IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1178 OF 2021

Anandkumar Ashoklal Bhalgat
Age : 43 years, occ : business
R/o Sonai, Taluka Newasa,
District Ahmednagar. Applicant

Versus

The State of Maharashtra. Respondent

WITH

CRIMINAL APPLICATION NO. 2432 OF 2021

IN

ANTICIPATORY BAIL APPLICATION NO. 1178 OF 2021

Sanjaykumar Shantilal Bhalgat & anr. Applicant

Versus

Anandkumar Ashoklal Bhalgat & anr. Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 1204 OF 2021

Sau Gunjan Kishor Bhalgat
Age : 44 years, occ : household
R/o Sonai, Taluka Newasa,
District Ahmednagar. Applicant

Versus

The State of Maharashtra. Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 607 OF 2021

1. Dr. Sunil Madanlal Bang
   Age : 52 years, occ : Medical practitioner

2. Abhaykumar Shantilal Changediya
   Age : 47 years, occ : agri., & business

3. Vijay Dharmaji Makone
Age : 42 years, occ : agri., & business

4. Laxman Haribhau Rashinkar
Age : 52 years, occ : agri.,

5. Vikas Manoj Jedhe
Age : 47 years, occ : agri.,

All r/o Sonai,Taluka Newasa
District Ahmednagar Applicants

Versus

The State of Maharashtra. Respondent

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Mr. S.J. Salunke, Advocate for the applicant in ABA No.1178/2021.
Mr. Zafar M. Pathan, Advocate for applicant in ABA No.1204/2021
Mr. A.B. Kale, Advocate for applicants in ABA No.607/2021.
Mr. Z.H. Farooqui, Advocate for applicants in Cri.Appln. 2432/2021.
Smt. V.S. Choudhari, A.P.P. for respondent – State in all applications.
Talekar and associates, Assisting the PP.

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CORAM : **PRAKASH D. NAIK, J.**

DATE : 27-10-2021.

ORDER :

1. The applicants have preferred these applications seeking pre-arrest bail in connection with Crime No. I-11/2018 (F.I.R. No. 31/2018) registered with Sonai Police Station, District Ahmednagar for the offences punishable under Sections 406, 420, 467, 468, 471, 120-B of the Indian Penal Code (for short, “I.P.C.”) and under Section 3 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, “M.P.I.D. Act”). F.I.R. was registered on 31.01.2018. Charge-sheet was filed against arrested accused for offences punishable under Sections 409, 418, 420, 467, 471, 201, 120-B of the I.P.C. and

Section 3 of M.P.I.D. Act. The names of accused mentioned in F.IR. Were Shyamsundar Khamkar, Ganesh Gore and Ganesh Tandale. They were arrested on 09.04.2018. Charge-sheet was filed against arrested accused and case is numbered as Special Case No. 81/2018. Subsequently CR No. 153/2018 was registered independently against Directors. According to prosecution, CR No. I – 153/2018 was merged with CR No. I-11/2018 and investigation is conducted under Section 173 (8) of the Code of Criminal Procedure. Forensic Audit was conducted through M/s A.N. Rathi and Company. It was conducted by Ajay Nandlal Rathi (Auditor). Tejkumar Gundecha and Gopal Kadel were arrested on 04.06.2021.

2. The case of the prosecution is that the complainant Suvidya Suvijay Somani is the Auditor. She conducted audit of Venkatesh Gramin Bigarsheti Sahakari Patnsanstha, Sonai. It was alleged that there was misappropriation of Rs. 1,93,07,406/-. Manager, Clerk and Cashier misused their powers. They did not protect interest of the Credit Society. They had acted in connivance with each other. They had obtained funds of the Credit Society. Proper security was not taken while disbursing the amount and thereby caused wrongful loss to the Credit Society and wrongful gain to themselves. Crime No. 31/2018 was registered with Sonai Police Station against Shyamsundar Khamkar, Ganesh Gore and Ganesh Tandale. The proforma of F.I.R. mentions the number of F.I.R. as CR No. I – 11/2018. The accused named in the F.I.R. viz. Shyamsundar Khamkar, Ganesh Gore and Ganesh Tandale were

arrested and charge-sheeted. The applicants were not named as accused nor any role of misappropriation was attributed to them.

3. Apparently while the investigation was in progress qua Crime No. 11/2018 (Crime No. 31/2018) on the basis of forensic audit, another F.I.R. was registered vide Crime No. 153/2018. The said F.I.R. was registered on the basis of the complaint of Shirish Kulkarni on 23.10.2018. It was registered for the offences under Sections 406, 409, 420, 467, 468, 120-B of the I.P.C. and under Section 3 of the M.P.I.D. Act. In the said complaint it was alleged that during the period of 2016-2017 the Auditor Smt. S.S. Somani has submitted report alleging misappropriation of Rs. 1,93,07,406/- by three employes. It was alleged that the amounts reflected in the said report and the transactions therein were approved in meetings conducted by the Board of Directors. Dr. Sunil Madanlal Bang was the Chairman. Abhay Shantilal Changediya was the Vice Chairman, Anandkumar Bhalgat, Tejkumar Gundecha, Gopal Kadel, Sacchidanand Kurkute, Vikas Jedhe, Vijay Makone, Laxman Haribhau Rashinkar, Sandhya Joshi, Gunjay Bhalgat were Directors. They are responsible for misappropriation of amount referred to in report lodged by Smt. S. S. Somani in Crime No. I-11/2018. It is alleged that there was inaction on the part of the Directors. Proper procedure was not followed and they had acted in connivance with the co-accused.

