IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3039 OF 2022

Manisha Dilip Gare .....Applicant

V/s.

State of Maharashtra ....Respondent

WITH

ANTICIPATORY BAIL APPLICATION No. 3040 OF 2022

Dilip Vitthal Gare and Anr. ...Applicants

Vs.

State of Maharashtra ...Respondent

Mr. Girish Agrawal for Applicant in applications

Mr. H.J. Dedhia, APP for State/Respondent

PSI- MS. Yugandhara V. Kendre, EOW, Nashik Rural present

CORAM : SANDEEP K. SHINDE, J.

15th NOVEMBER, 2022.

P.C. :

1. Heard Mr. Agrawal, learned counsel for the Applicants and Mr. Dedhia, learned APP for the State. Investigating Officer is present along with the record.

2. Apprehending the arrest in connection with Crime No. 301 of 2022, registered with Chandwad Police Station for the offences punishable under Section 420, 406 of the Indian Penal Code and Section 4 and 4 of MPID Act, Applicants are seeking pre-arrest bail.

3. It is a classic case demonstrating as to manner in which the Managing Committee members of cooperative credit Society, in breach of trust, misappropriated its funds.

Background facts are as under

Dilip Vitthal Gare , Applicant No.1 is a Chairman of Jai Yogeshwar Nagar Sahakari Path Sanstha ('Society', for short); Manisha Dilip Gare (Applicant in ABA 3039/22), is wife of the Chairman. Mr. Suresh Vitthal Gare, is a founder chairman and brother of Dilip Vitthal Gare. Whereas, Sunita Suresh Gare, is a wife of founder chairman of the said Society. Suresh and his wife Sunita, are not before me.

4. That for the period from 1st April, 2020 to 31st March, 2021, accounts of the Society were audited by the statutory auditor. He submitted a report whereby he concluded that applicants and such other persons were guilty of offences, relating to accounts, in terms of provision of sub-section (5B) of Section 81 of MCS Act. Whereupon, the Assistant Registrar,

authorized Sunil Ramdas Aadhav to file first information report. Accordingly, FIR was filed on 24th August, 2022 against Dilip Vitthal Gare, Manisha Dilip Gare, Suresh Vitthal Gare, Sunita Suresh Gare and Jakir Bhikan Shah (Manager of the Society), whereupon a Crime No. 301 of 2022 came to be registered against them under Section 420, 406 of IPC and Section 3 and 4 of MPID Act.

5. I have perused the auditor's report and the statement of witnesses, recorded in the course of investigation. It is evident from auditor's report;

(i) that on 15th February, 2021, mortgage loan of Rs.1 crore was sanctioned to Dilip Vitthal Gare, chairman of the society;
(ii) on 15th February, 2021, mortgage loan of Rs.1 crore was sanctioned to Manisha Dilip Gare;
(iii) on 30th March, 2021, term loan of Rs.1 crore was sanctioned to Suresh Vitthal Gare (brother of chairman);
(iv) on 30th March, 2021, term loan of Rs.75 lakhs was sanctioned to Sunita Suresh Gare.

6. Auditor's report indicate that;

(i) loan sanction to Dilip Ghare and Manisha Ghare was without, adequate, proper and enforceable security;
(ii) loans were sanctioned without sanction of the Managing Committee of the Society;

(iii) loans were sanctioned by Suresh Ghare, Chairman all alone, to his family members;

(iv) loans were sanctioned without scrutiny of proposal , and verifying financial credentials of sureties;

(v) term loans of Rs.1 crore sanction to Suresh Ghare and Rs.75 lakhs to Sunita Suresh Gare, both on 31/3/2021 was without security;

(vi) these Loanees, allegedly withdrawn amount in all Rs.3.75 crores on the date of its sanction;

(vii) withdrawal slips were not bearing particulars of currency notes;

(viii) in past, Gare family had opened 45 loan accounts either in the names of their family members or third persons; eventually, their employees or otherwise;

(ix) past loan amount (Rs.2.75 crore) was apparently appropriated by the applicants (Gare family);

(x) the loan amount Rs.3.75 crores allegedly withdrawn was shown appropriated to close 45 past loan accounts;

(xi) the applicants - Gare family in collusion with each other and manager of the society Jakir Shaba (applicant in ABA 3040/22), falsified the 45 loan accounts, by making false entries.

