IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO. 1714 OF 2021

Latika Nandkumar Pawar Applicant

Versus

The State of Maharashtra Respondent

Mr. R. N. Dhorde, Senior Counsel instructed by Mr. V. R. Dhorde, Advocate for the applicant.
Mr. A. V. Deshmukh, APP for respondent/State.
Mr. M. S. Anandas, Advocate for the complainant.

WITH
BAIL APPLICATION NO. 39 OF 2022

Laxman Sakharam Jadhav Applicant

Versus

The State of Maharashtra Respondents

Mr. N. V. Gaware, Advocate for the applicant.
Mr. A. V. Deshmukh, APP for the respondent/State.
Mr. M. S. Anandas, Advocate for the complainant.

CORAM : M.G. Sewlikar, J.
DATE : 21st FEBRUARY, 2022.

PER COURT :

1. Both these applications are being disposed of by common order as they arise out of the same offence.

2. Both the applicants have filed these applications for enlarging them on bail in connection with Crime No. 6293/2020

registered with Topkhana Police Station, District Ahmednagar, for the offences punishable under Sections 403, 406, 408, 409, 417, 418, 419, 420, 421, 422, 423, 424, 426, 427, 465, 466, 467, 468, 471, 474, 477, 477-A, 120-B, 107, 108, 109, 110, 111, 504, 506 read with Section 34 of the Indian Penal Code and Section 3, 4, 5, 6, 7, 8, 13 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. Facts leading to these applications are that Raosaheb Patwardhan Nagari Sahkari Patsanstha Ltd., Ahmednagar was established under Maharashtra Co-operative Societies Act. The business of the society was to collect the deposits from the public, to pay interest to the investors and to advance loans.

4. Applicant in Bail Application No. 1714/2021 was the Chairman of the society and applicant in Bail Application No. 39/2022 was elected as a Managing Committee Member of the society in the election held for the period from 2010 to 2015. The applicant took charge of the said Pat Sanstha as a Managing Committee Member on 4th February, 2010 and his term expired on 4th February, 2015. The Election of the said Pat Sanstha was held for

the period from 2015 to 2020 and new Committee of Board of Directors took the charge. Informant Sk. Ismail Gulam has alleged that the applicants and other office bearers of the society lured the depositors to invest money in term deposits and fixed deposits with the society. they painted a rosy picture by projecting that the depositors would be given lucrative interest. Because of this mis-representation, the informant deposited an amount of Rs. 11,000/- on 28th April, 2014 and Rs. 43,657/- on 2nd May, 2014 in two Fixed Deposit Receipts which were to be mature on 10th July, 2014 and 17th June, 2014 respectively and the amount to be paid on maturity was Rs. 11546/- and Rs. 45,690/- respectively. The interest assured was 12% per annum. Even after maturity, the amount was not repaid. When the informant approached the office bearers of the society for encashment of the Fixed Deposit Receipts, they refused to encash the same. Accordingly, he approached the police station with a complaint. But the police authority did not take any action on his complaint. Therefore, he filed private complaint and sought directions under Section 156(3) of the Code of Criminal Procedure for registration of the offence and investigation into it. Accordingly, investigation was carried out. Forensic Auditor was appointed. After the audit was completed, the Forensic Auditor reported that there had been mis-appropriation of Rs. 65,31,80,253/-. Accordingly, the applicants herein came to be arrested. Thereafter, both of them have filed these applications.

5. Heard Shri R. N. Dhorde, learned Senior Counsel for applicant in Bail Application No. 1714/2021, Shri N. V. Gaware, learned counsel for applicant in Bail Application No. 39/2022, Shri A. V. Deshmukh, learned APP for the State and Shri M. S. Anandas, learned counsel for the complainant.

6. Learned Senior Counsel Shri Dhorde submitted that the applicant's husband and the applicant were looking after the affairs of the society. The husband of the applicant was the Chairman at the relevant time. The husband of the applicant all of a sudden expired. He submitted that the Forensic Auditor did not call for papers from the society. Without going into the relevant papers, the Forensic Auditor has arrived at a conclusion that there was mis-appropriation of the aforesaid amount. He submitted that a complaint was made to the District Deputy Registrar (DDR) about the alleged illegality committed by the erstwhile Managing Committee. In the enquiry constituted under Section 88 of the Maharashtra Co-

