IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2473 OF 2017

Kapurchand Laxman Baviskar ...Applicant

versus

The State of Maharashtra ...Respondent

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Shri P.M. Shah, senior counsel i/b Mr. D.S. Bagul, advocate for applicants
Mr. A.S. Shinde, A.P.P. for respondent
Mr. C.C. Deshpande, advocate for assist to public prosecutor

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CORAM : V. K. JADHAV, J.
DATED : 9th AUGUST, 2017

PER COURT:-

1. This application is filed under the provisions of section 438 of Cr.P.C. seeking pre-arrest bail in connection No. 14 of 2017 registered at Deopur police station, Dhule for the offences punishable under sections 406, 409, 417, 418, 420, 467, 468, 471, 120(B), 34 of I.P.C. and sections 3 and 4 of Maharashtra Protection of Interest Depositors (in Financial Establishments) Act, 1999 (hereinafter for the sake of brevity referred to as the “M.P.I.D. Act”).. The application of the applicant, bearing Criminal Bail application Nos. 217 of 2017 with similar prayer came to be rejected by learned Additional Sessions Judge, Dhule by order dated 09.05.2017.

2. On the basis of complaint lodged by one Ashok Shravan Patkar, crime No. 14 of 2017 came to be registered at Deopur police station, Dhule for the aforesaid offences. It has been alleged in the complaint that the applicant is sitting director of Dadasaheb Waman Vishnu Shinkar Nagari Sahakari Patsanstha Maryadit, Dhule. The applicant is closely related to other accused. It has been alleged the applicant has used the depositors money for his personal use and as such, committed criminal breach of Trust. It has also been contended that the special auditor of Co-operative Societies has conducted inquiry into the matter and observed the aforesaid irregularities/illegalities in borrowing the amount and repayment of the said amount without paying entire interest on the loan amount. On the basis of these allegations, the applicant apprehends his arrest in the said crime.

3. Learned senior counsel for the applicant submits that initially the complainant has approached the learned Magistrate by filing criminal M.A. No. 875 of 2016 against near about 16 accused persons, including the present applicant with the same allegations, praying therein to direct the police to investigate into the matter, as provided under section 156(3) of Cr.P.C. However, by order dated 12.8.2016, the learned Magistrate has declined to send the said case for investigation and further directed to put the complaint for

verification and also directed the complainant to lead evidence under the provisions of section 202 (1) of Cr.P.C. Learned Magistrate by order dated 21.12.2016 disposed of the said application as withdrawn.

4. Learned senior counsel further submits that the complainant thereafter, with the same allegations, by making addition in the charges levelled against the accused, including the present applicant under Sections 3 and 4 of M.P.I.D. Act, the complainant filed Misc. application No. 22 of 2017 before the Sessions Judge, Dhule. The learned Additional Sessions Judge, Dhule, who is Special Judge under the provisions of M.P.I.D. Act, by order dated 28.2.2017, has allowed the said application and accordingly sent the application to Deopur police station under Section 156(3) of Cr.P.C. for registering the offence against the present applicant by carrying out proper investigation. Accordingly, aforesaid crime No. 14 of 2017 came to be registered at Deopur police station, for the offences as stated above, including the offences punishable under sections 3 and 4 of M.P.I.D. Act.

5. Learned senior counsel for the applicant submits that term 'financial establishment' has been defined in the M.P.I.D. Act and as per section 2(d) of the said Act, a Co-operative Societies owned and

controlled by any State Government or the Central Government, are not included in the term of 'financial establishment'. Learned senior counsel submits that as such, the provisions M.P.I.D. Act 1999 are not attracted in the present case. In the given set of allegations, provisions of sections 3 and 4 of M.P.I.D. Act, hardly attract. Learned senior counsel submits that those provisions safeguard the interest of the depositors and if any such financial establishment, which fraudulently defaults any repayment of deposit on maturity alongwith any benefit in the form of interest, or any other form as promised, or fraudulently fails to render service, as assured to the depositors, the said criminal provisions, as enumerated in sections 3 and 4 of the Act stand attracted.

