IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1034 OF 2020

Santosh s/o Govind Pansare,
Age 50 years, Occupation Service,
R/o Near Sharda Mangal Karyalaya,
Jagannath Nagar, Kedgaon,
Ahmednagar Dist. Ahmednagar. **...Applicant**

VERSUS

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

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Advocate for Applicant : Mr. S. S. Thombre
APP for Respondent-State : Mr. S. B. Narwade
Advocate for Assist to APP : Mr. N. B. Narwade

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WITH
CRIMINAL APPLICATION NO.2094 OF 2020

Yogesh Hiralal Shetwal and Others **...Applicants**

VERSUS

Santosh Govind Pansare and Another **...Respondents**

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Advocate for Applicants : Mr. N. B. Narwade
Advocate for Respondent No.1 :Mr. S. S. Thombre
APP for Respondent No.2-State : Mr. S. B. Narwade

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 22-01-2021.

ORDER :

1. Criminal Application No.2094 of 2020 has been filed by depositors in Ambika Gramin Bigar Sheti Sahakari Maryadit Patsanstha Kedgaon in opposing Bail Application No.1034 of 2020.

2. Said application is allowed and disposed of.

3. Applicant in Bail Application No.1034 of 2020 has been arrested in connection with Crime No.393 of 2018, registered with Kotwali Police Station, Ahmednagar, for the offences punishable under Section 406, 309, 420, 467, 468, 471 read with 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (MPID) Act. It will not be out of place to mention here that after the investigation, the charge-sheet is filed before the learned Special Judge under MPID Act and the case has been numbered as Special Case No.167 of 2019. Present application has been filed under Section 439 of Code of Criminal Procedure for bail.

4. Heard learned Advocate Mr. S. S. Thombre for applicant, learned Additional Public Prosecutor Mr. S. B. Narwade for respondent-State who has been well assisted by Advocate Mr. N. B. Narwade for the depositors in the concerned Patsanstha. In order to

cut short it is stated that, both of them have made submissions in support of their respective contentions.

5. The learned Advocate appearing for the applicant submits that the applicant was serving as Manager with Ambika Gramin Bigar Sheti Sahakari Patsanstha Maryadit Kedgaon Tq. Dist. Ahmednagar. The informant is the Auditor appointed by District Special Auditor, Class-I, Co-operative Societies, Ahmednagar. He has carried out the audit for the period between 01-04-2016 to 31-03-2018. After conducting the audit, he has given report stating that there is huge misappropriation of amount, creation of false and fabricated documents and cheating of the depositors. The allegation is that the misappropriation is to the tune of Rs.2,13,79,947/-. In fact, the charge-sheet came to be filed on 03-09-2018, and thereafter, the applicant has been arrested on 11-07-2019. That means, the investigation is complete and his further physical custody is not required. It is further submitted that there are in all 15 accused persons against whom the charge-sheet has been filed and out of them 13 are already released on bail either by this Court or by Sessions Court, Ahmednagar by asking them to deposit amounts ranging from Rs.1 Lakh to Rs.5 Lakh. On the ground of parity also

the applicant deserves to be released on bail. He has co-operated the auditor by producing all the documents which were in his possession. The further physical custody of the applicant is not required since the case is based on documentary evidence which already seized by police. The learned Advocate has taken this Court through various documents including the First Information Report and submitted that those documents *per se* do not indicate commission of a crime. He has also produced bunch of orders in respect of bail applications either passed by this Court or by the Sessions Judge. He also submitted that in view of the orders passed by this Court earlier in the present application, he has deposited amount of Rs.25 lakh in this Court. He submitted that the applicant is ready to abide by any terms of bail.

6. Learned Additional Public Prosecutor strongly opposed the application and also submitted affidavit-in-reply of Mr. Ajit s/o Bhagwat Patil, the Deputy Superintendent of Police, Ahmednagar (Rural) having additional charge of Deputy Superintendent of Police, Economic Offence Wing, Ahmednagar, wherein he has explained the documents which are on record, and especially it is stated that the present applicant was the Manager of the Society and he was

required to keep all the documents, especially the receipts in respect of deposits those were given in lakh of rupees by the Members of the Society. It was pointed out by learned Additional Public Prosecutor that the present applicant with the help of Chairman and other Directors of the Society issued receipts in respect of amount to two persons under the same number. This was noticed by the Auditor and then he says that there was misappropriation to the tune of Rs.1,24,75,880/- on account of not taking entry in respect of deposits in the daily register. Further entries in respect of deposits were taken in counter but not taken in daily register and it was to the tune of Rs.58,51,800/-. There was no balance in certain savings account, recurring account or daily deposits, yet excess payment was made and it was to the tune of Rs.12,21,425/-. The total misappropriation of the amount is to the tune of Rs.2,13,79,947/-. All those documents have been collected by the Investigating Officer. The previous bail application of the applicant was rejected by observing that huge amount has been misappropriated and the consideration for release of bail in respect of economic offences stand on a different footing. Now there is no change in the circumstance. The accused was absconding for about a year, which disentitles him from releasing on bail.