operative Societies Act, the Enquiry Officer exonerated the office bearers of the society observing that the applicants along with others were not liable for the difficulties of the society as the society sustained losses. He submitted that the Forensic Auditor has observed that Kiran Pokharna and Kishor Pokharna have given statements before the Auditor that they never applied for loan and, therefore, there was no occasion for taking loan. Learned Senior Counsel Shri Dhorde further submitted that infact, Kiran Pokharna and Kishor Pokharna executed a registered deed of mortgage. They have passed a receipt also indicating that they received the amount of loan. They have also filed affidavit mentioning therein that they have received the amount. He further submitted that before the Forensic Audit, there was an audit in which the Auditor found that there was no mis-appropriation. He submitted that because of the difficulties faced by the society on account of loss sustained by it, a Guardian Officer was appointed with effect from 27th June, 2014. He submitted that the Guardian Officer has submitted a report that there was no mis-appropriation, the investors whose deposits were less than Rs.5,000/- have been paid back their money, matching transactions have been done and out of matching transactions, funds were raised. He submitted that the Auditor found that the society paid interest because of which, the society faced the problems. The society should not have paid such interest and he directed that the society should stop paying interest on the amount. According to learned Senior Counsel Shri Dhorde, this Audit Report was submitted on 30th May, 2015. In this Audit Report, it was further observed that interest paid was at the rate of 11% to 13% per annum and there was no recovery from the debtors because of which, the society was in financial difficulties. The learned Sessions Judge observed that during Forensic Audit, all the files were not made available for verification. The Forensic Auditor has observed that in case of 38 borrowers, only paper entries have been taken to indicate that loans have been repaid. There was cash withdrawal of around Rs. 3,00,00,000/- (Rs. Three Crores). For which purpose this cash withdrawal has been made has not been explained by the members of the society. He submitted that the provisions of Section 81 of the Maharashtra Co-operative Societies Act have not been followed while appointing the Auditor. He submitted that there has to be a panel of auditors prepared by the Registrar of Co-operative Societies and from that panel, Auditor has to be appointed. He submitted that the applicant vacated the office as Director from 4th February, 2016. Since then she is not a Director. New body was appointed in the year 2016.

The applicant was the Chairman from 2010 to 4th February, 2016. She was Director for the period from 2005 to 2010. Therefore, for anything that happened after 2016, applicant cannot be held responsible. He submitted that there was no fraud and no mis-management. Only on account of the losses sustained by the society, it is not in a position to pay interest to the investors and their money cannot be repaid. He submitted that the proceedings under Section 101 of the Maharashtra Co-operative Societies Act have been taken against the borrowers. Therefore, no offence is committed by the applicant. He further submitted that the applicant is suffering from many ailments and therefore, she be released on bail. He submitted that by detaining the applicant behind the bars, no purpose would be served. The informant is not going to get his money back by detaining the applicant behind the bars.

7. Shri Gaware, learned counsel for applicant in Bail Application No. 39/2022 adopted the arguments of learned Senior Counsel Shri Dhrode. Applicant was the Managing Committee Member for the period from 4th February, 2010 to 4th February, 2015.

8. Learned APP Shri Deshmukh and Shri Anandas, learned counsel for the informant submitted that the term of the Committee expired on 4th February, 2015. Thereafter elections were held. They submitted that the society has been listed in the category of 'C' which means financial position of the society was not good. They submitted that the office bearers of the society lured the investors by projecting that they would get attractive rate of interest and thereby painted a rosy picture. Because of their allurement, the investors deposited the amount in the society. They submitted that there was cash withdrawal of Rs. 3,68,00,000/- (Rs. Three Crores Sixty Eight Lacs) for which no explanation is forthcoming. They submitted that the Forensic Auditor is appointed in terms of Government Resolutions and accordingly, VANS and Associates was appointed as the Forensic Auditor. They submitted that the Forensic Auditor has observed that there was no provision made for non-performing assets. The amount was deposited in mutual funds in violation of Government Resolutions. In terms of Rule 23 of Maharashtra Co-operative Societies Act, amount of 10% i.e. Rs.2,50,000/- should not have been paid back to the members. They further submitted that the Forensic Auditor found that the entire amount of loan for 14 members was paid by the society to one investor only i.e. Dr. Nilesh Shelke. Why

this was done has not been explained before the Auditor. Loan above Rs. 30,000/- was granted by violating loan policy as per the byelaws of the society. There was irregularity in matching transactions. Matching must be done by way of 30% cash and 70% deposit receipts. The provisions of the Circular were not followed and the matching transactions were done at 100% deposits and not cash. The Forensic Auditor further observed that 38 borrowers have repaid the loan however, only book entries seem to have been taken and that the amount of repayment was never received and all the closures were sham. They submitted that this clearly shows that there has been mis-appropriation as indicated by the Forensic Auditor.

9. I have given thoughtful consideration to the submissions of both the learned counsel. The objection of the Auditor was that loan was given only to one person and Kiran Pokharna and Kishor Pokharna have given statement that they did not apply for loan and therefore, there was no question of receiving loan amount. Applicant in Bail Application No. 1714/2021 has produced a letter dated 31st January, 2011, signed by 14 borrowers authorising Dr. Nilesh Shelke to receive the entire amount of loan. Accordingly, the entire amount of loan was paid to Dr. Nilesh Shelke. The amount of loan was Rs.

