IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1202 OF 2016

Mr. Sitaram Raghunath Kapse .... Applicant/Accused

Versus

State of Maharashtra .... Respondent
through Pant Nagar Police Station, Mumbai.

Mr. A.P. Mundargi, Senior Counsel i/b. Mr. Shreyansh R. Mithare for Applicant.
Mr. Shahed Ali Ansari i/b. Mr. Shivaji M. Patil for Respondent No.2.
Ms. P. P. Shinde, APP for Respondent/State.
Mr. Satish S. Kadam, PI, Pant Nagar Police Station, Ghatkopar, Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 19TH JANUARY, 2017.

P.C.

. Heard. This is an application under Section 438 of the Code of Criminal Procedure. The applicant is apprehending his arrest in Crime No. 1 of 2016 registered at Pant Nagar Police Station, on the basis of a complaint filed by one Mr. Shivaji Kute. Pursuant to which, the directions under Section 156 (3) of Cr.P.C. and accordingly the applicant is being prosecuted for offences punishable under Sections 406, 418, 420, 425, 463, 464, 468, 471 read with Section 34 of Indian Penal Code.

2. It is the case of the prosecution that when the applicant was working as a Deputy Commissioner of Police, he along with the other police personnels and officers, in the interest of the personnels of police department had decided to form a Co-operative Housing Society in the name of 'Ghatkopar Daxata Police Co-operative Housing Society'. There was a lease agreement between MHADA and the Society. The agreement was for the period of 30 years. It appears that the State of Maharashtra by an order dated 31st March, 1995 had appointed the present applicant as the Chief Executive Officer of Daxata Co-operative Housing Society and he continued to officiate as Chief Executive Officer till the year 2000. That till he was officiating as Chief Executive Officer, there was no complaint against the functioning of the Chief Executive Officer, not even by the complainant. It appears from the papers of investigation that the occupation certificates were given. A loan was taken from HUDCO Bank. The EMIs were being paid regularly. The accounts of the said Society were audited. An amount of approximately 18,00,000/- was also kept in fixed deposit in the interest of the Society.

3. The applicant has retired on superannuation. It appears that on 19th March, 2016 a complaint was lodged by Ghatkopar Daxata Co-operative Housing Society Limited against the present applicant and all the members of the then managing committee seeking directions under Section 156(3) of Cr.P.C. for the alleged misappropriation committed by the then managing committee. The cause title of the complaint shows that it was simplicitor filed by the

Co-operative Housing Society. It is alleged in the said complaint that the said Society is registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. It is a matter of record that no complaint was given to the DDR or any other official of the department of co-operation. It is alleged in the complaint that the amounts were transferred by the Administrator of the Society to the account of the present applicant and that he has misappropriated the said funds. It is further alleged that the HUDCO Bank has disbursed the loan to Daxata Co-operative Housing Society vide MOU dated 10th June, 2013. According to the complainant, the sanctioned loan amount was never received in the account of the complainant Society.

4. The learned counsel for the complainant submits that till 2005 the members of the complainant Society have regularly paid the EMI to HUDCO Bank. It appears that there was a default in paying the EMI and the earlier body had been superseded. It is a matter of record that HUDCO Bank has filed a Civil Suit against the members of the Society for recovery of the loan amount and thereafter the members of the Society had decided to file a complaint against the predecessor body. The learned counsel for the complainant has vehemently submitted that at the time of obtaining loan, the applicant had mortgaged the houses of the members of the present Society to the HUDCO Bank without their consent and that he had no authority to do so. It is an admitted position that the Bank would not extend any loan unless and until there is a collateral

security against which the loan is obtained. It is further pertinent to note that till the year 2005 when they were paying EMI regularly, they had no grievance that their properties have been mortgaged.

5. Today in the course of arguments, the learned counsel for the intervener submits that HUDCO Bank had sanctioned the loan in the name and style of 'Police Housing scheme and Daxata Co-operative Housing Society'. According to the complainant, the loan is not sanctioned to the present Society and that the applicant had acted in connivance with the Bank. Needless to reiterate that unless the HUDCO Bank pressurized the Society to pay the EMI, they had no grievance against either constitution, management or the accounting of the Society.

6. The applicant herein was granted interim relief by this Court vide order dated 19th August, 2016. The applicant has joined the investigation. The statement of the applicant has been recorded by the police. The learned APP upon instructions submits that the audit report is not available. In fact, the applicant has specifically stated that he had submitted the audit report to the bank, as it was incumbent upon him to submit the same to the Bank. As on today, HUDCO Bank has also informed that they do not have the copy of the audit report. Even according to the complainant, the offence was committed during the period 1993 to 2000. The complaint is filed in the year 2016. After 16 years, custodial interrogation of the applicant would not be imperative as he has co-operated with the investigation agency and undertakes to co-operate even further.

7. The observations are restricted to the application under Section 438 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial. Leave to add/amend.

O R D E R

(i) Application is allowed.

(ii) In the event of arrest, the applicant be enlarged on bail on furnishing P. R. Bond in the sum of Rs. 25,000/- with one or more local solvent sureties in the like amount. The applicant shall report to the Police Station as and when called after issuing notice under Section 160 of Cr.P.C.

(SMT. SADHANA S. JADHAV, J.)