement of their deposit with interest.

4. Learned counsel for applicant Surekha submitted that merely because she happens to be the wife of Chairman of the bank, she cannot be arrayed as an accused unless there are specific

allegations against her of aiding or abetting the act of alleged mis-appropriation, which according to him are absent in First Information Report. It is specifically contended that though there is allegation of giving loan to Mahila Bachat Gat of which applicant was Chairperson, it is his submission that during the relevant period she was not holding the said post and hence cannot be said to be party to the said loan. To support his submissions, he placed reliance on judgment of this Court in the case of Vasantdada Nagari Sahakari Bank Ltd. Vs. Union of India and others in Writ Petition No. 6759/2021.

5. Learned counsel for applicant Pruthviraj submitted that though he is the Director of the bank, there are no specific allegations against him as to the role played by him in the management of the bank. By referring to the First Information Report, it is submitted that the allegations are essentially against the Chairman of the bank. To support his submissions, he placed reliance on the report of Reserve Bank of India which according to him, states that there are irregularities in the accounts and that no findings are recorded about mis-appropriation of funds. It is submitted that the entire loan disbursed is already repaid and hence

question of any allegation of mis-appropriation against the applicant does not arise.

6. Learned counsel for other applicants i.e. Directors of the bank, submitted that the only reason for non-repayment of deposit with interest is the restrictions imposed by Reserve Bank of India. It is their submission that out of 38000 depositors, only 350 depositors' money is still remained to have been paid. It is contended that there are consent letters of more than 100 borrowers which show that they are ready to wait till the restrictions imposed by the Reserve Bank of India are lifted. It is thus their contention that there is no material to hold that any mis-appropriation has been committed by the Directors. It is submitted that since long liquidator has been appointed by the Reserve Bank of India and inspite of conduct of audit, no offence is registered by auditor or liquidator which shows innocence of the applicants. It is their submission that only with a view to pressurise the applicants for repayment of money, present report has been lodged belatedly.

7. Apart from above submissions, learned counsel for applicants submitted that all documents are in the custody of the

bank over which liquidator has control and hence nothing is to be seized at the instance of the applicants and as such their custodial interrogation is not necessary. They relied upon landmark judgment of the Hon'ble Apex Court in the case of Siddharam Satlingapa Mhetre vs. State of Maharashtra and others, **AIR 2011 Supreme Court 312** in order to support their contention of for grant of pre-arrest bail. It is their further submission that the proceedings under Section 101 of Maharashtra Co-operative Societies Act are initiated which indicate that steps are taken for recovery of unpaid loans.

8. Learned APP opposed the said submissions by contending that there need not be detailed allegations in the First Information Report. It is his submission that at this initial stage, the Court is required to see as to whether there is any prima facie material to show involvement of applicants in the crime and if it is so then applicants are not entitled for pre-arrest bail. It is submitted that there is no substance in the contention of learned counsel for the applicants that no mis-appropriation is revealed by the report of the Reserve Bank of India. He drew attention of the Court to the specific finding recorded in the report which according to him, shows that there is financial irregularity resulted into mis-appropriation of

depositors' money. As far as contention of the Directors that they are not responsible for the alleged mis-appropriation and that the allegations are only against the Chairman of the bank, it is submitted that during the course of investigation documents are collected which indicate that these applicants were party to the resolution passed for disbursement of loan. It is submitted that the stand taken by the applicants about repayment of loan by particular borrowers is false in view of the record which indicates that in order to show that the loans are repaid fresh loans were granted to those persons. To support said submission, he placed reliance on the documents which are part of investigation paper. It is his further submission that there is material on record to indicate that the loans disbursed to those borrowers were received back by the Chairman and he thereafter from his personal account transferred the said money to the account of sugar factory of which his son i.e. applicant in Anticipatory Bail Application No. 1481/2023 is Chairman. Thus, it is his submission that the Directors and the Chairman of the bank in connivance with each other have disbursed the loan fully knowing that they are not recoverable. Thus they have committed mis-appropriation of money of depositors. It is submitted that mere obtainment of certificates

under Section 101 of Maharashtra Co-operative Societies Act is not sufficient to absolve them from the alleged crime.