6. Learned senior counsel submits that in the instant case, the applicant is borrower. By complying all necessary requirements, the applicant has availed loans from the said credit society and repaid the said amount with interest. There are allegations in the complaint that the applicant has received substantial rebate illegally in the interest, in collusion with the Chairman and other directors of the credit society. The credit society has granted such rebate in the interest to near about 452 borrowers and the special auditor in his report has also taken a note of it. The present applicant was not treated with an exception and he has not been granted rebate in the

interest, as a special case. Even the complainant got same advantage and he was also granted rebate in the interest. The complainant himself was borrower of the same credit society. Learned senior counsel submits that the applicant is having immovable properties at Dhule itself. His antecedents are clear and he will be easily available for trial.

7. Learned senior counsel submits that though the special auditor had submitted a report, the Registrar, Co-operative Societies has not directed the Divisional Joint Registrar, Co-operative Societies, Nashik to initiate the criminal prosecution against the applicant. The investigation is almost over for all practical purposes and the formality of filing of charge sheet is only remained. There are certain allegations that the applicant has received rebate in the interest of borrowed amount. The applicant is ready to repay the said amount to the credit society. Even though the special auditor has proposed civil action against erring Directors, Chairman, under Section 88 of the Maharashtra Co-operative Societies Act 1960, however, the Directors of the Credit society, have challenged the said report of the auditor, by filing writ petition No. 7883 of 2015 in this Court and this Court has stayed further proceeding in terms of the action proposed by the special auditor.

8. Learned A.P.P. for the respondent State submits that the present applicant, in collusion with the then directors and the Chairman, borrowed huge amount without complying the mandatory requirements and on the basis of false and fabricated documents availed the loan from credit society. Learned A.P.P. submits that the applicant used huge amount for his personal cause and as such, not only deceived the credit society but also to the depositors. Learned A.P.P. submits that though the borrowed amount has been repaid, however, the applicant got substantial rebate in the interest and accordingly put the said society at huge loss. Learned A.P.P. submits that there is strong prima facie case against the applicant. Investigation is still in progress. The applicant is influential person and the possibility of tampering with the prosecution evidence cannot be ruled out.

9. This Court by order dated 15.5.2017 has granted interim pre-arrest bail to the applicant.

10. On perusal of the report of special auditor, and the chart attached with the same, it appears that the present applicant got rebate in the interest amount, to the extent of Rs.2700/- and some odd amount. The applicant is still serving as Assistant Teacher with Shitamai New English School, Dhule. On perusal of F.I.R. and the

investigation papers, it appears that the allegations have been made mainly on the ground that the applicant got substantial rebate in the interest in collusion with other directors and Chairman of the Credit society. On perusal of the report of special auditor alongwith the chart, it appears that there may be some irregularities in the process of considering the proposal for availment of loan, however, it also appears that such rebate in interest has been awarded to near about 452 borrowers. Furthermore, the observations made by the special auditor and the action proposed by him in his report has also been stayed by this court in writ petition 7883 of 2015. It also appears that all relevant documents are either in the custody of special auditor or investigating officer in this case. It also appears that investigation is almost over for all practical purposes and mere formality of filing charge sheet is only remained. Learned A.P.P. could not point out that as to on what ground/point the investigation is going on. In view of the same, custodial interrogation of the applicant is unwarranted and uncalled for. In view of above, by imposing certain conditions, the interim pre-arrest bail granted earlier to the applicant can be confirmed. Hence, I proceed to pass the following order:-

O R D E R

I. Criminal application is hereby allowed.

II. The interim pre-arrest bail granted by this court by order dated 15.5.2017 to the applicant is hereby confirmed on the following conditions:-

a) The applicant shall not tamper with the prosecution evidence in any manner.

b) The applicant shall make himself available as and when required by the investigating officer for further investigation.

c) The applicant shall not interfere in the affairs and business of Dadasaheb Waman Vishnu Shinkar Nagari Sahakari Pathpedi Maryadit, Dhule till further orders of the Court.

III. Criminal application is disposed of.

(V. K. JADHAV, J.)

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