# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# BENCH AT AURANGABAD

## ANTICIPATORY BAIL APPLICATION NO. 710 OF 2021

Sohanlal s/o Premraj Chavan, ... **Applicant**
Age 67 years, Occu: Nil
R/o "Apratim Pushp" Row House No.11
Near Radha Mangal Karyalaya,
Behind Disha Nagri, Beed Bypass Road,
Tq. & Dist. Aurangabad

**VERSUS**

The State of Maharashtra, ... **Respondents**
Through Satara Police Station, Aurangabad

Mr. Balaraj Pande, Advocate for the applicant,
Mr. S. B. Narwade, A.P.P. for the State.

CORAM : V. G. BISHT, J.

RESERVED ON : 25th August, 2021

PRONOUNCED ON : 3rd September, 2021

**ORDER**:

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No.0264/2021 registered with Satara Police Station, District Aurangabad for the offence punishable under Section 420 of the Indian Penal Code, 1860.

2. It is the case of prosecution that informant is owner of Fine Honda Showroom. The applicant was Account Manager since 2017. An authorized auditor carried out audit for the year 2019-20 and found irregularity to tune of Rs.11,16,745/-. When the applicant was confronted, he gave evasive reply and left the job on 4th August, 2020. Accordingly, the first information report came to be lodged.

3. Mr. Balraj Pande, learned counsel for the applicant, submits that there is delay of 9 months in lodging the first information report which is not explained. According to the learned counsel, the applicant was working in account department from 20.07.2017 to 04.08.2020 and he has no authority to handle cash balance at all. The applicant used to handover daily cash to the informant. Moreover, the alleged offence is related with documents and all the documents are within custody of the Showroom. The applicant being old aged person having no past criminal history is therefore entitled to have protection from this Court.

4. The learned counsel also invited my attention to the affidavit of the applicant in response to the special audit report to show that special audit report was done in the absence of applicant and no opportunity was given to him. Thus, for all these reasons, the application deserves to be allowed, urged learned counsel.

5. Mr. S. B. Narwade, learned A.P.P., on the other hand, would oppose the submissions by contending that audit report clearly indicates misappropriation of huge amount. Since the huge amount is involved, custodial interrogation of the applicant is necessary.

6. I have gone through the affidavit of the applicant. It is reiterated that special audit was conducted in absence of the applicant, that he was responsible for entries of vouchers and bills to be updated in the software named Tally and that he had no authority or responsibility to handle cash at all. The applicant's affidavit further shows that only

three customers namely Eknath Bhaurao Chavan (Rs.39,265/-), Dattatraya Vitthalrao Kunde (Rs.40,400/-) and Ashwini Nikhil Dongre (Rs.19,700/-) were from CIDCO branch and this cash was duly handed over by him to the informant and since it was routine practice, he did not ask acknowledgment.

7. It seems that there are two audit reports. First is carried out by Chartered Accountant for Sapna Sawaiwala on 19th November, 2020. It is interesting to note that it was on the basis of information given by the management, the said C.A. found that there was difference of Rs.7,35,801/- in physical cash available at main Showroom as compared to closing cash balance as per books of account. The whole audit report nowhere shows the role played by the applicant. There are certain observations, at Column A-2 Debtors of which first three names are that of Eknath Bhaurao Chavan, Dattatraya Vitthalrao Kunde and Ashwini Nikhil Dongre. Explanations to these three amounts are given by the applicant in his affidavit. Similarly, the observation at Column A-3 Bank re-conciliation, a difference in cash and bank balance to the tune of Rs.1,25,196/- was noted. But then again there is clarification of the applicant in his affidavit wherein he states that amount of Rs.1,25,196/- was the amount of salary and wages of the Off Roll Employees and the said amount was disbursed as salary and wages to the concerned Off Roll Employees and the same was reconciled and tallied with the CIDCO branch. Even otherwise, one is not able to discern the role of the applicant from this audit report.

8. It seems another audit report was carried out by the informant through C.V. Chitale & Company, Auditor & Chartered Accountant. It also does not give an insight as to the alleged irregularity and involvement of the applicant.

9. Having noted so, there is also no dispute to the fact that all the relevant documents are in the custody of the investigating officer. Having regard to the facts and circumstances of the case, more particularly, that the alleged case is based on documentary evidence, in my considered opinion, there is no necessity of custodial interrogation of the applicant and I am therefore, inclined to allow the application.

10. In view of above, I pass following order:

**O R D E R**

i. In the event of arrest of the applicant in connection with Crime No.0264/2021 registered with Satara Police Station, District Aurangabad for the offence punishable under Section 420 of the Indian Penal Code, 1860, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs. 25,000/-- [Rs. Twenty five thousand only], with one or two solvent sureties in the like amount.

ii. The applicant shall attend concerned police station as and when called and shall cooperate with the police in the investigation.

11. Application stands disposed of in the aforesaid terms.

**(V. G. BISHT, J.)**

JPC