IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1430 OF 2015

1. Pramod Jaysingrao Rananavare,
2. Babasaheb Sakhagonda Patil,
3. Dilip Shripatrao Mane,
4. Tanaji Ishwar Mohite,
5. Prakash Bhimrao Chavan,
6. Kisanrao Vitthal Kurade,
7. Bharat Bapugonda Patil,
8. Sanjay Tanajirao Mokashi,
9. Chandrakant Mayappa Kamble,
10. Gurunath Bhimrao Patharwat,
11. Vishupant Ramchandra Shinde,
12. Kiran Dhondiram Kadam ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr. Ashok P. Mundargi, Sr. Counsel with Mr. Jayant J. Bardeskar for the Applicants

Ms. Veera Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 14th JULY, 2016

P.C. :

1. By this application, the applicants, who were the Directors of Shivaji Sahakari Bank Ltd., Gadhinglaj, seek pre-arrest bail in connection with C.R. No. 141 of 2015 registered with the Gadhinglaj Police Station, for the alleged offences punishable under Sections 406, 420, 467, 468, 470, 477A, 120B r/w 34 of the Indian Penal Code.

2. At the outset, it is necessary to mention that the aforesaid application along with other applications was heard by me and was reserved for orders. However, due to heavy board, orders could not be passed. Whilst going through the papers, I felt that it was necessary to obtain clarifications on certain aspects and hence, the matters were listed on Board for directions on 22nd June, 2016, for obtaining certain clarifications. The applications were directed to be listed on 27th June, 2016. However, for two weeks, there was change in the assignment and the matters could not be taken up. Thereafter, learned A.P.P sought time on few dates as the Investigating Officer was not available and accordingly the matters have been listed again today.

3. I had heard learned Senior Counsel for the applicants earlier as well as the learned A.P.P for the State. Today, I have again heard the learned A.P.P.

4. The applicants were the Directors of Shivaji Sahakari Bank Ltd., Gadhinglaj (hereinafter referred to as `the said Bank'), from the year 1998 to 2010 for different periods. In June, 2014, the said Bank went into

liquidation and a Liquidator was appointed. According to the informant-Shri D. A. Chougule, retired Assistant Registrar, Cooperative Audit Department, Kolhapur, he conducted a re-audit of the said Bank, on the directions of the Deputy District Registrar, Cooperative Department, Kolhapur dated 27th January, 2015 and submitted his report on 14th August, 2015. He has stated that after obtaining legal opinion of the District Government Pleader, Kolhapur and after obtaining permission from the Deputy District Registrar, Co-operative Department, Kolhapur, he lodged a complaint, which was registered vide the aforesaid CR for the aforesaid offences as against the applicants and several others. According to the informant, the applicants along with other co-accused misappropriated huge money from the said Bank and used the said amounts for their own benefit. He has alleged that an amount of Rs. 1331.32 lakhs was misappropriated by all the accused in furtherance of their common intention during the period 1st April, 1998 to 31st March, 2010. According to the informant, all the accused had duped the depositors of crores of rupees by committing criminal breach of trust and by disbursing loans and by illegally withdrawing huge amounts. The informant - Shri Chougule has in his complaint dated 24th August, 2015 listed the allegations as against all the accused under various heads, i.e. (i) loans taken on fixed deposits; (ii) misappropriation from the IDBI Bank Account; (iii) fraud in loan account of Matoshree RRamabai Ambedkar Backward Class Cooperative Textile Mill, Kodoli; (iv) misappropriation of bank account of Mastoshree RRamabai Ambedkar Spinning Mill; (v) fraud in cash; (vi) misappropriation in respect of 50% subsidy scheme given by the District Industrial Centre, Kolhapur, for small textile powerloom owners; (vii) issuance of No Dues Certificate; (viii) fake loan accounts; (ix) transaction from dormant/dead accounts, (x) misappropriation in respect of the Central Government Agricultural Debt and Interest Waiver Scheme, 2008; (xi) Fraud and misappropriation in Branch and Head Office Account; and (xii) misappropriation in respect of the State Government Agricultural Waiver of Audit and Relief Scheme, 2009. The informant has specifically spelt out the role played by each of the accused in the complaint, under each of the aforesaid heads.

