IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 65 OF 2022

Ramesh S/o Sarjerao Gawali Applicant

Versus

The State of Maharashtra Respondent

Ms. Pradnya Talekar, Advocate for the applicant.
Mr. A. V. Deshmukh, APP for respondent/State.
Mr. D. B. Rode, Advocate for complainants.

CORAM : M.G. Sewlikar, J.

DATE : 2nd MARCH, 2022.

PER COURT :

1. By this application, applicant is seeking his release on bail in connection with Crime No. 618/2020 registered with Shrigonda Police Station, District. Ahmednagar for the offences punishable under Sections 420, 409, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code.

2. The informant is the Deputy Auditor. He had received directions to conduct audit of Dhanashree Mahila Gramin Bigar Sheti

Shahakari Pathsanstha Maryadit, Kashti ("Society" for short) for the period from 26th September, 2013 to 31st March, 2018.

3. One Smt. Jyoti Sarjerao Gawali is the wife of the applicant. She is the Chairman of the said society. By resolution dated 13th October, 2013, the society had authorised the applicant to keep the cash-in-hand. Accused Bharat Sadashiv Doiphode was the Manager of the said society. After conducting audit, it was revealed that the applicant along with his wife Smt. Jyoti Gawali and the Manager Bharat Sadashiv Doiphode committed fraud to the extent of Rs. 54,18,046/-. All these persons i.e. the applicant, the Chairman and the Manager committed fraud as under :-

i)	Rs. 65,000/-	-	This amount was not deposited on time but was deposited late on account of which there was loss of interest.
ii)	Rs. 29,594/-	-	This amount was not deposited on time but was deposited late on account of which there was loss of interest.
iii)	Rs. 50,000/-	-	This amount was not deposited in the account books.
iv)	Rs. 22,75,000/-	-	Without documents, loan was advanced.
v)	Rs. 3,64,000/-	-	Deposits were not entered in the

			account books.
vi)	Rs. 19,51,000/-	-	Amount was not entered in the account books.
vii)	Rs. 1,39,100/-	-	Amount expended without voucher.
viii)	Rs. 2,55,605/-	-	Less amount was shown in account books though there were no signatures on the voucher.
ix)	Rs. 2,517/-	-	Less amount was deposited in the account books than paid by the depositors.
x)	Rs. 1,08,520/-	-	More amount was paid to the account holders though there was no sufficient balance in their account.
xi)	Rs. 1,85,710/-	-	Suspicious expenses shown in the account books.

Thus, the total amount of fraud comes to Rs.54,18,046/-.

4. Heard Ms. Pradnya Talekar, learned counsel for the applicant, Shri A. V. Deshmukh, learned APP for the State and Shri Rode, learned counsel for the depositors.

5. Learned counsel for the applicant submitted that the society did not issue notice to the applicant. Therefore, the applicant did not get any opportunity to explain his side of the story. She submitted that the applicant has no concern with the said society.

The resolution dated 13th October, 2013, shows that the name of the applicant has been added subsequently. This has been done by the Board of Directors to evade their responsibilities. She submitted that the applicant was never informed by any communication by the society that he was authorised to handle the cash-in-hand. She submitted that the entire record shows that the name of the applicant does not appear anywhere in the account books. She submitted that the audit report shows that all the three i.e. the applicant, the Chairman and the Manager have committed fraud in collusion. Both the Chairman and the Manager have been released on bail. Though the role of the applicant is similar, he is detained behind the bars. He was arrested on 22nd July, 2021. She submitted that charge-sheet is filed and, therefore, detention of the applicant is not warranted.

