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

CRIMINAL APPLICATION (BA) NO. 502 OF 2021

Wasudeo s/o Vithobaji Hirudkar
vs.
The State of Maharashtra through PSO PS, Wathoda, Dist. Nagpur and another

Office Notes, Office Memorandum of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. A. A. Naik and Madhur Deo, Advocate for applicant.
Mr. S. A. Ashirgade, APP for respondents.

CORAM : MANISH PITALE J.

DATED : 17/07/2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this application, the applicant is seeking bail in connection with FIR dated 24/12/2020 bearing No.425/2020, registered at Police Station, Wathoda, Nagpur, whereby offences under Sections 420 and 409 read with Section 34 of the Indian Penal Code (IPC) were registered against accused persons. Upon completion of investigation, charge-sheet has been filed in April, 2021 for offences under Sections 409, 420, 467, 468, 469, 471, 120-B read with Section 34 of the IPC.

3. The learned counsel for the applicant submits that the applicant has not been specifically named in the

FIR, although the Board of Directors of the concerned Society have been named as accused and it is an admitted position that the applicant is a Director.

4. The FIR has been registered at the behest of an Auditor, who was appointed for conducting audit of the concerned Society i.e. Vishwakarma Gramin Bigar Sheti Sahakari Pat Sanstha Maryadit, Kharbi. The Auditor, on the basis of the audit report dated 27/07/2019, has caused the FIR to be registered. It has been alleged that the named accused persons, as well as the Board of Directors of the said Society were responsible for large scale financial irregularity, leading to the aforesaid offences being committed for which an investigation was necessitated upon registration of the FIR.

5. The learned counsel for the applicant invited attention of this Court to the aforesaid audit report, as also the report leading to registration of the FIR. By inviting attention to the contents of the said report, it was emphasized that even as per the Auditor, the persons responsible for the said offences were one Digambar Anandrao Yeole, i.e. Manager of the Society along with Suvarna Pramod Kakde i.e. Cashier of the Society. Apart from this, President - Purushottam Tulshiram Bele and the Vice President - Naresh Tulshiram Dandekar were also specifically named in the report. The learned counsel for the applicant submitted that insofar as Board of Directors were concerned, vague and omnibus allegations have been made even if the contents of the audit report were to be accepted. It was submitted that at worst, the applicant as a member of the Board of Directors could be said to have been negligent in taking care of the affairs of the said Society, but even prima facie no criminal liability could be attributed for the alleged misappropriation of the amount to the tune of Rs.2.22 Crores. On this basis, it was submitted that even prima facie ingredients of the alleged offence were not made out despite the charge-sheet running into about 2000 pages.

6. It was further brought to the notice of this Court that one Pravin Madhukar Chamat, who was the Chief Executive Officer of the said Society was granted anticipatory bail by order dated 24/06/2021, passed by this Court in *Criminal Application (ABA) No. 272 of 2021* (*Pravin Madhukar Chamat vs. State of Maharashtra and another*). On this basis, it was submitted the present application deserves to be allowed.

7. Mr. Ashirgade, learned APP opposed the contentions raised on behalf of the applicant. Attention of this Court was invited to a particular document in the charge-sheet said to be a fixed deposit receipt signed by the applicant in January, 2015. This was highlighted in order to contradict a statement made in the application on behalf of the applicant that he has not played any active role in the Society, despite being on the Board of

Directors from 2015 onwards. In fact, in the application it has been stated that the applicant has not been attending meetings of the Board of Directors since 2015 and that this is borne out by material that has come on record with the charge-sheet.

8. The learned APP further submitted that the role of the applicant in the present case is significant for the reason that large amount of monies were advanced without proper scrutiny and that the care that was expected to be taken by the applicant as a member of the Board of Directors of the Society was not taken, thereby indicating complicity of the applicant in the large scale financial loss caused to the Society. By referring to the audit report and documents filed along with the charge-sheet, the learned APP emphasized that if the applicant is to be released on bail, there is possibility of interference with the investigation and the investigator would face difficulties in unearthing the role of other Directors.

9. A perusal of the record shows that in the FIR dated 24/12/2020, registered at the behest of the Auditor, the specific role of the aforesaid Manager and Cashier has been highlighted, while the President and Vice President of the Society have been named. There is a reference to the Board of Directors, as accused No.5, but, admittedly the applicant has not been specifically named in the FIR. The report lodged by the Auditor, leading to registration of the FIR, also does not specifically name the applicant or attribute any particular amount allegedly misappropriated by him in the present case.

