IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.300 OF 2022

Malhari Baguji Mate ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr.Ganesh Gole i/b Mr.Ritesh Ratnam for the Applicant.
Mr.R.M. Pethe, APP for the Respondent –State.

CORAM : C.V. BHADANG, J.

DATE : 4 FEBRUARY 2022
(Through Video Conferencing)

P.C.

. The Applicant apprehending arrest, in Crime No.158 of 2021 of Aadgaon Police Station, District-Nashik under Section 420, 409, 468 read with section 34 of the Indian Penal Code, is seeking anticipatory bail.

2. The aforesaid crime is registered on the basis of the complaint dated 6 October 2021 lodged by Mr.Sanjay Shamrao Lolge who is working as a Auditor Class-I with the Co-operative Department at Nashik.

3. The Applicant happens to be the Chairman of Durga Nagari Sahakari Patasanstha Maryadit ('The Society' for short) since 2010. As per the complaint lodged by Sanjay Lolge on the

basis of the audit report of the said Society conducted for the period from 1 April 2013 to 31 March 2015 there was misappropriation and defalcation of an amount of Rs.2,76,01,040/- which was disclosed. In the audit report there were several irregularities noticed as under:-

(i) Bogus savings accounts in the name of non-existent persons and showing withdrawal of an amount of Rs.32,40,000/- from the same.

(ii) Showing a loan account in the name of the Credit Society in the account books of the same Credit Society.

(iii) Irregularities in the matter of gold loans without getting the gold deposited to the extent of Rs.59,830/- and others.

(iv) Discrepancies in the matter of fixed deposits, small savings deposits and short terms deposits.

(v) The discrepancies in respect of cash credit and hypothecation loan etc. which have been set out in details in the complaint dated 6 October 2021.

4. On the basis of the said complaint the offence is registered which is under investigation.

5. I have heard Mr.Gole, the learned counsel for the Applicant and Mr.Pethe the learned Additional Public Prosecutor

for the Respondent-State. With the assistance of the learned counsel for the parties, I have gone through the record.

6. It is submitted by the learned counsel for the Applicant that the Applicant has assumed office of the Chairman of the Society in the year 2010 and for the alleged defalcation/irregularities found since the year 2008 the Applicant cannot be held responsible. It is next submitted that the irregularities were committed by the Manager of the Society namely Bajirao Namdeo Kolhe (since deceased). It is submitted that the matter was discussed in the General Body Meeting of the Society. In particular the learned counsel has pointed out Resolution No.2 of the General Body Meeting dated 26 September 2015 in which the role of Mr.Kolhe was discussed.

7. It is submitted that all the relevant circumstances leading to the said irregularities/defalcation were communicated to the Sub-Registrar Cooperative Societies, Nashik by letter dated 23 November 2016 intimating that the amount of the depositors shall be returned as an when the amount is recovered by the Society. The learned counsel has thereafter pointed out the Audit Report in order to submit that the entire liability is not cast on the Applicant in respect of the alleged defalcation. The learned counsel pointed out that one Madhukar Bagle has been granted Anticipatory Bail by the learned Sessions Judge by order dated 20

January 2022 in Criminal Bail Application No.1606 of 2021 while rejecting the similar prayer by the Applicant on the ground of the Applicant having signed some 'fake deposit receipts' to the tune of Rs.1,45,00,000/- in respect of the deposits of the Credit Society with Ganesh Co-operative Bank. The learned counsel pointed out the relevant deposit receipts (page 34 to page 45) of the compilation.

8. It is pointed out that the receipts dated 24 September 2011 bear the signature of the Applicant as a Chairman for having discharged the fixed deposits receipts kept with Ganesh Cooperative Bank Ltd., Nashik. He however, pointed out that it subsequently transpired that no such deposits were kept with the Ganesh Cooperative Bank. He submitted that the Applicant cannot be said to have prepared or singed the said fake deposit receipts inasmuch as the only signature of the Applicant is regarding the discharge of the said deposit receipts on their maturity.

