

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.892 OF 2019

Ulhas Bhau Kudekar & Ors.

.... Applicants

versus

The State of Maharashtra

.... Respondent

- Mr. Kuldeep S. Patil, Advocate for the Applicants.
- Mr. S. H. Yadav, APP for the State/Respondent.
- Mr. S. A. Padwal, PSI, Khed Police Station, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th JULY, 2019

P.C. :

1. The applicants are seeking anticipatory bail in connection with C.R. No.I-94/2019 registered with Khed Police Station, Pune Rural, under Section 420 r/w. 34 of IPC.

2. The FIR is lodged by Shri. Chandrakant Garad who was an auditor appointed by the Registrar of Co-operative Societies. He was assigned the work of carrying out special audit in respect of Varshere Vividh Karyakari Seva Sahakari Sanstha

Maryadit, Vashere (hereinafter referred to as the 'said society'). He was directed to conduct audit of the said society which he did between 20/11/2018 to 23/1/2019. In the audit, he found that funds of the said society were misappropriated. He was directed to lodge his FIR and therefore, the FIR was lodged by him. He has mentioned in the FIR that the said society had made an application before the Assistant Registrar for carrying out construction work. The society was granted permission for carrying out construction in Gat No.17/2 at Vashere and they were sanctioned to spend Rs.5,44,755/-. However, the said society did not make construction on Gat No.17/2 but instead carried out construction on the upper floor of the Gram Panchayat building. The main objection against the society was that work of construction was carried out without inviting any tenders. The work was assigned to M/s. Atul Enterprises. The amounts of Rs.3 Lakhs and Rs.2,44,755/- were given by two separate cheques to M/s. Atul Enterprises. However, the same amounts were transferred in the personal account of the applicant No.1 by M/s. Atul Enterprises. Similarly, M/s. Pratik Ply were given Rs.50,000/- for furniture

supplied by them. That amount was also transferred by M/s. Pratik Ply and Hardware, Khed in the Savings Bank account No.4565 belonging to the applicant No.1. Based on these allegations, the FIR was lodged.

3. The allegations in the FIR in respect of the Board of Directors was that they had sanctioned this expenditure and change in the site of construction. Therefore, they were also alleged to be responsible. The FIR also blames the directors who were not present when these decisions were taken. According to the first informant, they had acted in collusion with others. Thus, the FIR was lodged for misappropriating funds of the said society for personal gain of applicant No.1.

4. The applicant No.1 is a Director of the society and Chairman of Bandhkam Samiti. Other applicants are members of the Board of Directors of the said society.

5. Heard Mr. Patil, Ld Counsel for the applicants and Mr.

Yadav, Ld. APP for the State of Maharashtra.

6. Mr. Patil submitted that the said society had spent lesser amount than what was sanctioned therefore no loss is caused to the said society. He further submitted that change of site for construction work was the decision which was unilaterally taken because it was more convenient to have the office in the Gram Panchayat building. It was centrally located and easily accessible. He submitted that if the permission for change of place was not taken, that would merely amount to irregularity and will not be an offence. He further submitted that the Gram Panchayat had permitted the society to carry out construction on their building. He further submitted that M/s. Atul Enterprises and M/s. Pratik Ply were having previous transactions with the applicant No.1 and therefore they transferred that money in the account of the present applicant No.1. Therefore, no offence is made out.

7. As against these submissions, Shri. Yadav, relied on the investigation carried out in this matter. The investigation papers contain statement of one Takalkar who was the proprietor of M/s. Atul Enterprises. He has stated that after he had received amount from the said society, he had deposited both the amounts of Rs.3 Lakhs and Rs.2,44,755/- in the savings account of applicant No.1 because they had personal transactions. Similarly, one Kumar Hede who was the owner of Pratik Ply has also given his statement. He has stated that he had received the cheque from the society. After encashment of cheque in his account, he transferred that amount in the savings account of applicant No.1. He has also stated that there was some previous transaction in which the applicant No.1 had given him cash of Rs.50,000/- which he had repaid.

8. I have considered submissions made by both the parties. The statement of the proprietor of M/s. Atul Enterprises and owner of M/s. Pratik Ply show that the applicant No.1 had previous transactions with them. Therefore, it was not proper on

his part to allocate work to them without inviting tenders. This fact supports the case of the Investigating Agency that the applicant No.1 had manipulated the entire board of directors for his own benefit by giving contract to the persons under his control. The said society could not have ownership right over the upper floor of Grampanchayat Building. The sanctioned amount also would differ for because of change in the location of the building. It was necessary to have invited tenders to carry out the work. Therefore, the role of applicant No.1 is clearly established even at this stage. However, it appears that the applicant No.1 had used other board members for his own purpose. Merely because they were party to the decision which ultimately benefited the applicant No.1 may not mean that they were aware of the applicant No.1's plans. Their custodial interrogation is not necessary. In view of the above discussion, following order is passed.

ORDER

1. Application for applicant No.1 is rejected.
2. In the event of their arrest in connection with C. R. No.I-94/2019 registered with Khed Police

Station, Pune Rural, applicant Nos.2 to 10, are directed to be released on bail on their executing P. R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount.

(SARANG V. KOTWAL, J.)