IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3519 OF 2019

Pratap Jaisinghrao Ghorpade .... Applicant
versus
State of Maharashtra .... Respondent

…....

- Mr.Sumant Deshpande a/w Nitesh Mohite i/b.Satyavrat Joshi, Advocate for Applicant.
- Mrs.G.P. Mulekar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 20th NOVEMBER, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.293/2019 registered with Sahakarnagar Police Station, Pune, under sections 420, 406 r/w 34 of the Indian Penal Code and under sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act (for short 'MPID'). However, when the charge-sheet was filed, section 409 of Indian Penal Code was also applied. The Applicant was arrested on 11/05/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr.Sumant Deshpande, learned counsel for the Applicant and Mrs.G.P. Mulekar, learned APP for the State.

3. The FIR was lodged on 13/04/2019 by one Tukaram Aba Kadam. He has stated that M/s Dhokeshwar Multistate Urban Co-operative Society (hereinafter referred to as ‘the said credit society’) has main branch at Lasalgaon, District Nashik. It has its regional branch for Pune region, of which the present Applicant was the Regional Manager. It is a credit society and has branches in Maharashtra and Gujarat. It has a branch at Balaji Nagar, Dhankavadi, Pune. It is alleged that the Applicant was aware that the first informant and others had invested their amounts in another credit society. The Applicant induced the first informant and others to disinvest their amounts from that credit society and instead, invest those in the Applicant’s credit society. The FIR mentions regarding investment of the first informant, Madhukar Baburao Khopde and Uttamrao Shriram Chaudhary. The FIR is about investment of Rs.19,78,382/- in the Applicant’s credit society, in Balaji Nagar branch. Subsequently their investment was not returned, they were not given the

promised interest. The FIR mentions that the Applicant himself in his own name and in the name of his relatives had purchased a land worth Rs.1,33,00,000/- and apparently he had used the society's amount. On this basis, the FIR is lodged. The investigation was carried out and the charge-sheet was filed.

4. The learned counsel for the Applicant submitted that the Applicant was an employee of the said credit society. Its Chairman Satish Popatrao Kale was granted bail in connection with another C.R. No.I-124 of 2017 registered with Lasalgaon Police Station, Nashik. In that case he is granted bail by this Court (Coram : Prakash D. Naik, J.) vide order dated 25/02/2020 passed in Bail Application No.2321 of 2018. He submitted that the allegations show that Satish Kale was incharge of the said credit society and was the main beneficiary. The Applicant had to follow his orders, otherwise he would have lost his job. Learned counsel for the Applicant however fairly submitted that Satish Kale is still in custody in the present case.

5. Learned counsel further submitted that there are allegations reproduced in the affidavit-in-reply filed on behalf of the State. The main allegation is that he had entered into a land transaction in his personal capacity while using the amount of the credit society. Learned counsel submitted that the concerned land was at Kondhwa bearing survey No.57, Hissa No.1/2. Learned counsel submitted that the resolution was passed in that behalf Chairman Satish Kale giving authority to the Applicant to enter into the transaction in his personal capacity if necessary because the developers were not willing to enter into the transaction in respect of land purchased in the name of the credit society. He submitted that the other land transactions have not caused any monetary loss to the credit society and in one case the loan amount was given to the concerned person by the Applicant in his personal capacity. That amount has nothing to do with the business of society.

6. Learned APP opposed this application on the basis of averments made in the affidavit. She submitted that the role of the Applicant is made out in the charge-sheet.

7. I have considered these submissions. The allegations from the charge-sheet are reproduced in the affidavit-in-reply from paragraph No.6 onwards. According to investigation carried out; the Applicant had obtained signature of Chairman on blank letter pad and had prepared forged resolution in respect of purchasing land situated at Kondhwa. The price of the land was Rs.1,33,50,000/-, but in the agreement for sale only amount of Rs.60,00,000/- was mentioned. It was paid to the land owner Dinesh Gavhane. The investigation reveals that the land owner had received Rs.1,00,00,000/- and there is difference of Rs.40,00,000/- in the ledger of the said credit society. The said transaction was subsequently cancelled and Gavane returned Rs.80,00,000/- by cheque. This shows that the figure mentioned in the agreement was lesser than the actual amount of transaction. In this context, the affidavit goes on the mention that the said property situated at Kondhwa Khurd admeasuring 10.25 Guntha in the name of the present Applicant stands attached.

