IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 571 OF 2022

Santosh s/o. Sambhajirao Kadam,
Age 48 years, Occu. Agri.,
R/o. Ambika Vasti, Deolali Pravara,
Tq. Rahuri, District Ahmednagar .. Applicant
Versus
The State of Maharashtra.
Through Police Station Officer,
Tofkhana Police Station,
Ahmednagar, Tq. and Dist. Ahmednagar .. Respondents

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Mr. Shirish Gupte, Senior Advocate instructed by Mr. R. R. Karpe, Advocate for the Applicant
Mr. V. M. Kagne, A.P.P. for Respondent / State

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CORAM : S. G. MEHARE, J.

[Date of reserving the order : 06.07.2022
Date of pronouncing the order : 22.07.2022]

ORDER :-

1. The applicant is seeking bail under Section 439 of the Code of Criminal Procedure ("Cr.P.C") in C.R.No. 6293 of 2020 registered with Police Station Tofkhana, District Ahmednagar, for the offences punishable under Sections 3, 4, 5, 6, 7, 8 and 13 of the Maharashtra Protection of Interest of the Depositors (In Financial Establishments) Act, 1999 ("MPID Act") and Sections 403, 406, 408, 409, 417, 418, 419, 420, 421, 422, 423, 424, 426, 427, 465, 466, 468, 471, 474, 477, 477-A, 120-B, 107, 108, 109, 110, 111, 504 and 506 read with Section 34 of the Indian Penal Code (IPC).

2. It is alleged against accused that all the Directors, Chairman,

Vice-Chairman and the servants of the Co-operative Patsanstha have lured the complainant and other investors that they will get the higher interest compared to the other financial institutions. They have also falsely promised that deposits are having insurance protection and K.Y.C. facility will also to be given to them. Falling prey to the lure of the officials of the co-operative credit society, the first informant deposited Rs.54,657/- in the term deposit. However, the promises made by the officials of the co-operative credit society proved false and deceptive. The officers of the co-operative credit society did not repay the amount deposited by the applicant when the deposits were matured. Not only this, the Directors have also changed the name of the co-operative credit society.

3. It has been vehemently argued by the learned senior counsel for the applicant that the police did not register the crime, however, the crime was registered as per order of the Magistrate under Section 156(3) of the Cr.P.C. The Co-operative Credit Society was allowed to deposit the money in the State Bank of India. The co-operative credit society sustained the capital loss from 2015-2019. Hence, the money could not be refunded. Around 100 cases have been filed against the borrowers after obtaining the certificates under Section 101 of the Maharashtra Co-operative Societies Act, 1960 ("the Act") and the amount of Rs.3 Crore has been recovered. The applicant was the Director in the year 2015.

The applicant has been exonerated in an inquiry under Section 88 of the Act. Considering the allegations against the applicant, he would not have been arraigned as an accused under the M.P.I.D. Act. The audit report reveals that there was no misappropriation, but it was mismanagement. The applicant had no control over the transactions of the Co-operative Credit Society after 2015. Unfortunately, the Chairman who was having the entire control over the business of the co-operative credit society has suddenly died. Since, then the society business came down.

4. The society is still function. The guardian officer has been appointed on 04.02.2016 and he is running the society. Huge amount has been returned to the small depositors. There are no elements of cheating. The present society does not fall under the M.P.ID. Act. In the earlier bail application filed by the other co-accused, the issue, whether the co-operative credit society falls under the M.P.I.D. Act, was not considered. Therefore, the applicant has ground to argue on that point.

5. In support of his contention that the applicant has been exonerated in an inquiry under Section 88 of the Act, he relied on the report of the Inquiry Officer dated 30.10.2017. He has also referred to a letter dated 14.12.2020 issued by the District Deputy Registrar, Co-operative Societies, Ahmednagar, to point out that since the Directors have been exonerated in an inquiry under

Section 88 of the M.P.I.D Act and the audit is also done, therefore, the offence under the M.P.I.D. cannot be applied. He has vehemently argued that the material investigation is over. The applicant is behind the bars from 02.02.2022. No purpose would be served keeping him behind the bars. Therefore, the applicant may be released on bail.

6. Per contra, the learned APP has vehemently argued that though the Deputy Director has addressed a letter to the depositors dated 14.12.2022 contending that it would not be appropriate to register the crime under the M.P.I.D. Act, the applicant has been arraigned as an accused. A serious economic offence has been committed by the applicant. The forensic audit of the society was conducted as per the Government Resolution dated 08.04.2020. Twenty four directors and other accused are still absconding. The applicant was the Director of the society from 2000 to 2015. He is the mastermind behind the fraud. The forensic audit report was considered in a previous bail. He would refer to page No. 444 of the charge sheet and would point out that software used by the society for recording of transactions was provided by one of the Board of Directors and the system was not audited (EDP Audit) since installation, hence, the system is not reliable with respect to the authenticity of the data. In this report, it has been specifically observed that, the Board of Directors of the present society passed resolution to increase rate of interest @

12.5 % p.a. in contravention of a circular dated 01.04.2004 issued by the Commissioner of Co-operative Societies declaring ceiling limit for interest on deposits not more than 11 % p.a. This is the evidence to allure the depositors.

