IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2609 OF 2017

Sitaram s/o Manohar Shendge, ... **Applicant**
Age 25 years, Occu: Agriculture,
R/o Mandve (BK), Tq. Sangamner
District Ahmednagar

VERSUS

The State of Maharashtra, ... **Respondent**
Through the Police Inspector,
Ghargaon Police Station,
Tq. Sangamner, Dist. Ahmednagar

Mr. Rahul R. Karpe, Advocate for the applicant
Mr. S. B. Joshi, APP for the State.
Mr. Rajendra L. Kunte, Advocate, Assist to PP

CORAM : K. L. WADANE, J.

DATE : 9th June, 2017

ORDER:

1. Heard Mr. Karpe, the learned counsel for the applicant and Mr. Joshi, the learned APP for the State.

2. The present Criminal Application is filed under section 438 of the Criminal Procedure Code for grant of anticipatory bail in connection with Crime No. I-49/2017 registered with Gharegaon Police Station for the offences punishable under sections 420, 403, 405, 409, 467, 468, 471 of the Indian Penal Code, 1860.

3. The above referred offence is registered on the basis of complaint given by one Santosh Pandhare,

Auditor, who had audited the transaction of Saibaba Gramin Bigar Sheti Shahakari Pat Sanstha Ltd., Birewadi (Hereinafter referred to as 'the Society') for the financial year 2016-2017. During his Audit, it was noticed that some amount was not deposited with the Bank of the Society and some amounts which was deposited in the Bank of the society were withdrawn without resolution of the Board of Directors by preparing false cheques, withdrawal slips and other relevant documents, details of which are given in FIR/Complaint at Serial Nos. 1 to 8. Such amount of misappropriation comes to Rs.2,16,61,916/-. The present applicant was working as cashier. The Complainant-Auditor has specifically reported that the the Manager and Cashier of the Society have misappropriated the said amount.

4. Mr. Karpe, the learned counsel appearing for the applicant submits that as per the bye-laws of the Society, CEO of the Society is supposed to be the custodian of the documents of the Society. Without resolution of the Board of Directors, nobody is authorized to withdraw the amount. He further submitted that as per the report submitted by the Chairman of the Society, there was misappropriation of

amount of Rs. One crore and as per the report of Auditor, it is more than Rs.2 crores. Therefore, there is serious infirmity about the amount allegedly misappropriated. Mr. Karpe further submits that the present applicant has made communication to the Assistant Registrar, Cooperative Societies, Sangamner, District Ahmednagar on 10.02.2017 informing that when he was serving with the Society as Cashier during the the period 2015 to 2017, transactions of the Manager, Chairman and Board of Directors of the Society were suspicious. Relying upon this communication, Mr. Karpe submits that the applicant himself has communicated to the concerned authority about the suspicious transactions of the Manager, Chairman and Board of Directors of the Society. He further submit that the applicant is ready to abide by any condition that may be imposed.

5. As against this, learned APP, appearing for the State has argued that there is misappropriation of huge amount i.e.more than Rs. two crores. He points out the contents of the Resolution of the Society dated 25.01.2011. By this Resolution the present applicant, being Cashier of the Society, was entrusted with the work relating to cash i.e. to deposit cash in Bank, to

withdraw the cash from Bank and other allied and related work. Learned APP further submits that since registration of the Crime, the present applicant is absconding and therefore, it is hurdle in the investigation. The present applicant has played important role in misappropriation of the huge amount. Custody of the applicant is required for the purpose of recovery of the relevant forged documents. In support of his contention, the learned APP has relied upon the observations in the case of **Nimmagadda Prasad Vs. Central Bureau of Investigation**, reported in **2013 (7) SCC 466**, in which it is observed by the Apex Court that:

> "27. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words

"reasonable grounds for believing" instead of the 'the evidence' which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution, will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

6. It appears that there are allegations against the present applicant and other accused i.e. Manager of the society about misappropriation of amount of more than Rs. two crores. Looking to the facts and circumstances of the case and gravity of the offence, without custody of the applicant, I do not think that Investigating Officer will be able to investigate into the crime in proper perspective. Therefore, considering the nature of accusation, amount involved in the offence and role of the applicant, the applicant is not entitled for anticipatory bail. Hence the Criminal application is rejected.

(K. L. WADANE, J.)

JPC