8. The next allegation is that there is difference of Rs.5,00,000/- in the ledger of the co-operative society in respect of transaction for development of property situated at Nimbalkar Wadi.

9. The affidavit also mentions that the Applicant has not co-operated in production of hard disk concerning record of society.

10. I have considered these submissions and I have perused the charge-sheet, with assistance of both the learned counsel. Apart from the first informant, statement of other investors are recorded during investigation. Those investors have given details of their investments e.g. one Shivaji Konde has invested Rs.10,50,000/-, One Atmaprasad Shukla had invested Rs.19,00,000/-, one Vilaschandra Bhosale had invested Rs.1,95,000/-, One Kuldeep Thopte had invested Rs.1,25,000/-, one Keshav Shitole had invested Rs.1,40,000/-. One Rahul

Kadam, who was working with the said credit society as Zonal Development Officer, has made similar allegations in his statement.

11. The report of the investigating agency dated 03/08/2021 addressed to the Public Prosecutor, High Court, Mumbai, mentions that the investigation till date had revealed that the misappropriated amount was Rs.1,67,29,582/-. A copy of the said report is taken on record and marked 'X' for identification.

12. As far as the land at Nimbalkar wadi is concerned, it was at survey No.5 Hissa No.1, which is the subject matter of the transaction. The owners were Sayaji Nimbalkar and Shivaji Nimbalkar. The transaction was not completed but more importantly it was entered into by the Applicant on behalf of credit society and not in his personal capacity.

13. In another transactions in respect of survey No.56 Hissa No.1/a/4/16 at Kondhwa Khurd the sale deed was

executed by the Applicant on behalf of the Credit society and not in his personal capacity. Therefore he is not a beneficiary as far as that transaction is concerned. Subsequently the same land was sold to one Shahanawaz and thus the society has received that amount.

14. Therefore the only serious allegation remains against him is in respect of survey No.57, Hissa No.1/2 at Kondhwa Khurd. This agreement was entered into by the Applicant and others in his personal capacity. His wife was also one of the parties along with him, who had purchased it from Gavhane family. In that context, the charge-sheet contains a resolution dated 01/02/2017 purportedly signed by the Chairman of Credit society giving authority to the Applicant and one Dhanykumar Mane to enter into the said transaction in respect of that land and even they were given authority to enter into the transaction in the name of the Applicant and Dhanyakumar Mane, if felt necessary.

15. Learned APP on instructions stated that this particular document is not sent for examination by hand writing experts.

Therefore at this stage, it is difficult to test veracity of this particular document. Suffice it to say that, at this stage, the Applicant has a document giving him authority to enter into the transaction in his personal capacity. Thus this was out of arrangement, which was done at the behest of the Chairman. As rightly submitted by learned counsel for the Applicant, the Applicant was an employee of the society and he had to follow the directions of the Chairman. Nonetheless, it is a serious allegation against the Applicant. He will have to give explanation during trial.

16. Considering the above discussion, the main allegation against the present Applicant remains the transaction in respect of survey No.57 at Kondhwa Khurd. In this context as pointed out by learned APP, the property is attached and the interest of the investors to that extent is safeguarded. The allegations against the present Applicant are restricted to the allegations made in the affidavit which are referred to hereinbefore. However, maximum punishment for the offence punishable u/s

420 is 7 years, under MPID it is 6 years, u/s 406 it is 3 years and u/s 409 though life imprisonment can be imposed, the section 409 of I.P.C. also provides for imprisonment which may extend to ten years. At this stage, the Applicant is in custody since May 2019. The main property that he was concerned with is already attached. His further custody is not necessary for investigation purposes. There are no other criminal antecedents against the present Applicant. The trial is not likely to commence in near future. Even though it finally starts, it is likely to take a long time to conclude. Therefore it would be just and proper to release the Applicant on bail on certain conditions. It is made clear that all the observations made in this order are restricted to passing of this order. The trial Court shall not be influenced by these observations.

17. Hence, the following order :

ORDER

(i) In connection with C.R.No.293/2019 registered with Sahakarnagar Police Station, Pune, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one or two sureties in the like amount.

(ii) The Applicant shall deposit his passport, if any, with the Investigating Officer, before being released on bail.

(iii) The Applicant shall not leave India without prior permission of the trial Court.

(iv) The Applicant shall attend all the dates in the trial Court, unless prevented by a reasonable cause.

(v) The Applicant shall fully co-operate in further investigation, if any.

(vi) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)