IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1835 OF 2019

Ramdas Sonaji Shirke … Applicant

Versus

The State of Maharashtra … Respondent

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 1836 OF 2019

Chaitanya Anil Kalyankar … Applicant

Versus

The State of Maharashtra … Respondent

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO.1839 OF 2019

1. Prakash Jayram Hande
2. Tanaji Balshiram Hande
3. Vikas Ramchandra Hande
4. Dattatraya Nathu Hande
5. Suryakant Manohar Hande
6. Balu Madhukar Dhavale
7. Haribhau Vaman Hande
8. Suresh Nana Gunjal
9. Tarabai Manohar Hande ... Applicants

Versus

The State of Maharashtra ... Respondent

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO.1861 OF 2019
WITH
INTERIM APPLICATION NO. 2122 OF 2021

1. Rahul Ramchandra Hande
2. Prabhakar Laxman Navale ... Applicants

Versus

The State of Maharashtra ... Respondent

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO.1935 OF 2019

Vedika Dayanand Hande ... Applicant

Versus

The State of Maharashtra ... Respondent

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO.1965 OF 2019
WITH
INTERIM APPLICATION NO. 2123 OF 2021

1. Akshay Hanuman Hande
2. Rishikesh Hanuman Hande
3. Asha Hanuman Hande ... Applicants

Versus

The State of Maharashtra ... Respondent

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Mr. Niranjan Mundargi i/by Chaitanya B. Nikte a/w Ms. Sneha Bhange, Advocate for the Applicants in ABA Nos. 1835 of 2019 & 1836 of 2019.

Mr. Aniket Nikam i/by Mr. Vivek N. Arote, Advocate for the Applicant In ABA No.1839 of 2019.

Mr. Satyavrat Joshi i/by Mr. Sunil S. Kamble Advocate for the Applicant in ABA No. 1861 of 2019.

Mr. Praful Soni, Advocate for the Applicant In ABA No.1935 of 2019.

Mr. Subir Sarkar, Advocate for the Applicant In ABA No.1965 of 2019.

Mr. Sharad T. Bhosale i/by Dilip Bodake, Advocate for the Intervenor in both Interim Applications.

Mr. R. M. Pethe, APP for the Respondent – State.

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CORAM	**:**	**PRAKASH D. NAIK, J.**
DATE	**:**	**7th SEPTEMBER, 2021**

PER COURT:

The applicants in all these applications are apprehending arrest in C.R. No. 90 of 2019 registered with Otur Police Station, District-Pune. The offences were registered under Sections 406, 408, 409, 420, 463, 464, 465, 467, 468, 470, 471, 477A, 120B of the Indian Penal Code r/w Sections 3 and 4 of MPID Act.

2 The First Information Report was registered on 11th June, 2019 by Aatmaram Aabu Mane, Special Auditor.

3 The case of the prosecution is that:

The complainant is serving in Co-operative Department as Special Auditor. He was authorized to conduct Governments Test Audit of Mahalaxmi Gramin Bigar Sheti Sahakari Patsanstha Maryadit, Umraj No.1, Taluka-Junnar, Dist-Pune for the period of 01/04/2011 to 31/03/2017. He conducted Audit of the Society and submitted the report dated 20/05/2019. While conducting the Audit he found irregularities and misappropriation of funds. The Commissioner directed the complainant to file criminal case.

Accordingly, the complaint was lodged against 33 persons. It is alleged that the Chairman Hanuman Hande and Vice Chairman Ramchandra Hande have misappropriated funds to the tune of Rs.30,81,55,000/- during the period from 01/04/2011 to 31/03/2017 by making false and bogus proposal in the name of members and remitting the said loan to the account of said members. Certain loans were forwarded without any security to the family members of the Chairman and the Vice Chairman. The Chief Manager of the Society, namely, Sathyavan Belote, branch Managers Sandip Hande, Manohar Shelke, Bhagvan Hande, Ravindra Shinkote have deliberately omitted their duty and wrongly entered the credit debit balance and created false balance sheets, suppressing the true and correct financial position. Statutory Auditors Mr. Paresh K. Shah, Chaitanya Kalyankar and internal auditors- Avinash Navle and Ramdas Shirke did not perform their duties and responsibilities and submitted incorrect audit report.

