IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.16 OF 2020
with
CRIMINAL APPLICATION NO.335 of 2020

Shri Suresh Pandit Borole = **APPLICANT**

VERSUS

1) The State of Maharashtra
and others = **RESPONDENT/S**

Mr.VD Sapkal, Sr.Counsel and Shri PS Gaikwad, Adv.for Applicant;

Mr.DR Kale,Public Prosecutor for Respondent-State.

Mr.VP Patil, Advocate to assist the PP

WITH

ANTICIPATORY BAIL APPLICATION NO.21 OF 2020

Vishwanath s/o Vasudev Yadnik = **APPLICANT**

VERSUS

1) The State of Maharashtra
and Anr. = **RESPONDENT/S**

Mr.Rajendra S.Deshmukh, Sr.Counsel and Shri PS Gaikwad, Adv.for Applicant;

Mr.DR Kale,Public Prosecutor for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

RESERVED ON : 6th January, 2021.
PRONOUNCED ON: 20th JANUARY, 2021.

PER COURT :-

1. Criminal Application No.335/2020 moved to assist the PP is allowed and disposed of.

2. The applicants in these Anticipatory Bail Applications are apprehending their arrest in connection with CR No.2/2011 registered with Chopada police station, District Jalgaon for the offences punishable under sections 406, 408, 409, 420, 422, 465, 468, 471, 474, 120(B)read with 34 of IPC and under Section 3 of MPID Act, and, therefore, they have approached this Court under Section 438 of Cr.P.C.

3. The applicant in ABA No.16/2020 would be hereinafter referred to as accused No.1 and the applicant in ABA No.21/2020 would be addressed as Accused No.14, as they are referred so in the police papers.

. <u>SUBMISSIONS IN ABA NO.16/2020</u>

4. The learned Sr. Counsel representing accused No.1 submitted that accused No.1 was Director and Chairman of Society, by name, Tapi Credit Co-operative Society Ltd., Chopada, District Jalgaon (herein after referred to as the said society). It is alleged in the FIR that present applicant and other 23 accused persons, hatched up a conspiracy, induced the depositors to deposit amount in the society under various schemes. Thereafter they committed criminal breach of trust by forging the documents and thereafter misappropriated an amount of Rs.44,14,85,620/-. In fact, in the FIR less figure has been mentioned,

but with the supplementary statement, the amount has been increased. Initially investigation was carried out at the local level. However, now, the investigation is with CID, Nasik. It was also stated that initially he had approached by filing Criminal Bail Application No.6/2011 under Section 438 of Cr.P.C. before the Additional Sessions Judge, Amalner, which came to be rejected on 21.1.2011. Thereafter, he approached this Court by filing ABA No.422/2011. It was also rejected by this Court on 29.4.2011. Thereafter, he had approached the Hon'ble Supreme Court by filing Special Leave Petition (Cri.) No.4046-50/2011 for seeking anticipatory bail which was along with some other applicants – co accused. The applications of co-accused were allowed, however the Hon'ble Supreme Court rejected the application of the present applicant on 11.5.2011. Thereafter, there was again an attempt by the present applicant by filing successive bail application being No. 64/2011 before the Additional Sessions Judge, Amalner on fresh grounds. However, it came to be rejected on 15.6.2011 when it was observed that there was no change in circumstance. It has been further submitted by the applicant that similar offence was registered with Jalgaon police station bearing CR No.1/2011, which was in respect of branch office of the society. In that offence, the present applicant came to be arrested on 29.5.2012. He was ultimately released on regular bail bearing Criminal Application No.156/2014 on 17.1.2014. He was never got transferred in the present matter by the police authorities though they had knowledge about pendency of the FIR for the purpose of investigation. On the contrary, CID, Nasik had issued him summons under Section 161(1) of Cr.P.C. on 3.4.2011; 13.3.2012 and 24.5.2019. He had attended the said office. His statements were recorded by the Investigating Officer and he has cooperated with the investigating agency; still he was not arrested. When the applicant again realized that there is threat of his arrest, he moved 3rd bail application bearing No.210/2019 before the Additional Sessions Judge, Amalner. However, it came to be rejected on 2.11.2019. It has been further contended that though it is shown that the present applicant and co-accused have misappropriated the amount of Rs.44,14,04,620/- that was attributable to in all seven loan Accounts. Out of them, five loan accounts have been closed now as the entire amount has been repaid by the respective borrowers. An amount of Rs.60,26,52,376/- has been recovered against those loan accounts. Thus, it can be seen that there is no mis-appropriation committed by the present applicant/s. There is absolutely no loss to the society. Further, in respect of the loan sanctioned to Sane Guruji Vidya Niketan School, action under Section 101 of Maharashtra Co-operative Societies Act and Recovery Certificate has been obtained by the society. The said order was challenged in a revision and the Revisional Court directed the borrower to deposit 50% of the amount. That order was further challenged before this Court in a writ petition and this Court also directed the borrower to deposit the said amount of 50%. Taking into consideration these developments, his application ought to have been allowed by the Additional Sessions Judge, Amalner.

