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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.80 OF 2022

The State of Maharashtra APPLICANT
VERSUS
Subhashchandra Mitthulalji Sarda RESPONDENT
....
Mr. V. S. Badakh, APP for applicant – State
Mr. V. D. Salunke h/f Mr. M. V. Salunke, Advocate for respondent
....

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.93 OF 2022

The State of Maharashtra APPLICANT
VERSUS
Pradeep Rameshwar Chitlange RESPONDENT
....
Mr. V. S. Badakh, APP for applicant – State
Mr. V. D. Salunke h/f Mr. M. V. Salunke, Advocate for respondent
....

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.96 OF 2022

The State of Maharashtra APPLICANT
VERSUS
Hamidbhai Amanat Ali Deshmukh RESPONDENT
....
Mr. V. S. Badakh, APP for applicant – State
Mr. A. B. Girase, Advocate for respondent
....

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.97 OF 2022

The State of Maharashtra APPLICANT
VERSUS
Mangal Santukrao Agwan and Another RESPONDENTS
....
Mr. V. S. Badakh, APP for applicant – State
Mr. P. P. Patni, Advocate for respondent No.2

....

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.98 OF 2022

The State of Maharashtra APPLICANT
VERSUS
Ashokkumar Dagdulalji Oza and Others RESPONDENTS
....
Mr. V. S. Badakh, APP for applicant – State
Mr. P. P. Patni h/f Mr. R. B. Jaju, Advocate for respondents
....

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.99 OF 2022

The State of Maharashtra APPLICANT
VERSUS
Vitthal Govindrao Gore and Another RESPONDENTS
....
Mr. V. S. Badakh, APP for applicant – State
Mr. A. B. Girase, Advocate for respondents No.1 and 2
....

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.100 OF 2022

The State of Maharashtra APPLICANT
VERSUS
Hiralal Mishrilal Dungarwal RESPONDENT
....
Mr. V. S. Badakh, APP for applicant – State
Mr. V. D. Salunke h/f Mr. M. V. Salunke, Advocate for respondent
....

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.101 OF 2022

The State of Maharashtra APPLICANT
VERSUS
Rameshwarji Ramdayalji Tawani and Others RESPONDENTS
....
Mr. V. S. Badakh, APP for applicant – State
Mr. A. B. Girase, Advocate for respondents No.1 to 3
....

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.102 OF 2022

The State of Maharashtra APPLICANT
VERSUS
Vishnudas VitthaldasBiyani and Another RESPONDENTS
....
Mr. V. S. Badakh, APP for applicant – State
Mr. P. P. Patni h/f Mr. R. B. Jaju, Advocate for respondents
......

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.107 OF 2022

The State of Maharashtra APPLICANT
VERSUS
Shakuntala Raosaheb Bade and Another RESPONDENTS
....
Mr. V. S. Badakh, APP for applicant – State
Mr. A. B. Girase, Advocate for respondents No.1 and 2
......

WITH
APPLICATION FOR CANCELLATION OF BAIL NO.106 OF 2022

Balwant Asaram Chavan APPLICANT
VERSUS
State of Maharashtra and Another RESPONDENTS
......
Mr. S.V. Deshmukh, Advocate for the applicant
Mr. V. S. Badakh, APP for respondent No.1 – State
Mr. V.D.Salunke h/f Mr. M.V.Salunke, Adv. for respondent No.2
....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 14th DECEMBER, 2022
PRONOUNCED ON : 22nd DECEMBER, 2022

ORDER :

1. By these applications, filed under section 439 (2) read with section 482 of the Code of Criminal Procedure, the State seeks

cancellation of anticipatory bail granted in favour of the respondents – original accused in Crime No. 454 of 2021 registered with Shivaji Nagar Police Station, Beed for offence punishable under sections 420, 477 (A), 409, 465, 467 and 471 read with 34 of the Indian Penal Code.

2. Application for Cancellation of Bail No. 106 of 2022 is filed by private applicant claiming to be account holder of Dwarkadas Mantri Nagari Sahakari Bank Ltd., Beed, (hereinafter for short "the bank").