7. Thus, the evidence on record shows, neither the loan was actually sanctioned nor disbursed to the applicants.

However, applicants by misusing their position manipulated the record of the society and thereby shown that;

(i) in February-March, 2021, loan Rs.3.75 crore was sanctioned;

(ii) Loan amount was disbursed through their savings account with the society and;

(iii) the said amount was utilized and appropriated by closing forty-five, overdue loan accounts.

The auditor's report in detail, dealt with this aspect. The remark in the report indeed shows, neither security documents were executed, nor such loan was sanctioned, nor any managing committee meeting was held before sanctioning the loan. A statement of Mr. Ramesh Kharde, a member of the managing committee fortifies this fact. Therefore, prima facie applicants' complicity in the forging record of the society and misappropriating its property, is evident.

8. In any case, applicants admit, that they withdrew Rs.3.50 crores from the society, soon after sanction of loan. However, it is their case that, they substantially repaid the amount with interest to the extent of Rs.3,35,30,653/-. Applicants have placed on record a certificate dated 18th October, 2022 issued by the cashier and manager of the society, certifying that the applicants had deposited Rs.3,35,30,653/- from time to time against the principal loan amount of Rs.3.50 crores.

9. That upon perusing the certificate dated 18th October, 2022 issued by the society, this Court vide order dated 10th November, 2022, called upon the Assistant Registrar to verify the authenticity and correctness of the said certificate and submit his report. May be for some reason, till date such report is not submitted.

10. At any rate, the statement of witnesses and in particular that of Mr. Madhukar Sampat Jadhav, cashier of the Society recorded on 4th October, 2022, clearly outlines as to manner in which the applicants manipulated record and misappropriated the funds to the extent of Rs.3.50 crores. Statement of Mr. Jadhav indeed shows that neither the loans were sanctioned to the applicants in February-March, 2021, nor 42 loan account were actually squared off. Therefore, statement of Mr. Jadhav renders the certificate dated 18th October, 2022, a false and forged document.

11. In the course of arguments, learned counsel for the Applicants, in support of the repayment of loans, would largely rely on the statement of accounts maintained with said society, but without producing the receipts and the particulars as to when and how the sum of Rs.3,35,30,653/- was repaid to the Society. Neither such details were produced, nor there are averments in the application to that effect.

Therefore, prima facie the certificate dated 18th October, 2022 allegedly issued by the Society and sought to be relied upon, does not reflect the true picture. Had Applicants genuinely repaid the loan, they would have produced the vouchers or such other evidence in support thereof. However, instead of producing and relying on the independent evidence of repayment of loan, the reliance is sought to be placed on the statement of accounts maintained by the Society itself. Moreover, as per the applicants, loan was sanctioned in February-March, 2021, and upto October, 2022, they repaid Rs.3,35,30,635/-. However, for want details of mode of payment, I presume that the loan was repaid in cash. If that was the case, the applicants would have certainly obtained acknowledgment or receipt from the Society of repayment of such huge amount; however, having not produced the receipt or acknowledgment from the society, I have every reason to believe and presume that certificate dated 18th October, 2022 relied upon, to show that the amount was repaid, was apparently false to knowledge of the applicants.

12. There is sufficient material on record, indicating complicity of the applicants in the crime, by which misappropriated the property of the members of the society, entrusted to them. Thus, in consideration of the facts above, the further investigation is necessary and, therefore,

prosecution cannot be denied the custodial interrogation of the applicants.

13. For all these reasons, applications are rejected. Interim order passed by this Court, is vacated.

(SANDEEP K. SHINDE, J.)