IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1370 OF 2021

Sacchidanand Bhanudas Kurkute
Age 52 years, Occu: Agri,
R/o Sonai, Taluka Newasa,
District Ahmednagar. ... Applicant

Versus

The State of Maharashtra. ... Respondent
Through P.I. Sonai Police Station,
Tq. Newasa, District Ahmednagar

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Ms. Sakshi Ajeet Kale h/for Mr. Ajeet Kale, Advocate for applicant
Mr. A. S. Shinde, APP for the State

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

DATE : 13th December, 2021.

ORDER :

1. The applicant has preferred this application 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 applicant was not named as

accused nor any role of misappropriation was attributed to him.

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 employees. 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 - 11/2018.

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

6. The applicant was sought to be arrested and hence he preferred application for anticipatory bail before the Court of Sessions which was rejected vide order dated 28.10.2021.

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 Advocate for the applicant 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 applicant 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). The accused who were named in the earlier F.I.R. were attributed specific overt act. No role has been assigned to the applicant. The case is based on inferences and surmises. The applicant had resigned as Director on 8th April, 2016. 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 applicant. 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 applicant showing his involvement in the crime. General allegations are made against applicant. 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 applicant. Properties of Directors were attached. Action under Section 88 of Maharashtra Co-operative Societies Act is initiated. The co-accused Anand Kumar Bhalgat, Gunjan Bhalgat, Dr. Sunil Bang, Abhaykumar Changediya, Vijay Makone, Laxman Rashinkar, Vika Jedhe were granted anticipatory bail by this Court vide order dated 27.10.2021.

9. Learned A.P.P. submitted that the investigation reveals the complicity of the applicant. Forensic audit report shows irregularities and involvement of the applicant. 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 applicant, who was 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 applicant which shows that he was 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 name of the applicant was not reflected in the previous F.I.R., the subsequent investigation and audit report show involvement of the applicant. Supplementary charge-sheet would be filed after arrest of the applicants in Crime No. 31/2018.

10. 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 applicant 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.

11. From the documents on record it can be seen that inference is drawn about the role played by the applicant being the Director 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 accused 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 applicant. 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 applicant is that he being Director of the Credit Society, was 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 applicant that steps were taken to recover the amount and it was refunded to the depositors. The Directors also initiated other actions against defaulters.

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

ORDER

(i) Anticipatory Bail Application No. 1370 of 2021 is allowed.

(ii) In the event of arrest of the applicant in Crime No.31/2018 (Crime No. 11/2018) registered with Sonai Police Station, Taluka Newasa, District Ahmednagar, the applicant be released on bail on executing P.R. Bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one or more sureties in the like amount.

(iii) The applicant shall appear before the Investigating Officer on 21st, 22nd and 23rd December, 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) Anticipatory Bail application stands disposed of.

(PRAKASH D. NAIK, J.)

JPC