IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 924 OF 2021

Navinchand s/o Shobhachand Gandhi ... **Applicant**
Age 61 years, Occu: Pensioner,R/o 34-B,
Bhistbag Road, Near Police Colony,
Savedi, Ahmednagar

VERSUS

The State of Maharashtra, ... **Respondent**
The State of Maharashtra
Through the Inspector,
Kotwali Police Station, Ahmednagar

Mr. B. R,. Waramaa, Advocate for the applicant,
Mr. V. S. Badakh, A.P.P. for the State.

CORAM : V. G. BISHT, J.
RESERVED ON : 2nd September, 2021
PRONOUNCED ON : 7th 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.6260/2020 registered with Kotwali Police Station, Ahmednagar, for the offences punishable under Sections 406, 420, 465, 467, 471 and 120-B of the Indian Penal Code, 1860.

2. It is the case of prosecution that informant is Branch Officer of Nagar Urban Co-op. Bank Ltd.(Multistate Scheduled Bank), Ahmednagar. The prosecution alleges that accused Dilip Mansukhlal Gandhi- Ex-Chairman, Ghanshyam Achyut Ballal- Branch Manager and Ashutosh

Satish Landge- Proprietor of M/s Terasoft Technology, Debtor conspired with each other and thereby committed breach of trust and misappropriation of bank amount by forging false documents. It is further alleged that said amount was transferred to the accounts of R.B. Kasar, M/s Devi Agency and M/s Giriraj Enterprises Sangamner and then withdrawn the said amount to the tune of Rs.3 crores and thereby committed misappropriation. Accordingly, complaint came to be lodged.

3. Mr. B. R. Waramma, learned counsel for the applicant, submits that at the time of filing of first information report name of the present applicant was nowhere revealed and it is only after filing of the charger-sheet, name of the present applicant, who was then Chief Executive Oficer of the said Bank, was shown. According to the learned counsel, the applicant retired on 01.02.2020 whereas the first information report in question came to be filed on 22.12.2020. Learned counsel then took me through the contents of the first information report and emphasized that in the whole episode, main accused are Dilip Mansukhlal Gandhi-Chairman, Ghanshyam Achyut Ballal, Ashutosh Satish Landge and others. Similarly, learned counsel then invited my attention to the report submitted by Manoj. V. Firodiya, Assistant Chief Manager to the Administrator (RBI), Nagar Coop. Bank Ltd., Ahmednagar (Multistate Scheduled Bank) and again emphasized that the said report emphasizes the role played by the main accused and the entire report does not show the complicity of applicant in any manner.

4. Learned counsel then invited my attention to Rule 44 and 45 of the Bye-laws and would submit that these Bye-laws are sufficient to hold that applicant/Chief Executive Officer cannot be held responsible for illegal entries recorded in branch of the Bank. Lastly, the learned counsel invited my attention to the statement of prosecution witnesses namely Manoj Vasantlal Firodiya and Satishkumar Vitthal Rokade and would submit that their statements recorded during the course of investigation nowhere attribute any irregularity on the part of the applicant. In such circumstance and the fact that the applicant has already retired from service and having no criminal antecedents, the application deserves to be allowed.

5. Mr. V.S. Badakh, learned A.P.P., on the other hand, opposed the submissions by contending that the present applicant, at the relevant time, was working as Chief Executive Officer of the Bank. There is misappropriation of huge amount of Rs.3 crores at the hands of the applicant and others by forging the bank documents. The applicant was having sufficient knowledge and despite that he allowed the others to commit the offence. Investigation is in progress and therefore, the present application deserves to be rejected.

6. I have carefully gone through the first information report and other investigation papers. I am in agreement with the learned counsel for the applicant when he argues that the first information report nowhere discloses name of the applicant. I am also with him

when he points out the various paragraphs of the first information report more particularly Paragraphs 5, 9, 18 and 29. If all these paragraphs are read carefully, then what emerges is the name of other accused specifically named in the first information report. Even it shows that accused Ghanshyam Achyut Ballal was served with show cause notice and his explanation was found to be unsatisfactory. Lastly, the first information report shows that on the basis of report of the Auditor of the Bank, accused Ghanshyam Ballal, the then Chairman Dilip Mansukhlal Gandhi and Board of Directors, after conspiring with each other, committed the offence of cheating and misappropriation of the bank amount.

7. The next in line is the investigation report submitted by Manoj V. Firodiya, Assistant Chief Manager to the Administrator (RBI). This elaborate report indicts the accused specifically named in the first information report. Interestingly, this report nowhere holds the present applicant responsible in any manner.

8. Then there is Bye-law of the said Cooperative Bank. Rule 44 of the Bye-law is in respect of appointment of Chief Executive Officer whose role is to assist the Board of Directors in its function. Rule 45 prescribes power and function of the Chief Executive Officer. In no way the chief executive officer is made responsible for any illegal entry recorded in the Bank record.

9. This brings me to the last part of the record and that is investigation papers. There are two material statements recorded by the investigating officer. One is that of Manoj Vasantlal Firodiya. Assistant Chief Manager who had submitted the investigation report in respect of alleged irregularities committed in the cooperative bank to the Administrator (RBI). His statement is in consonance with his own investigation report again. He nowhere attributed any role to the present applicant in the alleged offence of cheating, criminal breach of trust and misappropriation of the bank amount.

10. Next statement is that of Satishkumar Vitthal Rokade, Accountant of the said Cooperative Bank. His statement also implicates accused Dilip Mansukhlal Gandhi- Ex-Chairman and other accused specifically named in the first information report. His statement, like the statement of Manoj Vasantlal Firodiya, nowhere pinpoints and alleges that the present applicant was also one of the accused, responsible for alleged offence of cheating,criminal breach of trust and misappropriation of the bank amount.

11. The above discussion would make it amply clear that the applicant has made out a prima facie case for consideration. In my studied view, the prayer of the applicant deserves consideration. This being so, I am inclined to allow the application with ertain conditions.

12. Hence, following order.

O R D E R

i. In the event of arrest of the applicant in connection with Crime Crime No.6260/2020 registered with Kotwali Police Station, Ahmednagar, for the offences punishable under Sections 406, 420, 465, 467, 471 and 120-B 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.

13. Application stands disposed of in the aforesaid terms.

(V. G. BISHT, J.)

JPC