5. The learned Sr.Counsel has further submitted that, in fact, the investigation is pending since so many years. The applicant had made himself available before the CID; yet the Investigating agency was not serious to arrest him when he was co-operating with the investigation. After passage of time and change in the Investigating Officer, the applicant is apprehending his arrest. The co-accused have been released.

6. The learned Sr.Counsel has taken me through the documents, which have been produced on record to state that what steps were taken by the society in respect of those loan accounts and what has been observed by the auditor in his audit report. The auditor has stated that, certain loans have been disbursed to family members of the present applicant or relatives, which is against the Rules and bye-laws. So also, it is stated that in respect of certain loans, requisite mortgage or security has not been secured. Even if for the sake of arguments it is accepted that there are these short-falls; yet it will not amount to criminal intention and it would be, at the most, an irregularity. Now, all the documents are with the

Investigating Officer and, therefore, physical custody of the present applicant is not required. The learned Sr. Counsel, therefore, canvassed for release of the applicant (accused No.1) on anticipatory bail.

SUBMISSIONS IN ABA NO.21/2020

6. The learned Sr. Counsel representing this applicant submitted that this applicant (i.e. Accused No.14) was an employee of the society. The accounts of the society were audited by the informant – Narayan Gadhekar and then he lodged the report. The audit period that was stated in the FIR is between 1.4.2007 to 31.3.2009. The learned Sr. Counsel also brought to the notice of this Court that this applicant had also initially approached the learned Sessions Court, at Amalner district Jalgaon by filing ABA No.7/2011, which came to be rejected on 20.1.2011. Thereafter, he approached this Court by filing Criminal Application No. 420/2011. By common order, as co-accused had also filed applications, this Court rejected the application on 29.4.2011, but extended the interim protection till 8.5.2011. He had also approached the Hon'ble Apex court along with co-accused in a bunch of SLPs, which came to be rejected as against accused No.14 also on 11.5.2011. He had thereafter filed a Review Petition before the Hon'ble Apex court, which also came to be dismissed as withdrawn on 5.12.2011. He had also filed 2nd criminal bail application

No.65/2011 before the Additional Sessions Judge, Amalner, which came to be rejected on 15.6.2011. He was also an accused in CR No.1/2011 registered with Zilla Peth police station, Jalgaon. He surrendered before the Court on 2.8.2013 and thereafter he has been released on regular bail on 16.8.2013 by the learned Chief Judicial Magistrate, Jalgaon in RCC No.151/2012. He was also called by the State CID, Nasik by giving summons under Section 161(1) of Cr.P.C. for inquiry and accordingly, he was interrogated on 10.4.2018 and 14.7.2018 and he could not attend the CID office on 19.10.2019 though served with the summons due to medical problem of his mother and thereafter his mother expired. Now, taking into consideration the changed circumstances, he had again approached the learned Additional Sessions Judge by filing Criminal Bail Application No.209/2019, however, that has been rejected on 2.11.2019. Accused No.14 had never attempted to abscond and was available at his address all the times. He has not hampered the investigation in any manner; still charge sheet is not filed.

