IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1070 OF 2020

Ajay Chandrakant Akade,
Age : 53 years, Occu. Retired,
R/o 11, Rajani, Shinde Mala,
Sawedi Road, Ahmednagar,
District Ahmednagar **APPLICANT**

VERSUS

The State of Maharashtra,
through Police Station Officer,
CIDCO Police Station,
Aurangabad, Dist. Aurangabad **RESPONDENT**

AND

ANTICIPATORY BAIL APPLICATION NO.1078 OF 2020

Chandrakant Surajmal Anecha,
Age : 73 years, Occu. Retired,
R/o House No.625, Anecha Niwas,
Near Tuljapur Devi Mandir,
Civil HUDCO, Sawedi, Ahmednagar,
District Ahmednagar **APPLICANT**

VERSUS

The State of Maharashtra,
through Police Station Officer,
CIDCO Police Station,
Aurangabad, Dist. Aurangabad **RESPONDENT**

Miss Pradnya Talekar for Talekar and Associates, Advocate
for the applicants
Mr. S.B. Narwade, A.P.P. for the respondent/State

CORAM : MANGESH S. PATIL, J.

DATE : 27.11.2020

COMMON ORDER :

By way of these applications, two of the accused from Crime No.I-827 of 2019, registered with CIDCO Police Station, Aurangabad, for the offences punishable under Sections 409, 420 read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, "MPID Act"), are seeking bail in the event of their arrest in connection with that crime.

2. The FIR has been lodged by one of the depositors of Shree Mahalaxmi Multi State Cooperative Credit Society Ltd., Ahmednagar, Branch at Aurangabad (hereinafter referred to as "Credit Society"). As the name suggests, it is a Multi State Cooperative Society duly registered under the Multi-State Co-operative Societies Act, 2002 ("the Act", for short). The informant alleges that pursuant to the rosy promise of handsome returns in the form of sumptuous interest assured by the Credit Society, she made several deposits in aggregate for an amount of Rs.5,61,332/- by way of thirteen fixed deposits. However, inspite of the maturity date having expired, the Credit Society failed to refund the money. Initially, the Chairman and Directors of the Credit Society assured to repay the money by selling land but failed to live upto the promise and lateron even turned a blind eye.

3. Miss Talekar, learned Advocate for the applicants, in both these applications, vehemently submits that though the applicants were members and directors of the Credit Society at some point of time, applicant Akade had tendered resignation on 12.07.2013, which was duly accepted by the Board of Directors by resolution of the even date. Similarly applicant Anecha had tendered resignation on 02.03.2014. There is a reference about their resignations even in the Statutory Audit report of the year 2013-2014. She would then submit that since in the FIR the period of offence is mentioned as 21.06.2016 to 23.10.2016, during which period neither of the applicants was a director, they cannot be blamed for the mismanagement and the alleged offence.

4. The learned Advocate would then submit that going by the nature of the crime alleged to have been committed, it is a matter of resorting to audit and primarily only the documents and record of the Credit Society are to be referred, none of which is in the custody of the applicants. Their custodial interrogation, therefore, is not necessary. They are aged 53 years and 73 years, respectively and ready to cooperate the Investigating Officer. They would be put to disrepute if they are taken in custody. Following the principles laid down in the case of ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.; 2011 (1) SCC 694*** , they are entitled to claim anticipatory bail.

5. The learned A.P.P. strongly opposes the applications. He submits

that it is a serious economic offence, which needs to be investigated by resorting to forensic audit. Though the allegations in the FIR only refer to the offence having been committed in the year 2016, statements of several depositors have been recorded who have stated to have deposited their money with the Credit Society since before the resignations stated to have been tendered by the applicants. He would, therefore, submit that when the applicants were the directors when these persons had deposited money with the Credit Society, by virtue of Explanation to Section 3 of the MPID Act, they would be liable for the penal consequences. According to the audit report for the year 2013-2014, serious irregularities were noticed in disbursement of loans, which, prima facie, indicate financial irregularities sufficient to constitute the offence punishable under Section 3 of the MPID Act.

