IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) 219 OF 2021
(Naresh s/o. Babulal Murti..vs.. State, thr PSO, PS Ramdaspeth, Akola,Dist. Akola)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders. *Court's or Judge's orders.*

Mr. Anil Mardikar, senior counsel with
Mr. R. Khemuka, counsel for applicant.
Mr. N.S. Rao, APP for non-applicant/State.

CORAM: ROHIT B. DEO, J.
DATE:27.10.2021.

Heard.

2. The applicant is seeking bail in connection with Crime 94/2020, registered with Police Station, Ramdaspeth, Akola, for offences punishable under sections 120-B, 201, 406, 409, 418, 420, 467, 506 read with section 34 of the Indian Penal Code ("IPC") and section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ("MPID Act").

3. The crime is registered on the basis of report dated 27.6.2020, lodged by the auditor, who conducted the audit of Akola Shahar Mahanagar Palika Shikshak Sahakari Pat Sanstha Maryadit, Akola ("Society"), for the period

1.4.2012 to 31.3.2017. The applicant, who was the President of the Society during the relevant period, was arrested on 28.6.2020. The investigation is complete and the chargesheet is filed on 23.9.2020. While as many as twelve accused, including the office bearers and the manager, are arraigned, the applicant is the only accused in custody.

4. The learned senior counsel for the applicant Mr. Anil Mardikar would submit that in essence the allegations, substantially if not entirely, take exception to the discharge of duties and responsibilities as the President of the Society. The submission is that while financial irregularities are alleged, other than the observations in the audit report, there is no independent material in the chargesheet as would suggest criminal culpability and it is quite possible that the allegation of financial misconduct stems from the failure to maintain proper accounts. The learned senior counsel states on instructions received, that in order to demonstrate bonafides, and to ensure that any order for recovery which may be passed against the applicant in the statutory proceedings which may be

conducted under the Maharashtra Cooperative Societies Act, is implemented forthwith, the applicant shall deposit, as a pre-condition to release from custody, an amount of Rs. 5,00,000/- (Rupees Five Lacs) in the jurisdictional Court.

5. I have scrutinized, with the assistance of the learned counsel and the learned APP Mr. N.S. Rao, the material in the chargesheet. According to the auditor, the amount of misappropriation is Rs. 23,02,963/- (Rupees Twenty Three Lacs Two Thousand Nine Hundred Sixty Three). This figure is arrived at on the premise that several expenditures which are shown, were either unnecessary or exorbitant or exaggerated. Illustratively, the amount shown to have spent on litigation is included in the said figure. From perusal of the audit report, it is difficult to come to a prima facie view that the role attributed to the applicant, in complexity or gravity, is different or distinct from the role attributed to the Secretary, who is released on bail. I would refrain from minutely examining the material on record, much less commenting thereon lest either the accused or the prosecution is prejudiced. Suffice it to state, that I do not

consider further incarceration necessary. The prosecution case appears to be entirely based on documentary evidence and in particular the observations in the audit report. It is not even the case of the prosecution that if released on bail, the applicant shall not be available to face the trial, or that the applicant shall be in a position to subvert the trial.

6. While economic offences do constitute a class apart for the purpose of bail, open ended detention would only be a pre-trial punishment. Considering that the applicant has already suffered detention of 1 year and 4 months, and the likelihood that the trial may not reach its logical conclusion in near future, a case for bail is made out.

7. The applicant be released on bail in connection with Crime 94/2020, registered with Police Station, Ramdaspeth, Akola, for offences punishable under sections 120-B, 201, 406, 409, 418, 420, 467, 506 read with section 34 of the Indian Penal Code and section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, on executing PR bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with one

solvent surety of the like amount.

8. As undertaken by the applicant, the jurisdictional Court shall ensure that the amount of Rs. 5,00,000/- (Rupees Five Lacs) is deposited before giving effect to this order.

9. The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

13. The applicant shall not leave the country without the permission of the trial Court.

Judge

Belkhede