9. The Hon'ble Apex in the case of Siddharam Mhetre (supra) has laid down guidelines/factors/parameters which can be taken into consideration while dealing with anticipatory bail. It is observed by the Hon'ble Apex that the nature and gravity of the accusation and the role played by the accused need to be properly comprehended. It is also to be seen whether accusations have been made only with the object of injuring or humiliating the applicant and impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people. It is further held that the Court must evaluate the entire available material against the accused very carefully and strict balance has to be maintained between the liberty of the applicant and the right of the Investigating Agency to carry out investigation. There are judgments of Hon'ble Apex Court which indicate that in case of mis-appropriation of public fund and considering the initial stage of investigation, if any evidence is showing involvement of accused in the crime, they are not entitled for pre-arrest bail.

10. In the instant case, except applicant Surekha, there is no dispute about the fact that all other applicants are Directors of the bank. Though it is sought to be argued that the entire allegations are against the Chairman and these applicants are not responsible for the activities of the bank, more particularly disbursement of loan/over draft facility, investigation papers clearly show that applicants were party to the resolutions passed for disbursement of loans. Thus, at this stage, it cannot be said that the applicants are not concerned with the affairs of the bank and with disbursement of loans.

11. Material on record at this stage shows that the Reserve Bank of India in its report has specifically observed about the irregularities done by the management of the bank. It is specifically stated in the report that the bank had sanctioned over draft each of Rs.60,00,000/- to six borrowers between 12th December, 2011 to 1st June, 2012 and on the same day, the money was transferred to current accounts of the respective borrowers. Immediately, the said money was transferred to saving account of the Chairman of the bank who used this money. It is further found that these very same borrowers were sanctioned new self employed loan for

Rs. 55,00,000/- each between 15th March 2014 to 29th March, 2014 and the amount sanctioned under the self-employed loan was transferred to respective borrowers' current account and then it is transferred to settle their overdraft account. Apparently, there is no doubt about the fact only with a view to show that loans disbursed illegally are repaid, fresh loans were given to them and record is created to show that loans so granted are recovered. It is nothing but screening/covering of the acts of mis-appropriation. It is also observed in report of Reserve Bank of India that the Chairman of the bank was directly involved in these loans and advancements. In respect of very same loan transactions, other directions including present applications being signatories to the resolutions passed cannot shirk their responsibility. It is also pointed out by learned APP that the amounts disbursed by way of loan were transferred to the account of the Chairman who in turn transferred the said amount to the sugar factory of which his son is Chairman. Thus, it cannot be said that the son of the Chairman is not concerned or beneficiary of mis-appropriation.

12. There is specific embargo on advancement of loan to the relatives of the Directors of the bank. In spite of the same, loan was

advanced to Mahila Bachat Gat of which applicant Surekha was Chairperson. At this stage, it is immaterial as to whether at the time of actual disbursement of loan she was holding which position in the Bachat Gat. Suffice it to say that she was member of Bachat Gat and her husband who is the Chairman of the bank has disbursed loan to the said Bachat Gat without compliance of rules and without ensuring repayment.

13. It is the contention of applicants that the Reserve Bank of India has never observed about any mis-appropriation being committed by the Directors of the bank. However, the report in more than clear terms indicates mis-appropriation done by them. Merely because the auditor or liquidator has not lodged report against the applicants for mis-appropriation, they cannot get any benefit thereof. The Hon'ble Apex Court in case of Dhanraj N. Asawani vs. Amarjeetsingh Mohindersingh Basi and others, **2023 SCC OnLine SC 991**, has observed that even though it is the responsibility of the auditor or the Registrar of co-operative society to lodge First Information Report and that it has not done so, it is open for the aggrieved person to lodge such First Information Report. Once law is set into motion, it is the duty of the police to investigate into the

alleged offence. This process cannot be interdicted by relying upon the provisions of Sub-Section 5B of Section 81 of the Maharashtra Co-operative Societies Act which cast duty on the auditor to lodge First Information Report. Thus, non filing of report by liquidator would not become a ground for grant of pre-arrest bail.

14. At this stage, there is sufficient material to indicate involvement of applicants in the crime. Here in this case, the wife and son of the Chairman are not sought to be involved in the crime by way of victimisation. On the contrary, material on record is not only sufficient to indicate their nexus with the crime but to treat them as beneficiaries thereof. There is nothing on record to hold that it could be a possible case of false implication or that First Information Report has been lodged in order to injure or humiliate the applicants. Considering the nature of offence and volume of amount of mis-appropriation involved therein and having regard to the initial stage of investigation, it is not a fit case to consider applications of these applicants. Hence, the applications stand rejected.

15. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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