IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 955 OF 2021

1. Dilip s/o Panditrao Aagale
R/o Shivaji Nagar, Latur,
District Latur ... Applicants

2. Shrikant s/o Diliprao Aagale
R/o Shivaji Nagar, Latur,
District Latur

VERSUS

The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai ... Respondent

Mr. R. N. Dhorde, Senior Advocate i/by Mr. V. R. Dhorde, Advocate for the applicants,
Mr. D. R. Kale, P.P. for the State.

CORAM : V. G. BISHT, J.
RESERVED ON : 16th September, 2021
PRONOUNCED ON : 21st September, 2021

ORDER:

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No. 254/2021 registered with Renapur Police Station, District Latur for the offences punishable under Sections 420, 409, 465, 466, 467. 468, 471, 34 of the Indian Penal Code, 1860.

2. It is the case of prosecution that applicant No.1 is Chairman and applicant No.2 is Secretary of a registered cooperative society

known as Maharashtra Magaswargiya Majoor Sahakari Sanstha Maryadit, Pangaon, Tqluka Renapur, District Latur. Prosecution alleges that an audit took place for the period from 02.02.1994 to 31.03.2020 and it was found that though some sale deeds were executed by the applicants, there are no specific entries in the register. So also, various amounts, from time to time, were distributed by the said society, however, no detail of disbursal of the amount is recorded in the register. Similarly, various amounts shown to have been incurred under various heads but then again no record is maintained for the said expenditure. As such, the applicants, being the Chairman and Secretary of the Society, misappropriated total amount to the tune of Rs.1,65,188.76 and thus, caused loss to the members of the society. The first information report accordingly came to be registered.

3. Mr. R. N. Dhorde, learned Senior Advocate for the applicants, vehemently submits that the applicants have been falsely implicated, inasmuch as, they, from time to time, made various complaints against the authorities for not carrying out audit of the society. According to the learned Senior Counsel, there is no misappropriation of funds by the applicants and the funds have been paid to the respective parties and contractors and various payments were made by cheques as the same is evident from the record.

4. Learned Senior Counsel then invited my attention to various documents and as also the audit report. Moreover, according to the

learned Senior Counsel, the whole case is based on documents. All the necessary documents are in possession of the investigating machinery. In such circumstance, there is no necessity of custodial interrogation. The applicants are ready to cooperate the investigating agency and as also to abide by any conditions which may be imposed upon them by this Court.

5. Mr. D. R. Kale, learned Public Prosecutor, on the other hand, opposed the submissions by contending that the Auditor has filed the first information report on the basis of findings of the audit report. The funds allotted were never utilized nor properly accounted for. Having regard to the nature of offence, custodial interrogation of the applicants are necessary, argued learned Public Prosecutor.

6. It may be noted from the compilation of documents filed by the learned counsel for the applicants that the applicants herein, from time to time, had complained to the concerned authority about not carrying out audit of the said society and this can be seen from various letters written by the Divisional Sub Registrar, Cooperative Society, Latur, Assistant Commissioner, Social Welfare, Latur and others to the District Sub Registrar and the concerned authority to carry out audit of the said society and report thereof be filed accordingly. Thus, there is prima facie substance in the submission of learned Senior Counsel for applicants that as the audit of the society was delayed, the applicants, from time to time, complained the concerned higher authorities.

7. I have also gone through the audit report and there are findings in respect of purchase of land at paragraph-3, wherein, in tabular form at Serial No.4, it is alleged that though it appears from the entries that Gat No. 885 was purchased but there are no Sale Deed, 7/12 Extract and Village Form No.8 to that effect and thus, there was misappropriation of Rs. Six lakhs. However, the applicants have filed on record the said sale deed in question at Page No. 64 of their compilation. Not only there is sale deed but 7/12 extract and Village Form No. 8 are also there.

8. Similarly, serial No. 9 in the tabular form shows that Gat No.844 is shown to have been purchased for a consideration of Rs.12,50,000/- whereas, as per market rate, its value was Rs.1,46,000/- and thus, there was excess payment of Rs.11,04,000/-. Again, there is sale deed to that effect at page No. 53 of the compilation of the applicants. Whether it was in excess or otherwise will be matter of evidence. Right now, the sale deeds are very much on record and same repudiate the allegation that no sale deeds were furnished during the course of audit.

9. In this regard, even the complete record of the society in xerox was furnished before the Auditor. Despite that, it appears, there was notice from the said auditor to the applicants to produce the documents otherwise an inference would be drawn that there was misappropriation of funds.

10. There is a letter written by District Sub Registrar to the said Auditor/informant intimating him that all the records had been furnished to him and despite that he is indulging in correspondences at the cost of in-completion of the audit. This also goes to show that the Auditor/informant was somehow delaying the audit of the society.

11. It is also alleged that there are no receipts about the payments made by the society under various heads. Again, I find from the compilation of the applicants the extracts of Cheque Usage Register which runs from page Nos. 143 to 152 and entries made therein clearly go to show dates, cheque No., purpose and in whose favour the amount was drawn through the concerned bank.

12. From the above discussion, it is more than clear that the applicants herein had performed their duties regularly. Even assuming for the sake of argument that there are some irregularities then that being of a documentary nature, admittedly is in possession of the concerned society and investigating agency. I do not find necessity of custodial interrogation of the applicants.

13. In view of the above, I am inclined to allow the application with certain conditions. Hence, the following order.

O R D E R

i. In the event of arrest of the applicant in connection with Crime No. 254/2021 registered with Renapur Police Station, District

Latur for the offences punishable under Sections 420, 409, 465, 466, 467. 468, 471, 34 of the Indian Penal Code, 1860, the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs.25,000/- [Rs. Twenty five thousand only] each, with one or two solvent sureties in the like amount.

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

iii. The applicants shall not tamper with prosecution evidence in any manner.

14. Application stands disposed of in the aforesaid terms.

(V. G. BISHT, J.)

JPC