

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3966 OF 2021
ALONGWITH
INTERIM APPLICATION NO.3086 OF 2022
IN
BAIL APPLICATION NO.3966 OF 2021

Baburao Madhav Waze	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Nitin Gangal a/w Ashok Kadam and Purna Shukla i/b Shantanu ratnakar for the applicant.

Mr.S.V. Gavand, APP for the State.

PSI D.B. Sawant, EOW Palghar, present.

CORAM : BHARATI DANGRE, J

DATE : 15th NOVEMBER, 2022.

P.C.

1] The Applicant, who is alleged to be the Secretary of Kurze Adivasi Vividh Karyakari Co-operative Society Ltd. faces accusation in CR No.2/2021 which was registered on the complaint of one Uttam Ahire, the Special Auditor, Class II, Co-operative Societies (Fish) in respect of alleged misappropriation to the tune of Rs.1,31,57,235/-.

2] It is pertinent to note that the complaint was filed against 30 accused persons and the Applicant is arraigned as accused in the

position as Secretary of the said Society, where, alongwith other accused persons he is alleged to have committed offence punishable under Section 406, 409, 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code. It is pertinent to note that the Special Auditor submitted his report for the the period commencing from 01.04.2013 to 31.03.2016.

It is specific case of the Applicant that he was removed from the post in the year 2014 and one Deepak Araj was appointed as Secretary of the said Society.

3] The society in which the alleged defaultation took place being a Co-operative Society, it was its function to allot loan after obtaining consensus of the Board of Directors by passing resolution. The Society had complete Board of Directors who were responsible for allotment of loan. The Audit Report reveal that there was irregularity in recovery of loan amount of Rs.25,35,469/-. That recovery did not find its entry in the cash book of the Society, though the borrower is shown to have cleared the entire loan. The complainant allege that during the audit it was fond that certain entries were cancelled and by using white ink, certain manipulations were effected.

4] It is pertinent to note that the said Society is also governed by the provisions of Maharashtra Co-operative Societies Act and simultaneously proceedings under the said enactment were also initiated and finally the Authorized Officer submitted his report under Section 88 of the Co-operative Societies Act fastening liability upon the persons holding charge of Director and fastening liability of Rs.2 Lakh upon each of the Directors.

5] As far as the present Applicant is concerned, since he had given an Undertaking on a stamp paper that he would repay the amount, he was fastened with the liability of Rs.81,57,235/- . Undisputedly, the Authorized Officer of the Co-operative Societies took the report to its logical end by recovering the said amount from the respective defaulters or by recovering as arrears of land revenue.

6] When the charge-sheet filed against the accused is perused, it allege that there was misappropriation to the tune of Rs.1,31,57,235/-. The Applicant is alleged to have played major role. It will have to be ascertained as to whether as a Secretary he would be in charge of the Co-operative Society as the Society was having its duly appointed Board of Directors.

In any case, the Applicant was removed from his post in the year 2014 and he must have been given benefit of the said fact. Since accusation faced by him is of acting in consonance of the Directors, he has fraudulently prepared receipt books and taken forged entries in order to dupe the Government, of the amount mentioned in the charge-sheet.

7] It is informed that all the Directors of the said society are already released on bail. There is no reason as to why the Applicant shall not be granted liberty when he is a septuagenarian, having crossed age of 64 years and undergoing various ailments, which are already brought on record through the Interim Application which was filed, but not entertained.

8] On the investigation being complete, charge-sheet has been filed and material against the accused persons is already crystalized. It is

informed that charge has been framed and the prosecution is desirous to examine 32 witnesses.

When 32 witnesses in the charge-sheet are to be examined, it would definitely consume a considerable period and in a situation where the complaint has been filed on the basis of Audit Report for the preceding period, further incarceration of the Applicant is not necessary. He, therefore, deserve to be released on bail.

9] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) Applicant – Baburao Madhav Waze shall be released on bail in connection with CR No.2/2021 registered with Vikramgad Police Station, on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall report to the concerned Police Station on first Monday of every trimester between 10.00 a.m. to 12.00 noon.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(e) The Applicant shall regularly attend trial, on every date, unless exempted.

(f) Upon release, the Applicants shall furnish his contact number and permanent residential addresses to the Investigating Officer and shall keep him updated in case of change in the same.

I/A is disposed off.

[BHARATI DANGRE, J]