9. The learned counsel strenuously urged that parity could not have been denied to the Applicant only on the ground of the Applicant having signed the fixed deposit receipts. He submitted that Bajirao Kolhe has executed "A confession deed" ("Kabuli Dast") dated 8 November 2013 in favour of the Credit Society admitting that he had parted with a sum of

Rs.1,60,00,000/- in favour of the third parties without the connivance of the Chairman, Vice Chairman and the Board of Directors. In short according to the learned counsel, the then Manager Shri.Kolhe has accepted his liability which would have the effect of exonerating the Applicant.

10. The learned counsel submitted that the custodial interrogation of the Applicant is not necessary and he be granted pre arrest bail.

11. The learned Additional Public Prosecutor submitted that there are large scale irregularities and defalcation found by the auditors in the Credit Society worth more than Rs.2,76,00,000/- and the Applicant as the Chairman of the Society cannot escape responsibility/liability. It is submitted that the Applicant ought to have known the nature and the extent of the defalcation, in March 2013 itself when the fixed deposits receipts with the Ganesh Cooperative Bank which he had signed in token of the discharge were found to be fake. It is submitted that the Applicant did not take any steps for bringing this to the notice of the Co-operative Authorities immediately.

12. It is submitted that the so called Confession Deed "कबुली दस्त" from Mr.Bajirao Kolhe is also shown to be executed on 8 November 2013 and even thereafter, the matter was not

disclosed or informed to the authorities. It is submitted that reliance placed by the Applicant on the minutes of the General Body Meeting dated 26 September 2013 is misplaced and in any event cannot be relied upon to show that the irregularities and the defalcation was exclusively committed by Mr.Kolhe.

13. The learned Additional Public Prosecutor pointed out that Mr.Kolhe has expired and this is an attempt to see that no action cannot be taken. It is pointed out that even the letter dated 23 November 2016 is a reply to the show cause notice by the Sub-Registrar about the non submission of the audit report for the year 2015-16. He submitted that in order to bring out the nature of the irregularities and defalcation the custodial interrogation of the Applicant is necessary.

14. I have give my anxious consideration to the rival circumstances and the submissions made. It is not disputed that the Applicant is the Chairman of the Society since the year 2010. The defalcation has been noticed as per the audit report for the period from 1 April 2013 to 31 March 2015. Thus, the contention that it dates back to the year 2008 cannot *prima facie* be accepted. It is necessary to note that the Applicant is not seriously disputing the fact that there were irregularities and defalcations committed. Only contention is that the then Manager Mr.Kolhe was personally responsible for the same as

Mr.Kolhe had not taken the office bearers and the Board of Directors in confidence. At least *prima facie* it is difficult to accept the said contention as it is for the office bearers and the Board of Directors to manage and to control the affairs of the Society and they cannot be left exclusively to the discretion of the Manager who is an employee. It is necessary to note that out of the several irregularities the Applicant is shown to have signed certain fixed deposit receipts with the Ganesh Cooperative Bank in the name of the credit society. The said deposit receipts were signed in token of their discharge on their maturity, somewhere in August 2012 to March 2013. The learned counsel for the Applicant submitted that it was then disclosed that no such deposits were kept with the Co-operative Societies and the deposit receipts were fake. If that be so, the Applicant ought to be aware of the nature and extent of the defalcation in the year 2013 itself. However, no steps have been taken to take remedial measures or to intimate the said fact to the Co-operative Authorities who had general control over working of the Credit Society. The letter which is pointed out is dated 23 November 2016, that is more than 3 years of the disclosure that the deposit receipts were fake. Even that letter is shown to be a reply to the show cause notice by the Sub-Registrar about non submission of the audit report for the year 2015-16. Precisely in these circumstances, according to the prosecution the possibility of a role of the Applicant, in the matter cannot be ruled out which needs to be investigation.

15. It can *prima facie* be seen that the alleged Confession Deed is at the highest an internal matter between the Society and one of its employee, who is since dead and it cannot bind the investigation as such, which is in the interest of the members/shareholders and depositors of the credit society and all other stake holders.

16. In my considered view the proper investigation of the matter in order to bring out the individual role, if any, of the Applicant is the paramount consideration at this stage. The claim for parity also cannot be accepted in the facts and circumstances of the case. In the result, the Criminal Application is hereby rejected.

17. At this stage, the learned counsel for the Applicant has sought two weeks time for the Applicant to surrender before the Investigating Officer. Accordingly, the Applicant is granted two weeks time to surrender.

C.V. BHADANG, J.