4 The applicants have preferred applications for Anticipatory Bail before the Sessions Court. The Applications were rejected by the Sessions Court.

5 Interim protection was granted by this Court by order dated 22nd August, 2019 in ABA No. 1835 of 2019, ABA No. 1936 of 2019 and ABA No. 1839 of 2019. Interim protection was also granted in ABA No. 1965 of 2019 by order dated 25th September, 2019.

6 Learned Advocate Mr. Niranjan Mundargi appeared in ABA No. 1835 of 2019 and 1836 of 2019. It is submitted that the applicant Ramdas Shirke is a internal auditor. He is a certified auditor by profession. He has conducted several audits. His experience is of 30 years. He is a reputed auditor. There is no prima-facie case against him. He has categorically mentioned in Audit Report and covering letter that the Society has failed to share the balance sheets and financial statements with internal auditor. The Audit Report was submitted as per available information. He had pointed out the irregularities. He is not involved in alleged fraud and misappropriation amount. He is not a beneficiary. There is categorical mention of persons, who availed loan. In the Audit Report he has specifically pointed out that it is incumbent on Managing Committee to carry out compliance. The Report specifies suggestions and remarks. The role of the applicant is of internal auditor by which he serves at the instance of Managing Committee. He pointed out the internal Audit Report dated 31/05/2015. It is

submitted that there were no lapses by the applicant. He is not conspirator. The prosecution has filed Affidavit-in-reply which is at page No. 64 of this Application. In the reply it is stated that in the Minutes of the Meeting dated 10/06/2016, 08/05/2017, 26/09/2017 and 23/02/2018, it is observed that the President and Vice President of the Patsanstha had admitted and confessed the crime and committed to refund the amount. The members of Patsanstha wrote a letter to the Registrar about the misappropriation. The applicant was internal auditor and aware of modes-operendi of the accused. The applicant is accused no. 33. He was appointed as an Auditor. The applicant did not object the disbursement of loan which is more than limit. There was several bogus loan proposals. Notices were issued to the borrowers. 95 borrowers were present. They denied outstanding loan. They stated that they did not apply for loan. The applicant did not make enquiry with such borrowers. Custodial interrogation of the applicant is not necessary.

7 Mr. Mundargi, learned Advocate, on behalf of the applicant in ABA No. 1836 of 2019 submitted that he is not involved in the offences. The applicant Chaitanya Kalyankar is a C.A. by profession. He has conducted several audits. He was appointed as

internal auditor. In the Audit Report of the year 2016-2017, names of the persons who obtained loans were highlighted. The Audit Report recourse to the loan sanctioned by Managing Committee and Chairman of the Society. There is suggestions in the Audit Report that Mr. Hanuman Hande has misappropriated the funds from 2011 to 2017 and appropriate investigation should be conducted against him and his accomplices. The applicant had immediately classified the Patsanstha "D" classified. The classification shows that the applicant has acted honestly and as per guidelines. The investigation as a Special Auditor was directed by Commissioner on the Audit Report submitted by the applicant. The applicant is a vessel brows. He has been made an accused. The Special Auditor/complainant has not considered that the internal auditor and statutory auditors having collusion leads nowhere as neither of the misappropriated of the funds. He has not beneficiary. He has not involved in fabrication of documents. He has not misappropriated the funds. The main accused were arrested. The liability has been accepted by the other accused.

8 The prosecution has filed Affidavit-in-Reply opposing this application. The reply is similar to the Affidavit-in-Reply filed in ABA No. 1835 of 2019. In the reply it is alleged that the applicant

has defied a norms and Rules and By-Laws of Patsanstha. He did not raised objections in the statutory audit. Custodial interrogation of the applicant is necessary. The Patsanstha as per prevailing norms were to be accredited in "D" class but it was given "A" class.

9 Learned Advocate Mr. Aniket Nikam appeared in ABA No. 1839 of 2019. He submitted that in the said application applicants are not involved in the fraudulent activities. There are about 9 applicants in the said application. All of them are senior citizens. In the Minutes of the Meeting dated 10/06/2016, 08/05/2017, 26/09/2017 and 23/02/2018, it is observed that the allegations were levelled against the President and Vice President of the Patsanstha. The President Mr. Hanuman Hande admitted and confessed that he is responsible for the fraud. On 12/09/2016, Mr. Hanuman Hande and Akshay Hande executed an agreement with other members of Patsanstha stating that Mr. Hanuman Hande admitted that he took loan amount of Rs.17,17,57,920/- from Patsanstha and agreed to refund the same. He has also stated that he fails to refund the amount, the Patsanstha can take possession of his properties. On 11/08/2017, Mr. Ramchandra Hande executed an agreement with other members stating that he took the loan amount from the Patsanstha. On 16/01/2019 the members of

Patsanstha wrote a letter to Additional Registrar Co-operative Societies stating that the President and Vice President were responsible for the fraud and misappropriation. The applicants themselves have deposits in the said Patsanstha. The applicants are Directors of Credit Society. The applicants have not committed crime. Their custodial interrogation is not necessary. They are signatories to the complaint. An opportunity was given to the Chairman. The applicants are not beneficiaries.

10 The prosecution has filed Affidavit-in-Reply opposing this application. In the reply, it is alleged that for the purpose of filing charge-sheet it is necessary to trace copy of undertaking dated 23/02/2019 executed by accused guaranteeing the repayment of amount to depositors. It is necessary to find out whether the Directors, Chief Executive Officers have hatched criminal conspiracy to commit offences. Huge amount was misappropriated.

11 Learned Advocate Mr. Satyavrat Joshi represented for applicant in ABA No. 1861 of 2019. He submitted that loan of 34 crores was brought down. The application preferred by the applicant no.1 Rahul Ramchandra Hande has been withdrawn vide

order dated 28/08/2019. The applicant no.2 was granted interim protection by this Court vide order dated 28/08/2019. It is submitted that the applicant no.2 had never asked for any loan, never signed any document asking for loan and never withdrawn any amount sanctioned for loan by way of loan. He was never called for investigation by police. Custodial interrogation is not necessary.

12 Mr. Praful Soni, appeared for the applicant in ABA No. 1935 of 2019. He submitted that the applicant is a lady. Her custodial interrogation is not necessary. She is not involved in the crime. No specific role has been attributed to her. It is submitted that she was appointed in ladies quota. She is a school teacher since 2009. No positive overt act is attributed to her. There is no evidence against her showing her involvement in misappropriation of funds. The prosecution has filed reply opposing her application. It is alleged that the applicant has abetted the commission of crime. The father-in-law of the applicant had availed unsecured loan of Rs.25 lakhs without giving security. The said loan was given in 2012. The applicant acted in connivance with President and Vice President of Patsanstha. The loans were disbursed without security.

13 Learned Advocate Mr. Subir Sarkar has represented the applicant in ABA No. 1965 of 2019. He submitted that the custodial interrogation of the applicant is not necessary. The entire matter relates to documents. Investigation has proceeded. They have not committed any offence. They are impleaded because they are immediate family members of Accused no.1 and some of the documents show that loans were disbursed against their names, however, FIR itself reveals that the amounts were withdrawn in cash from time to time and there are no corresponding entries. All the applicants were made members of Patsanstha at the instance of accused no.1. The loan accounts credit were in the names of the applicants were also part of the report. 95 persons had come forward in pursuant to the notice dated 02/03/2019. They are denying their involvement as beneficiaries. Certain amounts was shown to have been repaid by the applicants. The amounts were given on the instructions of Accused No.1. The applicant no.3 is wife of Accused no.1. She is housewife. Applicant no.1 is conducting business. They were not holding any posts. They have no powers of decision making. The prosecution has filed Affidavit-in-Reply opposing the application. In the Affidavit it is stated that the applicant no.1 has availed unsecured loan. Applicant nos. 2 and 3 have also availed unsecured loan. Learned Counsel for the

applicants pointed out that avernments in para 4, 5 and 6 of the Affidavit are contrary to the averment in para 14 of the Affidavit-in-Reply. In para 14 it is stated that applicants are close relatives of accused no.1. He was President of Patsanstha. The loan was availed by applicants for disbursed without security. The loan application form, loan agreement, promissory note is not executed by the applicants and guarantors for the loan accounts. There was no KYC compliance for the said loans. It is not necessary to find out involvement of other accused. Thus, according to learned Counsel for the applicants, the investigation has revealed that the applicants were not signatories for any document utilized for loan. Learned Counsel has tendered Additional Affidavit-in-Reply on behalf of the applicants therein. In the said Affidavit he has stated that the Audit Report entries suggesting repayment of monies to the Patsanstha in lieu of loans availed was Rs. 23 lakhs were never given as repayment of loan. The amount was given by the applicants through Asha Infrastructure and his friend at the instance of accused no.1. The amounts were to the current account of the Patsanstha and not to any loan account. These amounts were thereafter returned to Sujitkumar Doke and Asha Infrastructure. Further amount so given to the current account of the Patsanstha were taken as loan from Mannapuram Finance

Company. On repayment of the money from accused no.1, the amount was repaid to finance company. The bank statement/ summary of accounts has been annexed to the Affidavit.

14 Learned APP submitted that he is relying upon the contents of the Affidavit-in-Reply filed by the prosecution. He submitted that the applicants in ABA No. 1835 of 2019 and ABA No.1836 of 2019 had failed in their duty. They were internal auditors. There were lapses on their part. They did not verify bogus account deliberately. They did not point out irregularities in their Report. The applicants in ABA No. 1839 of 2019 had acted in connivance with co-accused. Their complicity has been revealed during the course of investigation. They were the Directors of the Patsanstha. There were deliberate lapses on their part. The applicant no.2 in ABA No. 1861 of 2019 has also played equal role. The evidence is collected against him. He was party to the conspiracy. The Applicant in ABA No. 1939 of 2019 has acted in connivance with accused no.1 and accused no.2. She was one of the Director of the Patsanstha. The applicant in ABA No. 1965 of 2019 is involved in the crime. Loans were obtained in their name. The investigation revealed his complicity. The applicant in all these applications were conspirators. Their involvement is writ large.

15 Learned Counsel for the intervener has also opposed the grant of Anticipatory Bail. He submitted that the fund belongs to the members of the Society. It has been misappropriated by all the accused. All the accused have participated in the crime. The balance amount of loan which is yet to be cleared is Rs.90 crores.

16 I have perused the documents on record. The applicants were granted interim protection in 2019. Investigation is going on since long. The prime role is attributed to Accused no.1 and Accused no.2. It is admitted by the prosecution that the main accused had admitted his liability and assured of returning the amount. Apparently the amount has not been returned. The misappropriation was to the tune of Rs. 30 crores but subsequently it has been reduced to Rs. 19 crores. I have considered the submissions of both the sides. In the light of role attributed to the applicants in all the applications, their custodial interrogation is not necessary. It is alleged that they were conspirators. The allegations are vague. The auditors were attributed charge of conspiracy. They have submitted the Report. It has not been established that all these applicants are beneficiaries of the misappropriated amount. It is not established that the amount misappropriated has been credited into the personal account. They need not be

subjected to custodial interrogation. The investigation can proceed without subjecting them to custody. Hence, relief under Section 438 of the Cr.P.C. can be granted to them. Hence, the following order.

ORDER

(i) Anticipatory Bail Application Nos. 1835 of 2019, 1836 of 2019, 1839 of 2019, 1861 of 2019, 1935 of 2019 & 1965 of 2019 are allowed;

(ii) Interim orders dated 22nd August, 2019, 28th August, 2019, 3rd September, 2019 and 6th September, 2019 are confirmed.

(iii) In the event of arrest of the applicants in connection with in C.R. No. 90 of 2019 registered with Otur Police Station, Dist. Pune the applicants be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(iv) The applicants shall attend the investigating officer on 20th, 21st, 22nd & 23rd September, 2021 between 11.00 a.m. to 1.00 noon and thereafter as and when called for.

(v) Anticipatory Bail Applications are disposed of accordingly.

(vi) Interim Application Nos. 2122 of 2021 & 2123 of 2021 stand disposed of accordingly.

REKHA PRAKASH PATIL

(PRAKASH D. NAIK, J.)

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Date: 2021.10.01 20:26:35 +0530