IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 956 OF 2022

Prakash Keraba Otari ..Applicant
V/s.
The State of Maharashtra ..Respondent

Mr. Rajiv Patil, Senior Advocate a/w. Mr. Randhir Kale a/w. Vishal Kolekar a/w. Mr. Harshraj Jagtap a/w. Mr. Shubham Kadam, for the Applicant.
Mr. A. R. Kapadnis, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.
DATE : 11 APRIL 2022

P.C.

. By this Application, the Applicant, apprehending arrest, in connection with investigation of Crime No.167/2021 of Police Station Wai, District Satara, under Section 420, 464, 465, 467, 468 and 471 r/w. 34 of IPC and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act) and Section 81(5B) of Maharashtra Cooperative Societies Act, 1960, is seeking anticipatory bail.

2. The aforesaid crime is registered on the basis of the order dated 22 January 2020 passed by the District Special Auditor

Class I of Cooperative Society at Satara. Indisputedly, the Applicant is one of the Directors of *Harihareshwar Cooperative Bank Ltd. Wai, District Satara* ('Bank' for short), during the period from 2011 to 2019. The allegation is that 112 bogus loan proposals were sanctioned by the Bank on the basis of forged documents and fictitious entries were made showing repayment of the amount in the said loan accounts, thereby committing misappropriation of a total amount of Rs.37,46,00,000/- and odd. The specific allegation is that out of 112 loan accounts, 62 loan proposals were made to show finance for development of land of the Director Mr. Nandkumar Khamkar under the name and style as *'Harihareshwar Developers'* at Wai. Fifty loan proposals / cases were made for development of the land of Director Vazir Kasambhai Shaikh (since deceased) under the name and style as *'Asian Developers'*.

3. The record discloses that there was an inquiry made by the Cooperative Authorities under Section 81 of the Maharashtra Cooperative Societies Act, fixing civil liability in respect of the said irregularities.

4. I have heard the learned counsel for the Applicant and the learned APP. With the assistance of the learned counsel for the parties, I have gone through the record.

5. The learned Senior counsel for the Applicant submitted that although the Applicant was Director of the society from 2011 to 2019, the knowledge of any such irregularities, could not be foisted on the Applicant, merely on the basis of the Applicant being a member of the Board of Directors. It is submitted that in the inquiry under Section 81 of the said Act, there is nothing to show that there was any criminal intent and/or an active indulgence of the Applicant in sanctioning the loan proposals in respect of the establishment of Mr. Khamkar and Mr. Vazir Kasambhai Shaikh. The learned counsel for the Applicant submitted that the case of Nandkumar Khamkar and Vazir Shaikh stands on a different footing as the loans were sanctioned to the establishments of these Directors for development of the properties. It is submitted that the evidence is bound to be of a documentary nature and therefore for investigation purpose, the custodial interrogation of the Applicant is not necessary.

6. Learned APP has submitted that this Court had expressed its disinclination to grant pre-arrest bail to the co-accused Arjun Khamkar in ABA No.2626/2021. In that context, the said Bail Application was allowed to be withdrawn on 8 March 2022. It is submitted that the Applicant is similarly situated with co-accused Arjun Khamkar and no different considerations arise. Learned APP pointed out that the Applicant being admittedly the

member of the Board of Directors who is a party to the concerned resolutions, cannot escape liability.

7. I have considered the submissions made.

8. As noticed earlier, it is not in dispute that the Applicant is a member of the Board of Directors of the said Bank from 2011 to 2019 during which total 112 loan proposals have been sanctioned in respect of two properties, one each of Mr. Khamkar and Mr. Vazir Shaikh. The total amount involved is to the tune of Rs.37,46,00,000/- and odd. In my considered view, the contention based on the order passed under Section 81 of the Cooperative Societies Act, cannot prima facie be accepted, in as much as, the said enquiry is essentially about fixing of the civil liability. The criminal liability would be distinct. Thus, prima facie, it is not possible to accept that the Applicant had no knowledge of the nature of the loan proposals or their sanction, as admittedly, the Applicant was a member of the Board of Directors, during the relevant period and was also party to the concerned resolutions. It is well settled that custodial interrogation is qualitatively more elicitation oriented as held by the Supreme Court in *State (CBI) V/s Anil Sharma*[1] .

9. Looking to the nature, scope and ambit of the offence, I find that proper investigation of the matter is the paramount

1 (1997) 7 SCC 187

consideration at this stage. No case for grant of pre-arrest bail is made out. The Criminal Application is hereby rejected.

10. It is made clear that the observations herein are for the limited purpose of deciding the Application for pre-arrest bail. The learned Sessions Judge shall not be bound by the same at any subsequent stage of consideration of an Application for regular bail, if any.

(C.V. BHADANG, J.)