

ISM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1436 OF 2019

PRAKASH S. PALAV

....APPLICANT

V/s.

THE STATE OF MAHARASHTRA

.....RESPONDENT

Mr. Adnan N. Shaikh for the applicant
Ms. Sharmila S. Kaushik APP for the State
Mr. K. M. Yadav a/w Mr. U. V. Singh for the intervenor
Mr. Sanjay Kandalkar, Versoa Police Station

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 9, 2021.

P.C.:

1] Pursuant to an earlier order passed by this Court on 22/07/2019, complainants were directed to be impleaded, however, it appears that applicant had failed to do so. As a consequence of above, I have heard learned counsel Mr. Yadav for the complainant who has assisted learned APP in opposing the prayer for grant of bail in M.E.C.R.No. 2 of 2019 registered with Versova police station for Offences punishable under Sections 381, 406, 408, 418, 420 and 477 of the Indian Penal Code.

2] The case of the prosecution against the applicant is, applicant was engaged as a service provider/to handle record and maintain account of the society. During such period, he, in connivance with the then office bearers misappropriated the amount.

3] In short, the specific allegations against the applicant are, though applicant accepted the amount in cash from the members of the society towards membership, monthly maintenance etc., instead of depositing the same in the account of the society and maintaining the record of the same, on his own, diverted the same amount to his personal benefit or has spent the same in such other heads for which there is no sanction from the managing committee.

4] Learned counsel for the applicant submits that applicant is very much available for the prosecution and by producing the record of bank statement, has already cooperated the investigating agency. He would further claim that applicant is in advance age and that being so, he cannot run away from the prosecution.

5] Learned counsel for the complainant would urge that special auditor has already impleaded the applicant alongwith the then office bearers for the misappropriation of amount of Rs. 7 Lakhs and odd. According to him, special auditor has specifically noted in the audit report that applicant has failed to produce the record of which he was custodian, so also has not accounted for the amount that was received in cash. He would further claim that applicant at times has drawn excess amount than the one to which he is permissible in the form of salary/remuneration.

6] Learned APP submits that investigation in the matter is almost complete and the applicant's presence will be required to get explanation on certain entries in the record.

7] I have considered rival submissions.

8] It is not in dispute that the proceedings under Section 78, 83

and Section 88 of the Maharashtra Co-Operative Societies Act, 1960 (Hereinafter referred to as 'the Act' for the sake of brevity) are already taken recourse to against the office bearers who were manning the committee at the time when offence alleged to have been committed. Section 88 of the Act which precedes with an action under Section 78, 81 and 83 empowers Registrar to order recovery of the amount which has been misappropriated. No doubt, such provisions are attracted against office bearers of the society. However, it cannot be said that complainant society has no remedy, particularly keeping in mind provisions of Section 91 of the Act.

9] Even if the auditor has observed in the audit report that the applicant is involved in the misappropriation, however, it is difficult to infer at this stage the exact amount of misappropriation for which applicant can be blamed particularly when independent liability of the then office bearers of the society is pending determination/adjudication before the Registrar, under Section 88 of the Act.

10] The fact remains that investigation in the matter is almost complete and that being so, having regard to the fact that applicant is on ad-interim protection since last more than two years, case for confirmation of ad-interim protection is made out.

(i) In the event of arrest of applicant in M.E.C.R.No. 2 of 2019 registered with Versova police station, he be released on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

(ii) Applicant shall attend the Investigating Officer on 23/08/2021, 25/08/2021 and 27/08/2021 between 10.00 a.m. to 12.00 noon and thereafter as and when directed.

(iii) Applicant shall not tamper with evidence or influence the witnesses in any way.

11] Application stands disposed of.

[NITIN W. SAMBRE, J.]

IRESH
SIDDHARAM
MASHAL
Digitally signed
by IRESH
SIDDHARAM
MASHAL
Date: 2021.08.10
13:09:49 +0530