7. One co-accused, viz. Pankaj Suresh Borole had approached this court by filing ABA No. 1459/2019, who was granted interim protection and then it was confirmed by order dated 17.12.2019 and, therefore, on the ground of parity also, the present applicant deserves to be released on anticipatory bail.

8. The learned Advocate representing accused No.14 further submitted that due to the action for recovery of loan taken by the society, maximum loan has been recovered and only in case of two borrowers, action for attachment of their property for recovery of the loan has been taken. There is no question of misappropriation by the present applicant. Custodial interrogation of this applicant is not required. He has already cooperated with the investigating agency. The learned Sr. Counsel represented the accused No.14 also prayed for anticipatory bail.

8. Per contra, learned APP, well assisted by learned Advocate representing the society, submitted that custody of these applicants is necessary. Accused No.1 being the Chairman was responsible for all the activities in the society. The other Directors or members were acting under him. They had induced various depositors between 2002 to 2009 to make the deposits with the society under various schemes. However, when it came to refund of the amounts, they did not do so as the loan that was disbursed by accused No.1 and other Directors, was in-proportionate to the deposits those were with the society. Those depositors could not get their money within time and they have been cheated. The amount which was cheated and misappropriated goes in crores of rupees and, therefore, for commission of economic offences, leniency need not be shown. Accused No.1 was the Chairman of the society since 2001 to 2011. He had

formed fake companies and gave amounts to those companies as loan; thereby he has utilized the said amount. Some amounts have been credited to the personal accounts of the accused persons, which they were not authorized; thereby they have received the monetary gain. They have also purchased the properties during this tenure and inquiry in respect of the same is required to be made. In fact, accused No.1 is stated to be master-mind of the entire episode and the society.

. As regards accused no.14 is concerned, the auditor has specifically stated about the acts done and not done by him. His post was Loan Superintendent. He did not make available many documents at the time of audit. Further, it can also be seen from the contents of the FIR that the present Loan Superintendent, i.e. accused No.14, had got many documents, such as, Loan application, Promissory note; pay-in-slip; continuity bond; withdrawal slips, receipts and even blank cheques from the borrowers. All those documents were containing only signatures of the borrowers. Definitely, it was the intention of accused No.14 and the society to use those documents or to misuse them against those borrowers. All the accused persons have siphoned off the funds illegally and, therefore, definitely only after taking them in custody; the entire matter can be sorted out. The learned APP fairly admitted that since many years the investigation is pending and it also appears that the accused persons were called for interrogation, but that does not mean that custody of the present applicants is not required. In order to take the investigation to its logical end, their custody is required and since there is absolutely no change in the circumstances, they are not entitled to be released on bail.

9. It is very much unfortunate that though the FIR has been lodged on 3.1.2011; yet the investigation is stated to be not complete even after ten years have been elapsed. Under this circumstance, whether physical custody of the present applicants is required or not and also the fact that whether the present applicants are entitled to get the discretionary relief is a crucial question here.

10. The law on the point of anticipatory bail is required to be considered. Useful reference can be made to the decision of the Hon'ble Apex Court in the case of *P.Chidambaram Vs. Directorate of Enforcement – (2019) 9 SCC 24.* In the said decision, it has been observed as follows, -

> "………..Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation;

possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."………………….
…………..

72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India."

11. Further observations in *State Vs. Anil Sharma – (1997) 7 SCC 187; Adri Dharan Das Vs. State of West Bengal – (2005) 4 SCC 303,* were considered, wherein it was observed that custodial

interrogation is qualitatively more elicitation-oriented and arrest is part of process of investigation intended to secure several purposes. Further, the ratio in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra – (2011) 1 SCC 694,* laying down the factors and parameters, to be considered while dealing with anticipatory bail, were also considered. Further, taking into consideration *Siddharam Satlingappa Mhetre's case* and *Jayprakash Vs. State of Bihar – (2012) 4 SCC 379*, it was specifically reiterated that grant of anticipatory bail should be in exceptional matters.