4. Anandkumar Bhalgat had applied for anticipatory bail apprehending arrest in Crime No. 153/2018. Vide order dated 24th September 2019 interim relief was granted to him on certain conditions. The application was thereafter heard by this Court on 11th November 2019 and the same was allowed. During the course of hearing of the said application, it had transpired that the Investigating Officer is conducting further investigation in Crime No.31/2018 and file supplementary charge-sheet. The order indicates that the submissions were made by learned A.P.P. that the prosecution agency has no objection to grant anticipatory bail so far as Crime No. 153/2018 is concerned. It was observed that there cannot be two F.I.Rs in same crime. It was clarified that Investigating Officer would be within powers to arrest any person found to have been involved in Crime No. 31/2018. It is pertinent to note that Crime No. 31/2018 and Crime No. I – 11/2018 is the same and it was referred as investigation in Crime No. I – 11I /2018.

5. Thus, apparently further investigation in Crime No.I-11/2018 (Crime No. 31/2018) proceeded further.

6. The applicants were sought to be arrested and hence they preferred application for anticipatory bail before the Court of Session. The application of Anandkumar Bhalgat was rejected by the Sessions Court vide order dated 16th September 2021. Other applicants had also preferred applications for anticipatory bail before the Sessions Court apprehending arrest in Crime No. 31/2018

(Crime No. 11/2018), which were rejected.

7. Arrested accused Ganesh Haribhau Gore and Ganesh Ambadas Tandale had preferred applications for regular bail before this Court in connection with Crime No. I – 11/2018 (Crime No. 31/2018) and the said applications were allowed vide order dated 27th November 2018. The said order indicates that the applicants therein were directed to deposit half amount as has been shown towards arrears of loan in the audit report i.e. Rs. 27,13,302/- so far as Ganesh Haribhau Gore is concerned and Rs. 20,56,921/- so far as Ganesh Ambadas Tandale is concerned, within 15 days from the date of the order. The applicants therein were directed to deposit the balance 50% amount within three months from the date of the said order.

8. Learned Advocates for the applicants submitted that the F.I.R. vide Crime No. I – 11/2018 (Crime No. 31/2018) was registered against office bearers of the Credit Society. The audit conducted at that point of time indicated that the said accused were involved in misappropriation of the amount. The liability was attributed to them. The said accused were arrested and two of them were granted regular bail. Crime No. 153/2018 was separately registered only against Chairman, Vice Chairman and Directors of the Co-operative Credit Society. Although the investigation in the previous crime has proceeded, the investigation agency chose to register separate F.I.R. in respect to the same transaction only to

implead the applicants herein. Anandkumar Bhalgat had applied for anticipatory bail in Crime No. 153/2018 and by consent, the relief was granted to him and it was submitted that the investigation in the said F.I.R. will be conducted vide previous F.I.R. bearing Crime No.31/2018 (Crime No. I – 11/2018). Learned Counsel for the applicant Anandkumar Bhalgat submitted that having granted bail in Crime No. 153/2018, which according to prosecution, had merged into the previous F.I.R., the accused cannot be subjected to arrest again. The accused who were named in the earlier F.I.R. were attributed specific overt act. No role has been assigned to the applicants. The case is based on inferences and surmises. It is presumed that the applicants being Chairman, Vice Chairman and Directors, they were involved in the crime. The audit report conducted by Mrs. S.S. Somani attributes the allegations of misappropriation to the other accused and nothing was said about involvement of the applications. Charge-sheet has been filed against the arrested accused. Provisions of M.P.I.D. Act are not applicable. On perusal of entire charge-sheet, it can be seen that there is no iota or evidence against the applicants showing their involvement in the crime. General allegations are made against applicants. The Investigating Officer has seized the record of Credit Society pertaining to loan, muster roll, salary register,monthly meetings, account extract, etc. The chairman and Directors took steps to recover the dues / loan amount from borrower and refunded amount of Rs. 93,69,601/- to the depositors. Reliance is placed on letter dated 18.09.2021 issued by Manager. The Chairman initiated action against defaulters such as action under Section 101 of Maharashtra Co-operative Societies Act, seizure of vehicles, properties. Letter dated 18.09.2021 issued by Manager has been annexed to application. The Chairman and his family members have deposits of huge amount in the Credit Society by fix deposits. Statement of Assistant Registrar, Co-operative Societies shows that there was no evidence of involvement of Board of Directors. Forensic Audit is silent about wrongful gain by applicants. Properties of Directors were attached. Action under Section 88 of Maharashtra Co-operative Societies Act is initiated.