3. The respondents – accused are the Chief Executive Officer, Chairman and Managing Committee Members of the Bank.

4. Shri. B. B. Chalak, Member of the Administrative Board of the Bank, lodged the FIR making following allegations :

(i) During the period from 22.02.2019 to 24.02.2021, Inter Branch Adjustment Reconciliation Entries were inspected by the concerned authority of R.B.I. and special Scrutiny Report was received through E-main on 13.12.2021 from the Asstt. Registrar, R.B.I. Nagpur.

(ii) In the Inspection Report, 2019 unreconciled amount is shown as Rs.2801.34 Lakhs and it was deducted from the assets and profits of the said Bank, therefore, the valuation of the Bank was minus Rs.4815.09 Lakhs.

(iii) In the next Inspection, till date 31.03.2020, the said amount is reduced to Rs.37.87 Lakhs and no explanation is given by the Bank about it, therefore, the Special Scrutiny was done.

(iv) In the Special Scrutiny Report, it is noted that during the relevant time, the then Directors on Board of the Bank had used *modus operandi* to commit misappropriation of amounts and that examples of such transactions are given in the report.

(v) In the said report, it is further noted that there is fraudulent encashment through manipulation of books of accounts and it is an offence p/u/sec. 477-A of the Indian Penal Code and as per Para 2.1-b of Master Circular dated 01.07.2015 issued by the R.B.I., it amounts to misappropriation.

(vi) As per the said report for the period from 2015 to 2020, while making Inter Branch Adjustment Reconciliation Entries, for financial years ending dated 31.03.2015 Rs.46547.162 Lakhs, date 31.03.2016 Rs.5039.023 Lakhs, dated 31.03.2017 Rs.5051.114 Lakhs, date 31.03.2018 Rs.5329.435 Lakhs, date 31.03.2019 Rs.22801.356 Lakhs and dated 31.03.2020 Rs.37.87 Lakhs irregular transactions are committed.

It is mentioned in the said report that after 31.03.2019, part of amounts are deposited in the Bank, however, vouchers of the said transactions are not produced for verification, therefore, the Bank fraudulently, without charging or getting any interest on the said amounts provided those amounts and did not give information of the same to R.B.I. and customers of the Bank and thus cheated them.

(vii) Out of said irregular transactions, some accounts are connected with the Aditya Education Trust of which the applicant /accused is the Chairman and he is also the Chairman of the Bank and, therefore, in the report it is observed that the applicant / accused and the Managing Directors of the Bank by pressurizing the Branch Managers and staff of the Bank have got done the said irregular transactions and misappropriated the amounts. It is also observed by the Chartered Accountant Shri D. M. Baraskar in the Special Report dated 18.12.2020 that the Board of

Managing Directors of the Bank done said irregular transactions for their own benefit.

(viii) In the said Report it is observed and concluded that the then Chief Executive Officer Shri Radhesham Soni in the explanation dated 23.02.2021 submitted to R.B.I. has mentioned that the Bank, by obtaining cheqeus from some good customers, paid amounts to the said customers without sending the cheques for clearing or keeping it pending, however, the said explanation was not accepted and still the said practice was continued and irregular transactions are made for the benefit of certain customers and this caused loss to the bank and the other customers of the bank.

(ix) As per Section 81 of the Maharashtra Co-operative Societies Act, 1960, the Statutory Audit of the Bank for the period from 01.04.2020 to 31.03.2021 is conducted by Chartered Accountant Shri. Sanjay Jaju and in his report at page 33 of Part A, following observations are noted:

"Thus, the Management of the Bank had illicitly helped either its own directors / members or others yet t be identified outsiders / customers etc. to siphon off / misuse bank funds for their own benefit without creating

any valid liability and affecting the profitability of the bank. Therefore, it was concluded that there was Fraudulent encashment through manipulation of books of accounts: and therefore the Scrutiny considered the same as Fraud under para 2.1 (b) of Master Circular on Frauds-Classification and Reporting dated July 01 2015 and Section 477-A of the Indian Penal Code (Falsification of Accounts)"

(x) In view of above in the said report it is concluded that the members of Board of Directors, Managing Directors, Chief Executive Officer and the Branch Managers in the Branches were the irregular transactions are committed during last ten years are responsible for the said irregular or unauthorized transactions of the Bank and the amounts of irregular transactions for the period from 01.04.2014 to 31.03.2020 comes to Rs.22905.94 Lakhs. Though the said amounts are recovered and paid in the Bank still by preparing false books of accounts and committing irregular transactions the R.B.I. and the shareholders of the bank are cheated.