5. Mr. Mundargi, learned Senior Counsel appearing for the applicants submitted that as far as the applicants, who were directors of the said Bank were concerned, no specific role has been attributed to them. He

submitted that the applicants, as the Directors of the Bank, were in no way connected with the alleged misappropriation of funds. He submitted that in the complaint, allegations against the applicants are confined to only 3 out of the 12 heads; i.e. (i) illegalities in the account of Matoshree Ramabai Ambedkar Backward Class Cooperative Textile Mill; (ii) illegalities in respect of 50% subsidy scheme given by the District Industrial Centre, Kolhapur, for small textile powerloom owners; and (iii) illegalities in waiver of loan of farmers in Government Scheme, 2008. He submitted that there is nothing to show that any of the applicants had received any benefits from the same. He further submitted that audit which was conducted for the period from 1999 to 2010 does not show that there was any discrepancy or that there was misappropriation of any monies during the said period. He submitted that it is only in the re-audit, which was conducted in 2015, that the auditor allegedly found misappropriations as noted above in para 4 above, pursuant to which the complaint was lodged. According to the learned Senior Counsel, the Circular which is marked as Exhibit `L' at page 186 in the aforesaid Application, states that after a delay of five years, re-audit cannot be done. He further submitted that from the period 1999 till 2010, there were several Directors of the Bank, however, some of the

Directors have not been named as accused in the present case, more particularly, the Directors, who were there from the period from 2006 to 2010. He further submitted that the present applicants have been singled out, when there were many more Directors during the said period. He relied on Exhibit 'M' at page 189 i.e. the list of Directors for the period from 1999 to 2010. According to him, the applicants have been named only because of the political rivalry and at the behest of the opposite group of Directors.

6. According to the learned Senior Counsel, the applicants as Directors, cannot be held vicariously liable for the acts of its employees as the entire day-to-day transaction was being handled by the employees and not by them. He further submitted that the work of documentation, scrutiny of bills, receipt of purchase of agricultural equipments, buffaloes, etc. is done by the Bank staff and the Sanctioning Authority, who was the informant in the said case and not by the Directors, and therefore, the Directors cannot be made vicariously liable for the acts of its employees. He further submitted that an inquiry under Section 88 of the Maharashtra Cooperative Societies Act (`the said Act') has been initiated by the

authorized Officer appointed under Section 88 of the said Act, and that the liability of the Bank Officers was fixed at Rs. 10,47,766/-. However, as the said order passed by the authorised officer, was without hearing the applicants, the said order was challenged, pursuant to which, the said order was stayed. He submitted that the second notice dated 13th April, 2016, wherein, additional allegations as noted in the FIR, was issued under Section 88 of the said Act, and that the same is pending and that the applicants have appeared before the said Authority.

7. Learned A.P.P states that the applicants as Directors, are responsible for the alleged misappropriation and that they are the beneficiaries of the fund. She states that investigation is still in progress and the role of the applicants will be disclosed in the investigation.

8. Perused the papers. The learned A.P.P is unable to point out the exact role of each of the applicants or specific material against any of them. She does not dispute the fact, that considering the material on record, at this stage, there is no material to warrant custody of the applicants. It is also not in dispute, that on the basis of the FIR/complaint,

notices have been issued to the applicants under Section 88 of the Maharashtra Cooperative Societies Act and that the applicants have appeared before the Authority and that after hearing the parties, the Authority will fix the individual liabilities. In the facts of this case, considering the material on record qua the applicants, custody of the applicants is not warranted.

9. Accordingly, the applicants are granted pre-arrest bail on the following terms and conditions :

ORDER

(i) In the event of the arrest, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each, with one or two sureties in the like amount ;

(ii) The applicants shall report to the Investigating Officer of the concerned Police Station on first and third Saturday from 10:00 a.m. to 12:00 noon, for a period of three months from today, and thereafter as and when called, till the filing of the charge-sheet, whichever is earlier;

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

10. The Application is allowed in the aforesaid terms and is accordingly disposed of.

11. It is made clear that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.