12. Now, as regards the present case is concerned, the Society was a multi-purpose co-operative society. It had invited public at large to invest their amounts with the Society and the Society is stated to have given promises to those depositors that they would get high returns. Therefore, the offence alleged against both the applicants can be categorized as `Economic offence' and in the case of *P.Chidambaram Vs. Directorate of Enforcement(cited supra)* the Hon'ble Apex court has further observed thus, -

> " Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to

anticipatory bail."
………..

"80.……...Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitamalji Porwal and Anr.(1987) 2 SCC 364, it was held as under:-

> "5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest….."

"81.……..Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, the Supreme Court held as under:-

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.
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> 35. 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 apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations"

"83. …..Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

13. The ratio laid down in *State of Gujarat Vs. Mohanlal Jitamalji Porwal and Anr. - (1987) 2 SCC 364,* it was held that , in respect of Economic offences strict approach is commended. Further in the case of *Serious Fraud Investigation Office Vs. Nittin Johari and Anr. - (2019) 9 SCC 165,* again, relying on *Y.S.Jagan Mohan Reddy Vs.CBI (cited supra)* and some other pronouncements, it has been reiterated by the Apex Court that the Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. While granting bail in such cases of economic offences, the Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of punishment which conviction will entail, character of accused, circumstances, which are peculiar to accused, reasonable possibility of securing presence of accused at trial, reasonable apprehension of witnesses being tampered with, larger interests of public/State and other similar considerations. Thus, the law laid down in all the aforesaid pronouncements is required to be kept in mind while dealing with the present applications.

14. Now, turning to the case in hand, as aforesaid, Accused No.1 was the Chairman of the society at the relevant time and definitely he was responsible along with others co-accused for the day-to-day affairs of the society so also sanction/ disbursement of the loans. The allegations against him especially are, - out of the deposits of Rs.189 crores, an amount of Rs.86 crores have not been actually received. It is stated that the said amount has been then adjusted in the loan. The second more serious allegation against him is, that he has distributed the loans to his son, nephew and other such relatives, which amounts of such loans go in crores of rupees. At some point of time, he has not even cared to take security for the loans so disbursed. There are erasers in the record. A very detailed FIR has been given in respect of those outstanding loan accounts and it is alleged that those companies, to whom the said loans were given and are in arrears or outstanding, are in any way related to Chairman and/or the Directors of the Society. The amount of rupees five crores has been disbursed as loan to daughter of the present applicant to the account, which he had maintained under the name and style "Pankaj Infrastructure Pvt. Ltd." Thus, it is to be noted that as per the allegations in the FIR some fake companies were floated by accused No.1, which were shown to be in the name of his relatives and thereafter the amount has been disbursed. Though in the FIR the amount of misappropriation, cheating etc. is stated to be at Rs.31,38,09,204/-; yet it appears that

after the supplementary statement has been recorded; the said amount went up and it has gone to the tune of Rs.44,14,85,620/-. It is definitely a huge amount and specific role is attributed to accused No.1 as to how he has managed all these things.

15. As regards accused No.14 is concerned, the specific contention in the FIR is that he was holding the post of Loan Superintendent and he has not produced several documents and tried to hide them when the informant-auditor was conducting the audit. Further allegation is that he has taken so many blank documents, which were definitely intended to be used against those borrowers. Further, it is specifically stated that some of those documents have been already used and that amount goes to Rs.60,85,468/-. It is specifically stated that he has cheated as per the account extract dated 31.3.2009 to the tune of Rs.34,12,001/-. Definitely all these amounts were belonging to the Society. The accused No.14 would have definitely assisted accused No.1 and other co-accused persons in discharging day-to-day affairs of the society. The nature of the duties require it to be so.

