IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 ANTICIPATORY BAIL APPLICATION NO.1196 OF 2020
WITH APPLN/148/2021 IN ABA/1196/2020

SHARAD S/O SHIVAJIRAO PATIL NILANGEKAR
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicant : Salunke V.D.
APP for Respondent State: S.W.Mundhe
Adv.P.P.More to assist A.P.P.
...

CORAM : MANGESH S. PATIL, J.
DATE : 24.02.2021

P.C. :-

This is an application under Section 438 of the Cr.P.C. seeking bail in the event of arrest of the applicant in connection with Crime No.291/2020 registered with Nilanga Police Station, Latur for the offences punishable under Sections 420, 406, 409,467,468,471,472 read with Section 34 of the I.P.C. and under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act for short)

2] The F.I.R. and the papers of the investigation constitute the allegations which are to the following effect :

The informant is the Vice President of Maharashtra Shikshan Samiti, Nilanga which is a Society registered under the Societies Registration Act as well as a Public Trust under the Maharashtra Public Trusts Act (Society for short). The Society was having its savings account with a Cooperative Bank by name and style Dr. Shivajirao Patil Nilangekar Urban Cooperative Bank Ltd.Nilanga (Bank for short). The applicant is Chairman of that bank. It is alleged that without there being any resolution passed by the Society to raise loan and without there being any application submitted by it to the Bank demanding loan, the applicant hand in gloves with the Bank officials managed to raise loan to the tune of Rs.80 lakh and withdrew such a huge amount in cash by tendering a deposit slip on the very day on 30/3/2010 on which the term loan was sanctioned by the Bank in the name of the Society. It is thus alleged that he has misappropriated that amount by indulging in forgery.

3] It is then alleged that without there being any such similar request by the Society, amount to the tune of Rs.25 lakh was withdrawn from the cash credit account of the Society by the applicant, Directors of the Bank and its Manager.

4] The learned advocate for the applicant would submit that the applicant happens to be the real brother of the informant. Till the time their father was alive everything was going on smoothly and there were no disputes. After unfortunate demise of the father the applicant submitted a Caveat in the office of the Public Trust Registration Office. Annoyed by his such conduct the informant has now wrecked up everything. The deceased father was managing the affairs of the Society as well as the Bank. He was aware of all the happenings. The entire amount of Rs.80 lakh has been deposited with the bank in the Overdraft Account and even the amount of Rs.25 lakh is deposited in the Current Account of the Society. All such deposits have been made even before filing of the F.I.R. Already the informant has filed a dispute with the

Cooperative Court for recovery of the amount from the Bank. Without there being any substance a criminal trapping is being given to the family feud. The applicant is a Medical Practitioner. He is ready to cooperate the Investigating Officer. His custodial interrogation is not necessary. He has already been granted ad-interim anticipatory bail. There are no allegations about breach of the terms and conditions and the ad-interim relief be confirmed.

5] The learned A.P.P. assisted by the learned advocate for the original informant opposes the application. He submits that there is enough material to *prima facie* reveal the misappropriation and forgery. The investigation has revealed that there is substance in the allegations. Without there being any decision by the Society to borrow money, the Bank of which the applicant is a President has granted Overdraft facility and the applicant himself by tendering a withdrawal slip has withdrawn money to the tune of Rs.80 lakhs. Similarly, even without there being any such sanction and approval by the Society various amounts have been withdrawn from the Current Account of the Society with the Bank. Statement of the Administrator appointed on the Bank has also been recorded. Even there is a statement of one Advocate Mr. Sonawane who has deposited the amount of Rs.80 lakh in cash in the Overdraft Account of the Society with the Bank. In view of such active involvement of the applicant in the misappropriation and forgery, his custodial interrogation is highly necessary and the application be rejected.

6] The learned A.P.P. further submits that the applicant was handed over a questionnaire during the course of the investigation and has specifically admitted about he having withdrawn the amount of Rs.80 lakh.

7] I have carefully gone through the papers of the investigation and considered the rival submissions. So far as the allegations regarding misappropriation of Rs.80 lakh is concerned there is absolutely no record to show that any resolution was passed by the Society to borrow such money. There is also no record to show that any application was made by the Society to the Bank to that effect. Since the Society is a public trust duly registered under the Maharashtra Public Trust Act, even it could not have borrowed the money to such a huge extent without seeking prior permission of the Charity Commissioner as is required by Section 36A(3) of that Act. There is no record to show that any such permission was solicited and granted.

8] Coupled with the aforementioned state of affairs, during the course of investigation it has transpired that the applicant himself filled in a withdrawal slip and withdrew the amount of Rs.80 lakh in cash on 30/3/2010. Even in the questionnaire tendered to him he has admitted this fact.

9] It is further pertinent to note that conspicuously, in reply to one of the questions the applicant has specifically admitted that the amount of Rs.80 lakh from the Overdraft Account and Rs.25 lakh from the Current Account of the Society were withdrawn by his late father who could not redeposit it and after his demise on 5/8/2020, the amounts were deposited in the bank through their Advocate Mr.Sonawane.

10] If such is the state of affair, it is a clear case of forgery and misappropriation. There is active involvement of the applicant who personally withdrew the amount of Rs.80 lakh.

11] The plea that the amounts have already been deposited in the bank even before registration of the crime, in my considered view, is a convenient plea which should not weigh with this Court when a discretionary relief of anticipatory bail is being sought.

12] Considering the seriousness and magnitude of the crime, custodial interrogation of the applicant is highly imperative. Applying the principles laid down in the case of Sushila Aggarwal V/s State (NCT of Delhi) and another; (2020) 5 S.C.C. 1, the applicant is not entitled to anticipatory bail.

13] The application is rejected.

14] At this stage, the learned advocate for the applicant submits that the ad-interim relief be extended for some period to enable the applicant to approach the Supreme Court.

15] Since the ad-interim relief is in operation till date, the same shall continue for a period of 2 weeks.

[MANGESH S. PATIL, J.]

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