IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1517 OF 2021

SANDHYA DIGAMBAR JOSHI

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. Y.S. Thorat, Advocate for the applicant

Mr. N.T. Bhagat, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 16th FEBRUARY, 2022

PRONOUNCED ON : 09th JUNE, 2022

<u>ORDER</u> :

1 The applicant is apprehending her arrest in connection with Crime No.11/2018 dated 01.02.2018 registered with Sonai Police Station, Tq. Newasa, Dist. Ahmednagar, for the offence punishable under Section 406, 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. Y.S. Thorat for the applicant and learned APP Mr. N.T. Bhagat for the respondent. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 Interesting part to be noted is that the First Information Report, in which the present applicant is apprehending her arrest has been lodged by one Shirish Devidas Kulkarni, who appears to be the Special Auditor, Class-II, Co-operative Societies, Ahmednagar in respect of alleged misappropriation for the period between 01.04.2016 to 31.03.2017 committed at Shri. Venkatesh Gramin Bigarsheti Sahakari Patsanstha Maryadit, Sonai, Tq. Newasa, Dist. Ahmednagar. This offence has been lodged on 23.10.2018. In fact, prior to that the one Suvidya Somani, the Auditor, had lodged offence vide Crime No.31/2018 on 01.02.2018 with the same Police Station against three persons, who were the office bearers of said Patsanstha. It was under Section 406, 420, 467, 468, 471, 120-B of the Indian Penal Code. She had also stated that when she had carried out the audit for the aforesaid period of the said Co-operative Society, she could find irregularities, illegalities etc. and thereby causing misappropriation of the public fund. She has also stated that she is on the panel of Divisional Sub-Registrar, Pune. She has stated that there was misappropriation of amount of Rs.1,93,07,406/-. Now, this informant Shirish Devidas Kulkarni admits that said Suvidya Somani had carried out the audit for the year 2016-17 and then had lodged the First Information Report against three employees. Then, further he says that it was necessary for the Directors to fix the responsibility and have a re-audit for the said period and also to check the issues raised by those persons

against whom the report was lodged. For that purpose it appears that again the inquiry was held and now as against the Chairman, Vice Chairman, Directors and present applicant the offence was registered. Interestingly he says that for the amount arrived at by the informant he is holding the informant also responsible. While granting interim relief to the applicant on 06.01.2022, this Court had put a query that whether two First Information Reports can be filed in respect of the same offence or for the same contentions. The answer would be 'No' and from the police papers it can also be seen that some forensic audit is stated to have been conducted and then another First Information Report has been lodged.

4 On the basis of said forensic audit fresh First Information Report was registered vide Crime No.153/2018 with Sonai Police Station but it appears that when it was realized that there is already an offence registered in respect of the same year of audit Crime No.153/2018 was merged into Crime No.11/2018 and further investigation was started under Section 173(8) of the Code of Criminal Procedure, by giving report to that extent to the concerned Magistrate. The forensic audit has been got done through M/s. A.N. Rathi and Company. Chartered Accountant and the Auditor was Mr. Ajay Nandlal Rathi of Nashik, who has given his report on 09.06.2020. As regards Crime No.11/2018 is concerned, one bunch of charge sheet has

already been filed before the Special Judge, in which the name of the present applicant has been stated. The question therefore would be, as to which offence can be said to have been committed by the present applicant. The police papers do not show the specific act.

5 Reliance has been placed by learned APP on the Government Resolution dated 01.12.2016, wherein Panel of Forensic Audit and Digital Forensic Audit could be got done from the person from the panel has been stated. However, interesting point is that when already there is an audit and the Auditor has lodged the offence, then, what is to be done, is not stated in this resolution. It is a well settled law that there cannot be two First Information Reports in respect of the same offence. From the police papers what could be seen is statements of witnesses have already been recorded. The forensic audit report does not arrive at a different figure of the alleged misappropriation. Still it is not explained as to how the present applicant is responsible for the alleged misappropriation. Merely because she is one of the directors it cannot be said that she is also responsible. There is no question of vicarious liability when it comes to misappropriation or cheating. It has to be personal with active part. The Government Resolution, on which the State is relying, gives authority to the Economic Wing of the Crime Branch to have forensic audit. When, in this case, such appointment was

made and the forensic audit has been done, no other conclusion has been drawn. Therefore, the first and the foremost fact is that two First Information Reports are not maintainable and secondly, in view of the orders passed in Anandkumar Ashoklal Bhalgat vs. State of Maharashtra in Anticipatory Bail Application No.1216 of 2019 co-director was released on bail, the present applicant also deserves to be released on bail. Hence, following order.

ORDER

1 Application stands allowed.

2 The ad-interim protection, granted by this Court earlier to applicant vide order dated 06.01.2022, is hereby confirmed and made absolute. In other words, if the applicant is not formally arrested, in the event of arrest of the applicant viz. **Sandhya Digambar Joshi**, in connection with Crime No.11/2018 dated 01.02.2018 registered with Sonai Police Station, Tq. Newasa, Dist. Ahmednagar, for the offence punishable under Section 406, 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860, She be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicant shall not indulge in any criminal activity nor she

should tamper with the prosecution evidence, in any manner.

4 She should cooperate with the investigation.

(Smt. Vibha Kankanwadi, J.)

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