It is, therefore, alleged that the respondents, who were Chairman, Members of Board of Directors, Chief Executive Officer, Managers of the branches where the irregular / unauthorized transactions are committed during the last 10 years, are responsible for said transactions. The amount of the irregular transactions for the period from 1st April, 2014 to 31st March, 2020 comes to Rs. 22905.95 lakhs. In the report it is further stated that though the said amounts are returned and deposited in the bank, still, by preparing false books of accounts and committing irregular transactions, the RBI and the shareholders are cheated. Thus, the respondents have committed said offence and, therefore, action be taken against them.

5. After to lodging of the FIR, the respondent – accused approached the Sessions Court by filing applications seeking anticipatory bail, which are allowed by the Sessions Court. The State, being aggrieved with the said order, has filed present applications seeking cancellation of bail granted to the accused persons. One private applicant, claiming to be account holder of the Bank has also preferred application for cancellation of bail.

6. Heard Mr. V. S. Badakh, learned Additional Public Prosecutor for the applicant – State, Mr. S. V. Deshmukh, learned advocate for the private applicant and Mr. V. D. Salunke, Mr. A. B. Girase, Mr. P. P. Patni, learned advocates for the respective respondents – accused. Perused the investigation papers.

7. Learned advocates for the respondents – accused questioned *locus standi* of the private applicant on the ground that the State has already preferred applications seeking cancellation of anticipatory bail granted to the accused persons.

8. Learned advocate for the private applicant, by relying on the decision in the case of ***"R. Rathinam V/s State by DSP, District Crime Branch, Madurai and Another" (2000) 2 SCC 391***, submits that the private applicant has *locus* to file present application seeking cancellation of bail granted in favour of the respondent – accused.

9. Learned Additional Public Prosecutor submits that the allegations levelled against the respondents – accused are serious. There is temporary misappropriation of huge amount of the Bank. The Sessions Court has erred in granting discretionary relief of anticipatory bail to the respondents. He seeks cancellation of bail granted to the respondents – accused on the grounds mentioned in the respective applications.

10. Learned advocate for the private applicant submits that the entire community is aggrieved, if economic offenders who ruin the economy of the State, are not brought to book. According to him, respondents have committed economic offence with cool

calculations and deliberate design with an eye on personal profit, regardless of the consequence to the community. According to him, the Sessions Court has granted bail on irrelevant considerations. The respondents, being members of the managing committee of the Bank, have siphoned off funds of crores of rupees of the Bank, by bogus loans shown in the names of their trust, friends and relatives. Thus, they have played a systematic fraud and, therefore they did not deserve relief of anticipatory bail. By relying on ***"Ranjit Singh V/s State of M.P. and Others" 2016, ALL SCR (Cri) 668; "State of Gujrat V/s Mohanlal Jitamalji Porwal" (1987) 2 SCC 364; "Adri Dharan Das V/s State of W. B." (2005) 4 SCC 303; "Himanshu Chandravardan Desai V/s State of Gujrat" AIR 2006 SC 179; "Y.S. Jagan Mohan Reddy V/s Central Bureau of Investigation" (2013) 7 SCC 439*** and ***"P. Chidambaram V/s Directorate of Enforcement" (2019) 9 SCC 24*** he seeks cancellation of bail granted in favour of the respondent – accused.

11. Learned advocates representing the respondents opposed the applications contending that the respondents are not held responsible / liable in inquiry under sections 83 and 88 of the Maharashtra Co-operative Societies Act. They placed reliance of ***"Dolat Ram and Others V/s State of Haryana" (1995) 1 SCC***

349; "Bhadresh Bipinbhai Sheth V/s State of Gujrat and Others" (2016) 1 SCC 152; "State of Maharashtra V/s Laljit Rajshi Shah and Others" 2000 (3) Bom.C.R. 240 and ***"D V/s State of Telangana and Another" (2018) 16 SCC 511.***

12. So far as *locus* of the private applicant is concerned, he has placed reliance on ***"R. Rathiman"*** (*supra*), to justify his filing of the application for cancellation of bail.

In the said case, 75 advocates practicing in various courts situated in Tamil Nadu had presented petitions to the Chief Justice seeking cancellation of bail granted in favour of the accused, who had committed murder of 6 persons belonging to Schedule Caste Community. 34 persons were arrested in connection with the said massacre. 30 accused persons were released on bail. Brother of one of the deceased, along with some other persons, submitted representation to the Chief Minister requesting him to adopt steps to move High Court for cancellation of bail granted to the accused, for the reasons stated in the representation. The Government did not take any step. In these facts 75 advocates moved petitions before the Chief Justice of High Court for cancellation of bail. The matter was placed by the Hon'ble the Chief Justice, before Division Bench. The Division Bench refused to act on the petitions. The

Apex Court, in the facts, held that section 439 (2) of the Criminal Procedure Code, confers power of cancellation of bail on the High Court or the Court of Sessions and there is nothing to indicate that said power can be exercised only if the State or the investigating agency or even the public prosecutor moves for it by a petition. It is further held :

> *"8. It is not disputed before us that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. Nor it is disputed that the said power can be exercised suo motu by the High Court. If so, any member of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power suo motu. There is no barrier either in Section 439 of the Code or any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open to the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law."*

13. Thus, it is clear that the above observations are made by the Apex Court in view of the fact that there was massacre of 6 persons and the State did not move for cancellation of bail. The said observations will have to be read in that context. In the same paragraph, it is held that the power under section 439 (2)

of the Criminal Procedure Code, can be invoked either by the State of by any aggrieved party.

14. In the above ratio, the Apex Court, in the facts of that case, has held that power under section 439 (2) of the Criminal Procedure Code can be invoked either by the State or by any member of the public whether he belongs to a particular profession or otherwise, who has concern in the matter, can move High Court to invoke the said power *suo motu.* Said observations have to be read considering the facts of the case before the Apex Court. In the present case, since the State has already moved applications for cancellation of anticipatory bail, in my view, application filed by the private applicant, who has no concern with the crime, cannot be said to be maintainable.

15. Perusal of record indicates that the investigation in the crime is almost complete. Entire documents, in respect of the crime, are already seized by the police. Presently, all the documents, seized during the course of investigation are forwarded to the Auditor, who is conducting forensic audit of the Bank. Entire misappropriated amount is returned to the Bank along with 5% interest thereon. Therefore, it appears that the prosecution is alleging temporary misappropriation. Merely because resolution is passed, to recover 15% interest, that by

itself cannot be a ground to cancel bail granted in favour of the respondents and to remand them to custody, so as to recover 10% interest from them. Inquiry is going on against the respondents under section 83 of the Maharashtra Co-operative Societies Act.

16. On instructions, learned Additional Public Prosecutor makes a statement that on completion of the forensic audit, which may take about a month, charge sheet will be filed.

17. In ***"Ranjit Singh"*** (*supra*), criteria of cancellation of bail are set out. In ***"State of Gujrat V/s Mohanlal Jitamalji Porwal"*** (*supra*), it is held that entire community is affected if the economic offenders are not brought to book. In ***"Adri Dharan Das"*** (*supra*) it is held that interim order restraining arrest, if passed, it may amount interference in the investigation. In ***"Himanshu Chandravardan Desavi"*** (*supra*), the accused was Director of bank, who along with other directors, siphoned off funds of crores of rupees of the bank, by bogus loans in fictitious names, letters of credit were issued in the names of their relatives, associates etc. In ***"Y.S. Jagan Mohan Reddy"*** (*supra*) it is held that economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously. In ***"P. Chidambaram"*** (*supra*), it is held that power

under section 438 of the Criminal Procedure Code is extraordinary power and has to be exercised sparingly.

These are well settled principles about grant of bail in economic offences. However, ratio in the above citations is not applicable to the facts of the present case.

18. In the light of aforesaid facts and since the entire amount allegedly misappropriated, is secured along with 5% interest and as the investigation pertains to documents, which are already seized by the Investigating Officer and as the investigation appears to be almost complete, pre-trial custodial detention of the applicants, is not warranted in the present case.

19. The Sessions Court has given cogent reasons while allowing applications of the respondents and has rightly exercised the discretion in favour of the respondents. The reasoning adopted by the Sessions Court does not appear to be perverse. No case is made out by the applicants to cancel the anticipatory bail granted in favour of the respondents – accused. The applications being devoid of merit, are dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

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