6. The learned A.P.P. would then submit that though the applicants are making us believe to have tendered resignations and those having been accepted, it would be a matter of investigation if really the resignations were tendered as claimed by them and were accepted by the Board of Directors. He, therefore, submits that since it is a case of several depositors having been duped, being an economic offence, a free hand deserves to be extended to the Investigating Officer to reach to the conclusion. Custodial interrogation of the applicants is a must and the applications be rejected.

7. I have carefully gone through the papers of investigation as well as the ones produced by the applicants. Going by the FIR, the period of

alleged misappropriation and criminal breach of trust and cheating is mentioned to be few months of the year 2016. Obviously, the applicants are strenuously attempting to demonstrate as to how they were not the directors of the Credit Society during that period. Though the argument is attractive, one cannot forget the fact that it is trite that a FIR is not expected to be an encyclopedia. More so in the case of this nature where only one of the depositors sets the criminal law in motion based on her personal experience. If during the course of the investigation, the Investigating Officer comes across several instances of the depositors being duped over a period of time, it would be naive to resort to an argument demonstrating that the applicants were not the directors of the Credit Society during the period referred to in the FIR.

8. This seems to be the case in the matter in hand. The statements of several witnesses have been recorded who all have stated as to how they deposited the money with the Credit Society right from the year 2013 onwards, lured by the promise to receive sumptuous interest and inspite of the deposits having matured way back in the year 2016, the Credit Society has not paid them the amount of maturity promised by it. To name a few , Shamrao Murar Patil, Manisha Dhiraj Patil, Surekha Shamram Patil, Nayana Suresh Parwardhan, Sharad Pralhad Tambe, etc.

9. Even according to the applicants, first one of them was the director till 12.07.2013 and the other was till 02.03.2014. Therefore, at this

juncture, it is quite clear that the promise that was made to these depositors of earning sumptuous interest was made when they were the directors of the Credit Society.

10. The offence punishable under Section 3 of the MPID Act and particularly the Explanation to it needs to be borne in mind. It reads thus :

> "**3. Fraudulent default by Financial Establishment**
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> Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity alongwith any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured again the deposit, every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall liable for a fine which may extend to one lac of rupees.
>
> *Explanation*. - For the purpose of this section, a Financial Establishment, which commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed shall be deemed to have committed a default or failed to render the specific service, fraudulently."

11. Bearing in mind this provision, one needs to refer to the

observations of the Statutory Auditor, who has done audit of the Credit Society for the year 2013-2014. In part A-I, he has pointed out following serious irregularities :

"1. Disbursement of Loans -

- During the year, Society has disbursed huge loans without taking care
- Without Proper Securities
- Without verifying Paying Capacity
- Without verifying purpose of the loan
- Without documentation
- Without verifying legal title of Property taken as security
- Without Registered Mortgage
- Without Guarantor
- Without valuation of property from Registered valuer
- Creation of Charge
- Loan to related parties.
- Account wise discrepancies are given in detailed report attached with this report.

2. Building advance -

- During the year, Society has paid Advance of 290 Lacs for Society Head Office and Quarters for staff. The said amount is paid without obtaining permission from appropriate authority and without considering financial position of the Society.

- Detailed remarks given in detailed report attached to this report.

3. KYC norms -

- Society has not followed KYC Norms while opening New Accounts. Detailed list are given in detailed report attached with this report."

Going by these irregularities, it does appear prima facie that it is a case of fraudulent default by the Credit Society.

12. Miss Talekar, learned Advocate would then submit that in the FIR, the informant has referred to a pamphlet published by the Credit Society assuring to pay sumptuous interest and he can be said to have been lured by the promise made in it, but the other witnesses are not referring to have been lured by that pamphlet.

13. In my considered view, no such threadbare analysis can be resorted to. It is a case of several depositors waiting for their hard-earned money to be returned, that too for years together. The financial irregularities noticed by the Statutory Auditor clearly show that serious fraud has been practised upon them. It is indeed an economic offence and needs to be looked upon seriously as has been laid down in the case of ***Nimmagadda Prasad Vs. C.B.I., Hyderabad; 2013 BJLS (SC) 404***. Following the observations of the Supreme Court in this case, the applicants are not entitled to derive any benefit from the guidelines laid down in the case of ***Siddharam Satlingappa Mhetre*** (supra).

14. The applications are rejected.

[MANGESH S. PATIL]
JUDGE

npj/ABA1070-1078-2020