16. When all the accused persons are alleged to have acted jointly and it is stated that there is siphoning-off funds also to the extent of Rs.5,46,72,967/- in respect of loan to daughter of accused No.1, then definitely, the present

applicants (i.e. accused Nos.1 and 14) would be having knowledge as to where the said amount was invested or how it was siphoned-off. Further, the siphoning-off the funds by showing certain amount and grant of loan is stated to be to the tune of Rs.31,38,09,204/- as per the initial FIR and as aforesaid, in the supplementary statement, the loan given to "Banai Hospital and Research Center" through three accounts, is stated to be to the tune of Rs.12,75,95,416/-. While disbursing such huge amount of loan, the basic documents are stated to have not been secured regarding existence of the firm or company or some statutory organization running such hospital. It is stated that as none of the documents were made available, showing existence of such hospital, which was stated to be at Dombivali (West), Shastri Nagar, the informant-auditor was of the opinion that no such hospital is in existence. Only the letter-pads by getting them printed in the name of such hospital have been utilized.

17. Now, the objection is raised that both the applicants were called for interrogation by giving summons at various points of time and they have attended the office of CID, Nasik and co-operated with the investigation. That cannot be the sole ground to grant discretionary relief to the applicants and, as aforesaid, the investigation on the basis of custodial interrogation moved on a different footing than the inquiry or interrogation expected of. Therefore, merely because the

applicants have attended the police station or CID office will not be sufficient. Further, it also appears that they were in custody in another offence. Definitely, there appears to be some lapses on the part of the Investigating Officer, who was then conducting the investigation. It would have been very much easy for him to get custody of the applicants in the present case also. However, at this stage, the exact date of the investigation with CID, Nasik in respect of CR No.2/2011, cannot be gathered. Both the applicants were in custody in respect of CR No.1/2011 registered with Zilla Peth Police Station, Jalgaon. It is stated that it is case in respect of another branch of the society. Thus, it can be seen that there is criminal antecedents also and in respect of all the branches, if there are separate offences then they would have been investigated separately. It is not clear that investigation of the said crime was given to CID Nasik or not. Therefore, the ground, that they were earlier in custody of the Police Officer of some different police station, cannot be considered in favour of the applicants to grant them anticipatory bail.

18. Much has been canvassed that now huge amount has been recovered from the borrowers than even the alleged amount of misappropriation and on this count also their custody is not required. The applicants are taking advantage of certain legal proceedings, those were taken up against some borrowers. However, it is to be noted that as

regards accused No.1 is concerned, he was the Chairman of the Society from 2001 to 2009. As stated in the FIR, the recovery proceeding that was initiated before the Sub-Registrar against the Chairman of Sane Guruji Vidya Niketan School was on 17.5.2007. That means during his period. Those legal steps so taken per se would not give advantage to him to state that he had no intention to cheat. Even if for the sake of arguments it is accepted that that amount has been secured now; yet it would be to the extent of said loan and not in respect of all those amounts and concerning all those borrowers in respect of whom the acts are alleged in the FIR.

19. It has been stated that there is no loss to the society due to the acts alleged against the accused persons. The important point to be noted that because of the subsequent events if the society could have been able to recover the amount that does not give away the temporary loss at the said time that was suffered by the society. It might be fortunate thing, if after the long driven litigation, the society would be able to recover the amount. It would definitely have a financial impact on the affairs of the society during the intervening period.

20. The accused No.14 was definitely duty bound to make all the documents available to the auditor. Further, in view of the position he was holding, definitely those borrowers would have

trusted and believed him. But it appears from the allegations that he has taken huge documents which were bearing simply the signatures of the borrowers, which were definitely intended to be used against those borrowers.

21. Taking into consideration all these aspects and the law laid down, as aforesaid, though unfortunately the investigation in the crime is pending since long; yet case is not made out to grant discretionary relief to the applicants in view of the fact that the applicants are involved in the economic offences of huge amount which is a public money and, therefore, this Court has to be strict in its approach in dealing with this type of offence. In the result, both the Anticipatory Bail Applications are hereby rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV..