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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

## ANTICIPATORY BAIL APPLICATION NO. 2786 OF 2021

ANANDRAO VITHOBA ADSUL ....APPLICANT

V/s.

ENFORCEMENT DIRECTORATE, GOVERNMENT OF INDIA AND ANR .....RESPONDENTS

Mr. Ashok Mundargi Senior Advocate a/w Mr. Subodh Desai i/b Mr. Amol A. Patankar for the applicant
Mr. Anil Singh a/w ASG, a/w Mr. Aditya Thakkar a/w Mr. Shreeram Shirsat a/w Mr. Pranav Thakur a/w Ms. Smita Thakur a/w Mr. Amandeep Sra a/w Mr. Saurabh Kshirsagar i/b Hiten Venegavkar for ED-Respondent no. 1
Mr. Ajay Patil APP for the State

**CORAM : NITIN W. SAMBRE, J.**

**DATE: DECEMBER 3, 2021.**

**P.C.:**

1] Present applicant has moved this application seeking protection in ECIR/MBZO-I/02/2021 registered by the non applicant against the applicant under the provisions of Prevention of Money Laundering Act 2002 (Hereinafter referred to as 'the Act' for the sake of brevity). It is claimed that Investigating Officer is likely to exercise his discretion of arrest against the applicant under Section 19 of the Act.

2] Facts in brief for deciding present application are as under.

3] Applicant in 2006 claimed to have been elected as chairman of City Cooperative Bank, which disbursed number of loans, of which 190 went in non performing assets (NPA). Applicant having realized that staff of the bank viz. Chief Executive Officer (C.E.O.) etc have recommended sanction and disbursement of loan, contrary to established procedure, viz. security, scrutiny of papers etc., lodged a complaint with Mumbai Police resulting into registration of C.R. No. 204 of 2020 which is transferred and re-registered with Economic Offences Wing as EOW-CR-14/2020. In the said F.I.R., pursuant to instructions of the Investigating Officer, audit of the Cooperative bank of which applicant was chairman was carried out and certain objectionable conduct of the applicant and that of other directors and officials was noted. As a consequence, proceedings under The Maharashtra Cooperative Societies Act, 1960 were taken out. I am informed that in the proceedings under Section 88 of the said Act (for recovery from the responsible defalcator/each of the director) the State Government granted stay to such recovery.

4] In the aforesaid background, non-applicant having noticed that applicant in the capacity of chairman of the bank has received certain amount through his nears and dears from the borrowers. Provisions of Prevention of Money Laundering Act were invoked.

5] Applicant, thereafter approached before this Court in Criminal Writ Petition No. 3418/2021 which was disposed of on 14/10/2021 thereby giving liberty to the petitioner to invoke provisions of Section 438 of Code of Criminal Procedure, 1973. As such, applicant approached before learned Special Court which has rejected his prayer for grant of ad-interim protection. As such, this application.

6] Submissions of Mr. Mundargi, learned senior counsel for the applicant are, applicant is already facing appropriate proceedings, both under Maharashtra Cooperative Societies Act so also in C.R. No.

204/2020 transferred and re-registered with Economic Offences Wing as EOW-CR-14/2020. He would further claim that proceedings under Section 88 of The Maharashtra Cooperative Societies Act are already stayed by the State Government. In the aforesaid background, submissions are, in absence of appropriate material which is not provided to the applicant, it is difficult for him to make out nature of crime. He would urge that if the applicant is given an opportunity by granting protection, he shall appear before the respondent and explain the objectionable transactions, if any. According to him, from the affidavit filed before the Court below, allegations of certain transactions of receiving amount from the borrowers can also be explained as the said amount was duly returned in the very same financial year to the borrowers by the relative of the applicant who has borrowed the same without his knowledge. Learned senior counsel in the aforesaid background would urge that in the event of arrest, applicant needs to be protected as he is very much available and willing to cooperate in the investigation.

7] Mr. Anil Singh, learned Additional Solicitor General would strenuously urge that prima facie involvement of the applicant can be inferred from investigation carried out till date. According to him, applicant by misusing his position as that of chairman of cooperative bank has received the amount, from the borrowers in the form of his commission, either to himself or through his relatives and the said amount can be considered to be covered within meaning of definition of Money Laundering under the Act. He would further claim that since there is strong prima facie case against the applicant, applicant does not deserve any protection from this Court.

8] Considered rival submissions.

9] The fact about registration of crime no. 14/2020 with Economic Offences Wing at the behest of applicant, in the capacity of chairman of the cooperative bank is not in dispute. The allegations in the complaint which led to filing of the F.I.R. with the economic offences wing is worth referring to. Applicant himself has claimed about disbursement of undeserving loans based on illegal procedure adopted by the officials of the bank. Applicant has played lead role in the decision making process of sanctioning and disbursement of loan under the provisions of The Maharashtra Cooperative Societies Act and Rules framed thereunder is not in dispute.

10] As such, it can be apparently inferred that in the matter of sanctioning and disbursement of loans under the stewardship of applicant from 2006 onwards till this date was not in accordance with law. The said fact is further supported by action of the State Government against the applicant and other directors under Section 88 of the The Maharashtra Cooperative Societies Act. The aforesaid facts pinpoints direct involvement of the applicant in the commission of offence of sanctioning and disbursement of undeserving loans under the chairmanship of the applicant.

11] Of the 56 loan cases out of 190 NPA loan accounts, value of the property which was mortgaged to secure the amount of loan was enhanced, that too without any legal basis. In some of the cases, valuation which was earlier while releasing loan at the time of rescheduling was reduced in absence of any justifiable reasons. The aforesaid act primarily demonstrates that while sanctioning and disbursing the loan, interest of the bank was not safeguarded by properly securing the loan amount. Undeserving loans were disbursed and the applicant is alleged to have received the commission.

12] Statement of auditor, Ex-Chief Executive Officer and other staff of the bank pinpoints prima facie involvement of the applicant in the offence in question from which it can be inferred that necessary ingredients of offence punishable under the provisions of Prevention of Money Laundering Act are made out.

13] Statement of witnesses specifically pinpoints receipt of amount from borrowers, documentary evidence which are maintained by officers who paid such amount, primarily depicts prima facie involvement of the applicant in the offence in question. That being so, no case for bail is made out. Application stands rejected.

**[NITIN W. SAMBRE, J.]**