6. Learned APP Shri Deshmukh submitted that the applicant is the mastermind of the entire fraud. He submitted that he had prepared demand drafts in the name of the depositors. The memorandum of the applicant shows that he had kept these demand drafts at his residence. They were recovered from him and they were encashed from the concerned banks. He further submitted that

audit report shows that loan was advanced to the family members and relatives of the applicant without any security. He submitted that the applicant and his wife Smt. Jyoti also took loan from the society. He further submitted that deposit receipt No. 126 shows that it is a blank Fixed Deposit Receipt. Subsequently, it was found that it was given to one Datir Pandurang Narayan on 15th September, 2015. There is no entry in the account books to that effect. According to him, there are statements of witnesses which show that they were paid amount though they were not entitled to it. Statement of Arun Shrirang Shete shows that amount of Rs.1,800/- was paid to him though he had not kept any deposit with the society. Same is the statement of Rahul Waman Pachpute. He submitted that the statement of Ambadas Bhanudas shows that he had deposited amount of Rs. 19,51,00,000/- with the society. But no receipt was issued in his favour and he was informed by the Manager and the Chairman that receipt book had exhausted and the receipt was given on letter head. He further submitted that the statement of witnesses show that the applicant had collected the amount from the depositors and did not deposit it in the society. He submitted that all these transactions show that the applicant is the mastermind of the fraud. Therefore, he should not be released on bail.

7. The fulcrum of the prosecution case is the resolution by which the applicant was authorised to handle the cash. This resolution is dated 13th October, 2013. This resolution shows that it was resolved that accused Bharat Sadashiv Doiphode was appointed to act as a Secretary and daily collection agent of the society. A line seems to have been added to the effect " परंतु रोख शिल्लक ठेवण्याचे अधिकार चेअरमनचे पती रमेश गवळी यांना राहतील." With the naked eyes, it can be seen that these words have been subsequently added. The minutes do not show that appointment of the applicant to handle cash was on the agenda of the meeting. Moreover, there is nothing on record to show that the applicant was communicated by the society that he was authorised to handle cash. Applicant, admittedly, is not the office bearer of the society. Therefore, *prima facie*, there is no evidence to show that the applicant was handling the cash. Moreover, no account books are produced on record to show that the applicant had signed any account book. At this stage, there is nothing on record to show that the account books were written by the applicant.

8. So far as recovery of demand drafts is concerned, it is pertinent to note that the panchanama does not show that these

demand drafts were prepared in the name of the depositors of the society. Xerox copies of those demand drafts were not collected. Therefore, only on recording evidence it would be clear whether those demand drafts were in the name of the depositors. The statement of Rahul Pachpute shows that he had paid some amount to the applicant. But how much amount he had paid to the applicant is not stated by him. A vague statement is made that he had paid the amount to the applicant. Statements of witnesses show that the applicant, the Chairman and the Manager collectively committed fraud. Even the First Information Report also shows that the applicant, the Chairman and the Manager are jointly responsible for the fraud. The Chairman and the Manager are released on bail. In this view of the matter, it appears that the name of the applicant seems to have been subsequently added. It was argued that the applicant has criminal antecedents. The criminal antecedents will have relevance only when *prima facie* case is made out against the applicant in this crime. At this *prima facie* stage, criminal antecedents will have no relevance because the name of the applicant seems to have been added subsequently. In this view of the matter, following order is passed :

ORDER

i) Application is allowed.

ii) Applicant be released on PR Bond of Rs.75,000/- (Rs. Seventy Five Thousand) with one solvent surety in the like amount in connection with Crime No. 618/2020 registered with Shrigonda Police Station, District. Ahmednagar for the offences punishable under Sections 420, 409, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, on condition that he shall not tamper the prosecution evidence, he shall not leave the jurisdiction of the concerned police station and shall deposit the passport if any, with the concerned police station.

iii) Application stands disposed of.

iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge

dyb

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 313 OF 2022 IN
BAIL APPLICATION NO. 65 OF 2022

Babanrao Vishwanath Pachpute & another — Applicants

Versus

Ramesh Sarjerao Gawali & another — Respondents

Mr. D. B. Rode, Advocate for the applicant.
Mr. A. V. Deshmukh, APP for respondent/State.
Ms. Pradnya Takalkar, Advocate for respondent No. 1.

CORAM : M.G. Sewlikar, J.

DATE : 2nd MARCH, 2022.

PER COURT :

Application is disposed of.

(M. G. SEWLIKAR)
Judge

dyb