IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**BAIL APPLICATION NO.204 OF 2020**

Ashok s/o Kanhuji Meghdambar,
Age 55 years, Occupation Service,
R/o Mohari Tq. Jamkhed Dist.
Ahmednagar. **...Applicant**

**VERSUS**

The State of Maharashtra,
Through : Nagar Taluka Police Station
Tq. Nagar Dist. Ahmednagar. **...Respondent**

**.....**

Advocate for Applicant : Mr. B. R. Kedar h/f
Mr. V. B. Sargar
APP for Respondent-State : Ms. D. S. Jape

**.....**

**CORAM : SMT.VIBHA KANKANWADI, J.**
**DATE : 13-01-2021.**

**ORDER :**

1. Present applicant has been arrested in connection with Crime No.95 of 2018, registered at Ahmednagar Taluka Police Station Dist. Ahmednagar, for the offences punishable under Section 420, 406, 408, 409, 120(B), 34 of Indian Penal Code and Section 3 of Maharashtra Protection of Interest of Depositors Act (MPID) Act. The charge-sheet has been filed on 30-10-2018 and the Special Case No.378 of 2018 is pending before Special Judge under MPID Act, Ahmednagar, and

therefore, he has filed present application for getting bail under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. B. R. Kedar holding for Mr. V. B. Sargar for applicant and learned Additional Public Prosecutor Ms. D. S. Jape for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that applicant was arrested on 23-08-2019 and since then he is in custody. He had approached the learned Special Judge for bail under Section 439 of Code of Criminal Procedure, however it came to be rejected on 10-01-2020 on the ground that the offence that is made out is economic offence and is of serious in nature. In fact, the perusal of the First Information Report would show that the applicant had falsely implicated him. The present applicant was Manager in Head Office of Shrinath Multi State Urban Co-operative Society Ltd., Ahmednagar. The contents in the First Information report would show that the allegations are in respect of misappropriation that had occurred at Mehekari Branch of the said Multi State Urban Co-operative Society. The applicant was not at all concerned with the said branch. His co-accused have been already released on regular bail, and therefore, the ground of parity should

be considered. Now the investigation is over, and therefore, there is absolutely no necessity for the further physical custody of the present applicant. All the functions of the said credit society was operated by its Chairman and the Member of Body Directors. The nature of the work of the present applicant was different. The learned Advocate, therefore, prayed for bail to the applicant.

4. Per contra, the learned Additional Public Prosecutor strongly opposed the application. So also in view of the order passed by this Court, the Investigating Officer Ms. Jyoti Chandrakant Gadkari had filed affidavit-in-reply. She is the Police Inspector attached to the Economic Offences Wing, Ahmednagar. After almost reiterating the same contents of the First Information Report, she has stated that the Multi State Co-Operative Society is governed under the Multi-State Co-operative Societies Act, 2002. Section 52 thereof deals with powers and functions of the Chief Executive Officer. Sub-clause (b) of Section 52 of the said Act provides that it would be the duty of the Chief Executive Officer to operate the accounts of the multi-state co-operative society and be responsible for making arrangements for safe custody of cash. The Special Audit Report for the financial year 2016-2017 would show that the name of the

present applicant being General Manager of the Society and so also it was there for the financial year 2017-2018. There is ample evidence that was collected by the investigating agency, and therefore, being economic offence the applicant may not be released on bail. Learned Additional Public Prosecutor also submitted that the informant and other public at large were induced by the Chairman, Director and other office bearers as well as the present applicant to invest their amount in the society for high returns. But when it came to the maturity of the deposits those were made by those persons, they could not get their amount. The misappropriation / loss to the society was to the tune of Rs.40,64,42,239=51 Paisa, therefore when such huge amount has been misappropriated and the present applicant was responsible for the co-ordination with various branches then he does not deserve to be released on bail.

5. It is not in dispute that the present applicant was the General Manager of the society. Definitely Section 52 of the Multi-State Co-operative Societies Act, 2002 which deals with powers and functions of the Executive Officer would be applicable to him, however no such provision is pointed out from the said Act that if the said Chief-Executive Officer fails to carry out those functions or powers then it

will give rise to a criminal liability. There may be other liability of civil in nature for the same or even departmental proceedings, if any. But certainly whether it amounts to criminal liability or in other words it amounts to an offence, has not been pointed out. Further it will not be out of place to mention here that as regards the reliance of the prosecution on the Special Audit Report for the financial year 2017-2018 is concerned, the report states that there was fraudulent activity and the present applicant was responsible to the extent of transaction in Wadgaon Gupta Branch. Page No.158 (internal page No.12 of the report) shows entry at Survey No.16 that, on 31-08-2017 cash transaction worth Rs.32,36,480/- and cumulative total amount of cash transaction was Rs.5,48,36,480/- which was attributable to the present applicant and the particulars say that the amount was paid by Wadgaon Gupta Branch to the present applicant. However, as regards this entry is concerned, it is an admitted position that a separate charge-sheet has been filed as there was separate offence registered in respect of that entry. Perusal of the First Information Report would show that the informant and others of whose names have been mentioned in the First Information Report had invested the amount shown in their name in the First Information Report with Mehekari Branch of the

Society. There is nothing in the Special Audit Report to show that from the said amount which was with Mehekari Branch anything was paid to the Manager. As regards Section 420 of Indian Penal Code is concerned, the First Information Report does not make a mention about direct dialogues between the informant and applicant. Same is the case with the statements of other witnesses. Further all of them are stating that after the maturity of their deposits, they have contacted Manager but it can be noted that they might have definitely contacted the Manager of the Branch and not the General Manager, however their amount was not returned to them. Therefore, the representation that is contemplated as per Section 415 of the Indian Penal Code, it is not attributed by the contents of the First Information Report as well as statements of the witnesses under Section 161 of Code of Criminal Procedure against the present applicant. Though the amount allegedly misappropriated may be huge, yet the specific part played by the present applicant that too in respect of Mehekari Branch will have to be considered when already another offence was registered in respect of Wadgaon Gupta Branch. Definitely in view of those facts, nothing was recovered from the present applicant which could be connected to Mehekari Branch, therefore the further physical custody of the applicant is not required, he therefore, deserves to be released on bail, especially when co-accused are already released on bail. Hence, following order.

**ORDER**

1) Applicant i.e. accused No.9 Ashok s/o Kanhuji Meghdambar in Special Case No.378 of 2018, pending before learned Special Judge (MPID Act), Ahmednagar, be released on P.R. of Rs.1,00,000/- (one lakh) with one or two solvent sureties of like amount.

2) The applicant shall not tamper with the evidence of the prosecution in any manner.

4) He shall not indulge in any criminal activity.

5) He should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.

6) Bail before Trial Court.

**(SMT. VIBHA KANKANWADI)**
**JUDGE**

*vjg/-*