25,00,000/- each. Accordingly, after deducting 10% i.e. Rs.2,50,000/- from each of the borrowers, Rs. 3,15,00,000/- was deposited in the account of Dr. Nilesh Shelke. A registered mortgage deed has been executed by all the 14 borrowers. The date of registered mortgage deed is 31^{st} January, 2011. It is signed by Kishor Pokharna and Kiran Pokharna. Kishor Pokharna has sworn an affidavit admitting therein that he has received the amount of loan. He has executed receipt to that effect also. There is an application from Kiran Pokharna for taking loan. Kiran Pokharna has also sworn an affidavit and also passed a receipt for receiving loan amount. Therefore, it appears that this objection does not survive.

10. By communication dated 23^{rd} July, 2014, a Guardian Officer was appointed by DDR, Co-operative Societies, Ahmednagar. The Guardian Officer, by communication dated 15^{th} January, 2015, informed the DDR that action has been taken against the borrowers for their default in payment of loan under Section 101 of the Maharashtra Co-operative Societies Act. Since October 2014, all the depositors have been paid 5% of their total deposit and 5500 depositors whose deposits were less than Rs. 5,000/- have been paid the entire amount of deposits. This indicates that the society had

taken action against the borrowers who committed default in payment of loan.

11. So far as deposit in mutual funds is concerned, the Additional DDR, by communication dated 17th January, 2006, informed that in terms of Circular dated 1st August, 2000, there was no bar in investing in mutual funds. Accordingly, a resolution was passed on 17th January, 2006 to make the deposits by the society in State Bank of India Blue Chip to the extent of Rs. 6,00,00,000/-. It appears that this Circular was in force till the year 2008 and in the year 2008, this Circular seems to have been withdrawn. The Forensic Auditor has observed in his report that permission to deposit in mutual funds came to be cancelled from 3rd January, 2008. The report of the Forensic Auditor does not show that after 3rd January, 2008, any deposit was made in the mutual fund. Therefore, whatever deposit was made by the society in the mutual funds was in terms of the Circular of the year 2000. Therefore, it cannot be said that this deposit in mutual funds is made in violation of the Circular.

12. Matching transactions have been done by the society. There are 11 borrowers with whom the depositrs have done the

matching transactions. The only objection is that the matching transaction should have been done by accepting 30% cash and 70% deposits. This, at the most, can be said to be an irregularity.

13. So far as cash withdrawals are concerned, those have not been made by the applicants in both the applications. But they were made by the Vice Chairman Subhash Rekhi and Prakash Kadam, the Secretary.

14. The main objection of the Auditor appears to be that loan of borrowers worth Rs. 8,76,00,000/- (Rs. Eight Crores Seventy Six Lacs Only) have been closed by the society by mere book entry. The Forensic Auditor observed that the loan amount was never repaid and all the closures were sham. Learned Senior Counsel Shri Dhorde submitted that the society has accounts in three banks i.e. Shahar Sahakari Bank, Axis Bank, Mahanagar Co-operative Bank and other banks. He produced the extracts to show that the amount received from the borrowers was deposited in the Saving Accounts maintained in these banks. Accordingly, he submitted all the details and the Investigating Officer with the help of the Auditor verified those details. Accordingly, the Forensic Auditor verified these

transactions and has submitted a report that 38 borrowers have repaid the amount of loan.

15. From the discussion made above, it appears that loan amount of 38 borrowers has been repaid. The report of applicant Latika Pawar submitted to the DDR shows that during the period from 1st April, 2014 to 31st March, 2015, in all 113 loan accounts have been closed having been fully repaid and the total amount comes to Rs. 6.18 crores. The report further shows that the proposals of 348 borrowers for fixing upset price have been forwarded to the office of the DDR vide communication dated 1st August, 2014 and 148 proposals have been sanctioned. 75 borrowers have repaid the entire loan amount. Matching transactions have been done. It further states that 18 loan accounts have been closed as fully satisfied and the amount comes to Rs. 57, 86,168/-.

16. The Forensic Auditor has raised an objection that in terms of Circular dated 1st April, 2004, of the Commissioner of Co-operatives, Maharashtra, Pune, the interest on deposits and loans should not exceed 11% per annum. However, the Board of Directors of society passed a resolution dated 10th February, 2009, to increase

the rate of interest to 12.5% per annum. The resolution violates the abovementioned Circular of the Commissioner of Co-operatives, Pune. The Forensic Auditor has observed that this action of Board of Directors attracts the depositors by showing higher rate of interest compared to other financial institutions and also induced the depositors to deposit their hard earned money and savings in various deposit schemes of the society. Precisely, this was the very objection of the Auditor. The Auditor observed in the Audit Report dated 30th May, 2015, that interest was paid at the rate of 11 to 13 percent per annum which has led to the financial difficulties of the society, owing to which, since the year 2014, the depositors have not been paid the amount of their deposits.

