FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2659 OF 2015
[Vijay Sakharam Chaudhary Vs The State of Maharashtra and anr.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Shri G.V.Wani, advocate for applicant
Shri V.H.Dighe, A.P.P. for respondents

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CORAM : V.M.DESHPANDE, J.
DATED : 29th June, 2015

PER COURT : -

1] This is an application filed for anticipatory bail on behalf of Vijay Chaudhary, who is the Secretary of one Cooperative Society by name Vividh Karyakari Seva Sahakari Society, Virode, Taluka Yawal, apprehending his arrest, in connection with Crime No. 16 of 2015, registered with police station Faizpur, District Jalgaon, for the offences punishable under Sections 406, 408, 409, 468, 477-A r/w 34 of the Indian Penal Code.

2] I have heard Shri G.V.Wani, learned counsel for the applicant and Shri V.H.Dighe, learned Additional Public Prosecutor.

2] Dilip Chintaman Shinde is the first informant. First informant is a special auditor of the Cooperative Department. Cooperative Department directed this auditor to conduct the audit of Vividh Karyakari Seva Sahakari Society, Virode, Taluka Yawal for the years 2009-2010. Accordingly the audit was conducted. It was found by the special auditor that the present applicant has sanctioned loan to the various members of the society in spite of the fact that the old loan which was granted in favour of those members was not recovered by the Society. Further, it was found during the course of the audit that the loan amount which was not recovered was shown by this applicant Secretary as recovered one in the account books. Further, it was found that though the amount was not deposited in the bank in the ledger, it was shown by the present applicant that the amount is deposited in the bank. With these basic allegations, the first information report was lodged and according to the report, misappropriation is of Rs.21,65,520.70 Ps.

3] Learned counsel Shri Wani would submit that the present applicant is already transferred to Chopda. Thus, he has no control over the branch at Virode. Further, he submits that he has already deposited the entire amount. He, therefore, submits that custodial presence of the present applicant is not warranted.

4] The prayer for anticipatory bail of the present applicant is vehemently opposed by the learned Additional Public Prosecutor. According to the learned Additional Public Prosecutor, present applicant is king pin in this entire offence. He submitted that custodial presence of the applicant is necessary.

5] Undisputedly, a member, if he has not cleared his earlier loan amount to the Society, then such member is dis-entitled to claim fresh loan from the Society. Being the Secretary of the Society, the present applicant is having control over day-to-day management of the Society. From the audit, it is crystal clear that near about more than 100 members who were in arrears in respect of repayment of their loan, they were granted loan afresh by the present applicant. Thus, the present applicant has not taken care of the financial health of the Society.

6] More graver allegation, which appears to be prima facie established from the ledger of the Society itself is that, the present applicant, though has mentioned in the ledger that the amount is deposited in the bank, however, there is no such corresponding entry in the bank account. Thus, huge amount is being misappropriated.

7] Grant of anticipatory bail is a discretionary relief which the applicant can claim from the court. According to the learned counsel, in view of the fact that the entire documents are already seized by the investigating officer, the custody of the applicant is not essential. The seriousness of accusations is also one of the factor while considering the prayer for anticipatory bail.

8] In the present case, the applicant was expected to maintain financial health of the Society. According to the learned counsel, at the most, present applicant has failed to discharge his duties properly. Such argument, though appears to be attractive at the first blush, however, it has to be rejected on the closure scrutiny of the matter. Failure to discharge the duty is different than fabricating the documents showing in the ledger that amount is deposited in the bank when, in fact, such amount is not deposited in the bank account. Surely, this is not merely the failure to discharge the duties.

9] In that view of the matter, present applicant is not entitled for discretionary relief from this court. Hence, the application is rejected and interim order granted on 22.5.2015 stands vacated.

(V.M.DESHPANDE, J.)

dbm/crap2659.15