IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 578 OF 2011
IN
CRIMINAL APPLICATION No. 3416 OF 2008

Shivaji Shankarrao Kale ... Applicant
Vs.
The State of Maharashtra & Anr. ... Respondent

Mr. A.P. Mundargi, Senior Advocate i/b. Mr. U.R. Mankapure for the Applicant.
Mrs. Rutuja Ambekar, APP for Respondent – State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th February, 2017.**

P.C.:

This Application is moved to relieve/discharge the applicant from the affidavit/undertaking submitted in Criminal Application no. 3416 of 2008. The applicant/accused is prosecuted in C.R. No. 304 of 2008 for the offences punishable under sections 406, 409, 420 r/w. 34 of the Indian Penal Code registered with Sahakar Nagar Police Station, Pune.

2. It is the case that one Ajit Sahakari Bank Ltd. had suffered financial loss of Rs.20,79,39,000/- due to fraud, falsification of accounts, misappropriation of amount. The applicant/accused was one of the directors of the said bank for the period from 2002 to 2008 and for 9 to 10 months during that period, he also worked as Chairman of the said bank, therefore, he is made accused in the said case. In Anticipatory Bail Application No. 3416 of 2008, the learned Judge of this Court has relied

on the affidavits dated 29th November, 2008 and 1st December, 2008 wherein the applicant has given undertaking that he shall not sell or transfer his immovable properties which were described in the affidavit. The Hon'ble Judge of this Court has accepted his statement in the affidavit and while allowing the Anticipatory Bail Application has put the applicant to the term that he shall not part with or transfer his immovable properties mentioned in the affidavit.

3. By this Application, the learned senior counsel prays that the said condition be relaxed and permission be granted to withdraw the said undertaking in respect of the properties. The learned Senior counsel has submitted that the applicant/accused along with other accused have faced inquiry under section 88 of Maharashtra Cooperative Societies Act, 1960 and the report of the enquiry dated 15th February, 2016 is in favour of the applicant/accused. The learned senior counsel produced the said report given by one Dilip Tukaram Bapkar, Authorized Enquiry Officer. He pointed out the concluding paragraphs about total 74 allegations. He submitted that the Enquiry officer has given break up of the liability of the financial losses suffered by the bank of four persons, who are co-accused and the total liability is shown to the tune of Rs.20,79,39,000/-. The name of the applicant/accused is not shown as liable to this financial loss. The learned senior counsel further relied on anticipatory bail order passed by this Court wherein it was mentioned that the applicant/accused had

purchased 2 Hectare land from Gat No. 90 at village Kukdi in the name of his sister, however, he had reconveyed the said land to the bank. The learned senior counsel thus prays that under such circumstances, the condition be relaxed.

4. Learned APP opposed the Application and submitted that criminal trial is yet to start and as the applicant/accused is facing charges of cheating and misappropriation of the bank money, the condition is not to be relaxed.

5. I have perused the relevant portion of the report of enquiry conducted under section 88 of the Maharashtra Cooperative Societies Act. Also perused the order of granting Anticipatory Bail passed by this Court so also the relevant documents which are pointed out by the learned senior counsel . In view of the submissions of learned senior counsel and as the applicant/accused is not held financially liable to pay the amount of which the bank is defrauded, I am inclined to allow this Application. The applicant/accused is discharged from the affidavit or undertaking submitted by the applicant and his wife in Criminal Anticipatory Bail Application No. 3416 of 2008 which is recorded and accepted by this Court by order dated 1st December, 2008.

(MRIDULA BHATKAR, J.)