9. Learned A.P.P. submitted that the investigation reveals the complicity of the applicants. Forensic audit report shows irregularities and involvement of the applicants. The offence is of serious nature. There is misappropriation of huge amount. The offence cannot be committed by the co-accused without connivance with the applicants, who were holding higher position in the Credit Society. The transactions were approved in the meetings conducted by the Board of Directors. Misappropriation of huge amount could not have been missed by the applicants which shows that they were hand-in-glove with the other accused. Further investigation is in progress. Crime No. 153/2018 was registered subsequently and thereafter investigation was conducted in Crime No. 31/2018. Although the names of the applicants were not reflected in the previous F.I.R., the subsequently investigation and audit report show

involvement of the applicants. Supplementary charge-sheet would be filed after arrest of the applicants in Crime No. 31/2018.

10. Learned Counsel for the depositors adopted the submissions of the learned A.P.P. It is submitted that the applicants were Chairman, Vice Chairman and Directors of the Credit Society. There is misappropriation of the amount of Rs. 1,93,07,406/-. The applicants cannot be absolved of their liability. Their inaction was deliberate. Money belongs to the depositors. The amount have been misappropriated by the accused. The applicants cannot show ignorance. They are equally responsible for the act of misappropriation. Their custodial interrogation is necessary.

11. I have perused investigation papers. From the record it is apparent that Crime No. 31/2018 was registered with Sonai Police Station for the aforesaid offences on the basis of complaint lodged by Smt.Suvidha Vijay Somani. The complaint is dated 31.01.2018 and F.I.R. was registered on 01.02.2018. The allegations reflected therein were based on the audit conducted at that point of time. The said F.I.R. is also numbered as Crime No. I-11/2018. The F.I.R. categorically mentions that there is misappropriation of Rs. 1,93,07,406/-. It was stated that the irregularities were committed by the Manager, Clerk and Cashier by misusing their position. The security was not obtained. The amount was obtained by them. Irregularities were conducted by them. Thus, the said F.I.R. was lodged against Shyamsundar Shankar Khamkar, Ganesh Haribhau

Gore and Ganesh Ambadas Tandale. They were arrested and charge-sheeted. It is pertinent to note that the complicity of the applicants was not disclosed in the said F.I.R. It is also apparent that the liability as against the accused named therein was fixed. During the course of further investigation the amounts of misappropriation stipulated in the aforesaid F.I.R. had not escalated. Apparently thereafter Crime No. 153/2018 was registered on the complaint of Shirish Devidas Kulkarni on 23.10.2018 under Sections 406, 409, 420, 467, 468, 120-B of the I.P.C. It is not clear as to why there was necessity of registering separate F.I.R. as the investigation relating to the same transaction was the subject-matter of Crime No. 31/2018. In second F.I.R. also it was alleged that there was misappropriation of Rs.1,93,07,406/- at the hands of the accused. Reference is also made to the audit report of Smt. S.S. Somani who had lodged previous F.I.R. In addition, it was alleged that the Board of Directors had approved the transactions of the year 2016-2017 and thereafter the Chairman, Vice Chairman and Directors were hold responsible.

12. From the documents on record it can be seen that inference is drawn about the role played by the applicants being the Directors of the Credit Society. It is also pertinent to note that two of the accused named in the previous F.I.R. were arrested and they have been granted bail subject to conditions of deposit of some amount. It is also relevant to note that one of the applicant Anandkumar Bhalgat had applied for anticipatory bail in Crime

No.153/2018 and it was indicated by the prosecution that the said investigation will be merged in the F.I.R. registered vide Crime No. 31/2018 (Crime No. 11/2018). Investigation papers do not indicate that any amount was misappropriated by the applicants. In fact, prosecution had proceeded with the case registered vide earlier F.I.R. that the misappropriation was done by the office bearers and liability was fixed on them. In the second F.I.R. the allegation attributed to the applicants is that they being Directors of the Credit Society, were responsible for the acts of the co-accused and it is obvious that the transactions were approved during day-to-day affairs of the Credit Society by the Directors. It is also pointed out by applicants that steps were taken by them to recover the amount and it was refunded to depositors. The Directors also initiated other actions against defaulters. Custodial interrogation of the applicants is not necessary.

13. In the light of the factual matrix as stated above, the applicants need not be subjected to custodial interrogation. Investigation can proceed without subjecting them to custody. Hence, I pass the following order.

ORDER

(i) ABA No. 1178 of 2021, ABA No. 1204 of 2021 and ABA No. 607 of 2021 are allowed.

(ii) In the event of arrest of the applicants in Crime No.31/2018 (Crime No. 11/2018) registered with Sonai Police Station, Taluka Newasa, District

Ahmednagar, the applicants be released on bail on executing P.R. Bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) each with one or more sureties in the like amount.

(iii) The applicants shall appear before the Investigating Officer on 10.11.2021, 11.11.2021 and 12.11.2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called for, fill filing of the charge-sheet.

(iv) ABA No. 1178 of 2021, ABA No. 1204 of 2021, ABA No. 607 of 2021 and Criminal Application No.2432 of 2021 stand disposed of.

(PRAKASH D. NAIK, J.)

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