10. There is no doubt about the fact that the allegations made in the audit report, the FIR and the material brought on record along with the charge-sheet indicate that according to the Investigating Officer, there has been misappropriation of more than Rs.2.22 Crores in the present case. But that in itself cannot be the only factor for rejecting the prayer made in the present application. A perusal of the audit report shows that at various places the Auditor has attributed specific role to the Manager Digambar Yeole and Cashier Suvarna Kakde, apart from the President and Vice President of the Society. At a few places, there is reference made to the alleged negligence on the part of the Board of Directors due to which, the aforesaid misappropriation of amount took place. Even in audit report the exact role or involvement of the applicant is not specified and allegations have been made against the Board of Directors. There is no dispute about the fact that the applicant is indeed a member of the Board of Directors and to that extent, there is a reference to his alleged involvement along with others.

11. As noted above, in the application it has been specifically stated that although the applicant is a member of the Board of Directors of the Society, but he has not been actively involved since the year 2015. In fact, it is specifically stated that the applicant has not attended a single meeting of the Board of Directors pertaining to the period for which the audit report was submitted. It is admitted that between 2005 and 2014, the applicant was indeed attending meetings and his signatures can be found on the record, but thereafter, he did not attend any meeting. This specific assertion appears to be based on the documentary material available on record.

12. As opposed to this, learned APP has submitted that the applicant was very much part of the Board of Directors and therefore, his role could not be denied in the facts and circumstances of the present case. The FIR was registered on the basis of the audit report and the oral report submitted by the Auditor on the basis of such audit report. The learned APP has emphasized on a particular document, which happens to be a fixed deposit receipt allegedly bearing the signature of the applicant pertaining to January, 2015, to claim that the applicant was indeed actively involved.

13. Be that as it may, the nature of allegations made in the present case, at the present moment and the material available on record at worst indicate the involvement of the applicant to the extent of his being a member of the Board of Directors. Any direct allegation or involvement pertaining to misappropriation of specific amount, prima facie, is not found on the basis of the material available on record. Merely because a particular document allegedly bears signatures of the applicant is not sufficient to demonstrate that the applicant could be placed in the same category as the specifically named accused i.e. Manger, Cashier, President and the Vice President of the Society. Even in the report submitted by the Auditor there is reference to the negligence on the part of the Board of Directors, which is significant factor. The nature of offences alleged in the present case, including under Section 409 of the IPC would necessarily require dishonest misappropriation and fabrication of documents, thereby, showing that there ought to be material available on record to directly connect the accused with such offences.

14. As noted above, such material, as of now, is not brought to the notice of this Court, despite the charge-sheet running into about 2000 pages. It is obvious that looking to the nature of the offences registered in the present case, the evidence and relevant material consist of documents and that the Investigating Officer has already taken custody of such relevant documents. It is also not the case of the respondent State that custody of the applicant is required for recovery of specific documents from his custody. There is hardly anything to indicate that if the applicant is released on bail, the investigation would be hampered or that keeping him in custody is necessary for completion of investigation. The charge-sheet has been already filed in April, 2021 and voluminous documentary material is already placed on record on behalf of the State.

15. In these circumstances, particularly because the applicant has been in jail since 30/01/2021, this Court is of the opinion that the applicant deserves to be enlarged on bail, subject to imposition of appropriate conditions.

16. In view of the above, the present application is allowed in the following terms :-

(A) The applicant shall be released on bail in connection with FIR No.0425/2020 dated 24/12/2020, registered with Police Station Wathoda, Nagpur on furnishing PR Bond of Rs.1,00,000/- [Rupees One Lakh only] and surety in the like amount.

(B) The applicant shall cooperate with the proceedings in pursuance of the said FIR and attend proceedings before the concerned Court on each date.

(C) The applicant shall not himself or through any other person influence witnesses or tamper with the evidence.

(D) The applicant shall attend the office of the respondent No.2 i.e. Economic Offences Wing, Civil Lines, Nagpur, every Monday between 10.00am to 12.00 noon, till the completion of trial.

(E) The applicant shall not visit the office of the Vishwakarma Gramin Bigar Sheti Sahakari Pat Sanstha Maryadit, Kharbi, during the pendency of the trial and he shall not in any manner try to contact the office bearers of the said Society.

17. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant and that the concerned Court shall not be influenced by any observations made in this order, in any proceedings undertaken in the future.

18. Application is disposed of.

JUDGE

KOLHE/P.A.