7. It has also been observed in the said report on page no. 449 that the investment in mutual fund of Rs. 6 Crore is misappropriation of funds and assets of the society and results in fraud. It has also been observed in the said report that the society did not obtain the required documents as mentioned in the Rule for loan policy as per the model bylaws accepted by the society. Use of forged document for availing credit facilities was observed in verification of the cases given in the said report. The loan was sanctioned to various parties but it was disbursed to one Dr. Nilesh Vishwas Shelke. There is evidence of borrowers of the witnesses that they have not raised the loan, however, the documents and signatures were used for availing such loan facilities. This is clear cut evidence of forgery. It has also been discovered that the management of the society misused the depositors' fund by investing in the mutual funds in the year 2006 by violating rules of model bylaws as well as rules framed under the Act. It has also been observed that during this period, the present applicant was the Director. It has also been observed that there was heavy cash withdrawal from the said bank account and the manager of the society failed to explain the use of these funds. The term deposits

were converted into saving account without sanction in the Annual General Meeting and the resolution was passed in the board meeting that from financial year 2015-16 on wards interest on saving bank will be repaid to the depositors. It has been concluded in the said report that a fraud has been played with huge amount.

8. The learned A.P.P. would also argue that there is no substantial change after passing the earlier order except filing the charge sheet. He relied on the Judgment of the Hon'ble Supreme Court, in the case of ***Nimmagadda Prasad Vs Central Bureau of Investigation, 2013 AIR (SC) 2821***. The applicant was the instrumental in doing the illegalities and fraudulent acts, therefore, the application may be rejected.

9. In reply, Mr. Gupte, the learned senior counsel, referring to page No. 458 of the report, argued that the amount of Rs.59.51 Crore was outstanding and the properties of the society were secured. Learned senior counsel Mr. Gupte for the applicant, reading definition of the 'Financial Establishment' given under Section 2(d) of the M.P.I.D. Act, has vehemently argued that a society owned and controlled by the State Government or Central Government or Banking Company does not include the financial establishment under the Act. Since the guardian/administrator has been appointed, a society has been taken by the Government.

Hence, the provisions of the MPID Act would not apply in this case.

10. After discovering the fraudulent acts and cheating the depositors, the criminal action has been taken against them. The audit has also been carried out. The forensic audit was done. In that audit various infirmities, illegalities and fraudulent acts committed by the Board of Directors have been discovered. Since there were complaints against the Board of Directors, the Government appointed the guardian/administrator on 04.02.2016. Initially the society i.e. financial establishment was run by the Board of Directors, which was registered under the Act. The administrator/guardian officer was appointed after discovering the fraudulent acts committed by the Directors and staff. Since then he is administering the Credit Society. Appointing the public officer to administer any such Credit Society to protect the interest of the depositors,would certainly not mean that such financial establishment was owned and controlled by the State Government, therefore, this Court does not find a substance in the arguments by learned senior counsel Mr. Gupte for the applicant that since the co-operative society was under the control of the Government, the provisions of M.P.I.D. Act would not apply.

11. The applicant had filed bail application bearing Criminal Miscellaneous Application No. 196 of 2022 before the learned Additional Sessions Judge, Ahmednagar seeking regular bail.

However, during interregnum, a charge sheet has been filed by the Investigating Officer, therefore, the said application was withdrawn. After filing the charge sheet, another application No. 37 of 2022 was preferred before the learned Additional Sessions Judge, Ahmednagar, he rejected the said application by order dated 23.03.2022. The learned A.P.P. has argued that merely filing a charge sheet in not change in the circumstances. The position is settled on this point that the charge sheet gives an opportunity to the applicant to refer to the material collected by the Investigating Officer.

12. This Court, in bail Application No. 1714 of 2021 with another bail application in order dated 21.02.2022 has observed the facts in detail and also considered the audit report. Considering the facts and material before the Court in detail, this Court declined the bail to the similarly situated directors.

13. This Court has gone through the papers referred to by the learned senior counsel Mr. Gupte for the applicant and learned APP for the State. The documents referred by the learned APP would show that various illegalities and fraudulent acts have been committed by the Directors. At the time of granting loans no documents were verified. There is evidence of some of the witnesses that they never raised the loan, but the loan was disbursed in their name. The material is also available on record

that the Directors have illegally invested the money of the depositors in mutual funds. All the acts committed by the Directors were apparently abuse and violation of the Co-operative Societies Act and the directions issued by the commissioner, Co-operative Societies from time to time. Exonerating the Directors from an inquiry under Section 88 of the Act, is altogether a different issue. That would not relieve the applicant from criminal action, if the prosecution has the evidence of fraud, forgery and misappropriation of the public money. Recovering the money by obtaining certificates under Section 101 of the Act, is also an independent issue. There is evidence that the applicant was Director of the Credit Society from 2000 to 2015. The forensic audit report is very specifically pointing out the illegalities committed by the Board of Directors. Huge amount of depositors has been fraudulently transferred to the other accounts. The rate of interest on deposit was enhanced in contravention of a circular of the Commissioner for Co-operation and thereby they allured the depositors. Considering the papers referred to by the respective counsel and the observations recorded by this Court in the order passed in earlier bail application, this Court is of the view that the applicant has no case for bail.

14. The application stands dismissed.

(S. G. MEHARE)
JUDGE

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