7. At the outset, it is to be noted that the auditor has filed report after he found there are certain misdeeds in the entire affairs of the Society. It can be seen from the First Information Report that the audit was completed on 07-07-2018. Thereafter permission was sought to lodge the First Information Report and it appears that it was given on 31-08-2018, and then the First Information Report has been lodged on 03-09-2018. It was totally based on documents and those documents have already been recovered by the Investigating Officer. The Ex-Chairman of the Society Sarjerao Narayanrao Kotkar was released by this Court in Anticipatory Bail Application No.22 of 2019 on 16-01-2019. Thereafter, the Vice Chairman Dnyandeo Wamanrao Shinde was released by the Additional Sessions Judge/ Special Judge, under Section 438 of Code of Criminal Procedure in Criminal Miscellaneous Bail Application No.1879 of 2018 on 21-11-2018. Thereafter, many Directors had filed anticipatory bail applications before this Court and bunch of those applications were decided by this Court on 05-12-2018 and a very detailed order has been passed granting anticipatory bail to all of them. Further two to three accused persons have been granted bail under Section 438 of Code of Criminal Procedure by the learned Additional Sessions

Judge. Here in this case, the informant says that certain documents were not maintained, and therefore, he has come to the conclusion that there is misappropriation. It was observed by this Court in order dated 05-12-2018 that the perusal of the First Information Report as well as Audit Report would show that those applicants, and even it can be made applicable to the present applicant, are not individually alleged to have misappropriated the said amount and it is said that the Board of Directors have failed to discharge their obligations as per the Bye-Law of the Society. No doubt the present applicant being the Manager has a different role to play but then he would be acting under the directions and supervision of the Board of Directors. When it was noticed by the Auditor that some receipts have been given same numbers, he had called upon the Manager, office bearers and Members of the Board of Directors to give their explanation and the present applicant had given his explanation. It is stated that the allegation about misappropriation of amount of Rs.1,24,75,880/- is factually incorrect. It was stated that there was regular audit done of the society till 2015-2016 and none of those Auditors had noticed any irregularity. Merely because some entries are not taken, it does not amount to misappropriation and the Society is not put to loss. All those observations made by this Court in the said order are definitely applicable here. If he has not taken entry of a certain transaction then at the most he would be liable departmentally, but in order to come to the conclusion that it amounts to misappropriation, further co-relation will have to be seen. There is absolutely no document which is produced on record which would show that the said amount is received by the present applicant and then he has utilized it in any manner. Though the Board of Directors have been released on bail under Section 438 of Code of Criminal Procedure, yet in a way the ground of parity is available to the present applicant, rather when he was arrested and has undergone the police custody period, every opportunity was made available to the police officer to have investigation in a better manner. Now since the investigation is over and the applicant has deposited amount of Rs.25 lakh in this court, his further physical custody is not required. He deserves to be released on bail by imposing stringent conditions. Hence, following order.

<u>ORDER</u>

1) Application stands allowed.

2) The applicant who is arrested in connection with Crime No.393 of 2018, Present Special Case No.167 of 2019, pending before learned Special Judge under MPID

Act, Ahmednagar, be released on P.R. of Rs.1,00,000/- (one lakh) with two solvent sureties of Rs.50,000/-each (fifty thousand).

3) The applicant shall not tamper with the evidence of the prosecution nor he shall indulge himself in criminal activity.

4) The amount of Rs.25,00,000/- (twenty five lakh) deposited in this Court be transferred to the Court of learned Special Judge under MPID Act, Ahmednagar, if the account under that head is available or with the Sessions Judge, Ahmednagar with a direction to the learned Special Judge where the Special Case No.167 of 2019 is pending, to invest the said amount in any Nationalized Bank for such period as may be required till the conclusion of the trial. The present applicant will not be entitled to withdraw the said amount or part thereof till the conclusion of the trial.

5) Learned Special Judge under MPID Act, Ahmednagar to dispose of the said amount as per the provisions under Section 452 of Code of Criminal Procedure.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-