17. This is precisely the objection of the depositors. From the investigation papers and audit report, it is quite clear that the Board of Directors and the Chairman lured the investors to make the deposits in their financial institution by promising higher rate of interest. Because of their allurement, the informant and other investors deposited their hard earned money in the financial institution. This amounts to defrauding the investors. The Board of Directors promised the investors a higher rate of interest, when as

per the Government Resolutions, the same ought not to have been paid. Because of their mis-representation and allurement, the depositors were attracted to deposit their life savings in the financial institution of the Chairman and Board of Directors. In this view of the matter, the investors have been defrauded.

18. Learned Senior Counsel Shri Dhorde placed reliance on the case of Dr. Suresh G. Motwani vs. State of Maharashtra and another reported in **2003 ALL MR (Cri) 2212**. In this decision, it is held thus :-

> 11. Criminal Prosecution is not a proceeding for recovery of the dues of the investors but is meant for punishing the guilty. Assuming however, that in case of economic offences, the object of criminal prosecution is to protect the investors and help them in recovery of money, I fail to see how the detention of the applicants in the jail would aid the recovery. The money, if at all, would come out of the running of the business of the companies. If the applicants are in police custody, certainly the companies would not be able to carry out the business as effectively as they would be if the applicants are out of custody. There is therefore, no substance in contention nos. (iii) and (iv) which are hereby rejected.

This decision does not help the applicants for the reason that the accused in that case had deposited Rs.70,00,000/- and had further undertaken to deposit a sum of Rs. 50,00,000/-. In the case at hand, none of the applicants has shown willingness to deposit any amount. In the aforementioned case, the accused had paid the amount to show his bonafides. In the case at hand, no bonafides of any sort have been shown. Therefore, this authority has no application to the facts of the case in hand.

19. Reliance is also placed on the case of Salim Akbarali Nanji vs. Union of India and others reported in **(2006) 5 Supreme Court Cases 302**. The Honourable Supreme Court has observed thus :-

> 27. It is no doubt true that amounts advanced by banks must be recovered. Such debts should not be permitted to become non-performing assets. However, one cannot lose sight of the realities of the situation. Having regard to the nature of banking business, it is possible that the Bank may commit an error of judgment in advancing funds to a particular party or industry. It may be than on account of to her factors beyond its control, or even beyond the control of the borrowers, it may become difficult, or even impossible to recover the loan advanced in accordance with the schedule of repayment, or to recover the loan at all. These are risks inherent in the banking business, though a wise banker with foresight and anticipation may reduce such risks to the minimum level. One cannot however, jump to the conclusion that only because some of the debts have become bad, there is lack of proper management of the Bank, or that

> the conduct of the Bank is dishonest or mala fide. In a given case, there may be evidence of such mismanagement or dishonest conduct, but in the absence of any such accusation one cannot draw an adverse inference against the Bank. In the instant case, though some of the debts have to be written-off, with little chance of substantial recovery, we cannot lose sight of the fact that the Bank has generated considerable operating profits and has built up a substantial general reserve over the years, against which the debts written-off have been adjusted.

20. This is not the fact situation in the case at hand. In the case at hand, the applicants and the other Board of Directors have fraudulently given promises to the investors to attract their deposits. The promises which could not be fulfilled were given and ultimately, the society went into losses. Learned Senior Counsel Shri Dhorde submits that the applicant in Bail Application No. 1714/2021 is suffering from various ailments and therefore, she should be released on bail on account of these ailments. The application is silent as to what ailments she is suffering from. It is vaguely mentioned that she is suffering from various ailments. Even record produced shows that all her tests have been shown to be normal. Investigation in the crime is still pending. Having regard to this, I am not inclined to release the applicants on bail, pending investigation. Hence the following order :-

ORDER

(i) Both the applications are rejected.

(ii) Observations made in this order are restricted to the decision of these applications only and the Trial Court shall not get influenced by these observations while deciding any other application of whatsoever nature or during the trial.

(M. G. SEWLIKAR)
Judge

dyb

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 610 OF 2022 IN
BAIL APPLICATION NO. 1714 OF 2021

Ismail Gulab Shaikh Applicant

Versus

The State of Maharashtra & others Respondents

Mr. M. S. Anandas, Advocate for the applicant.
Mr. A. V. Deshmukh, APP for respondent No. 1/State.
Mr. R. N.Dhorde, Senior Counsel instructed by Mr. V. R. Dhorde, Advocate for respondent No. 2.
Mr. N. V. Gaware, Advocate for respondent No. 3.

CORAM : M.G. Sewlikar, J.

DATE : 21st FEBRUARY, 2022.

PER COURT :

Application is allowed and disposed of.

(M. G. SEWLIKAR)
Judge

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