IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (BA) NO.1324 OF 2021

Sandip s/o Prakash Bele
...Versus...
State of Maharashtra, Through Police Station City, Chandrapur

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. S. V. Bhutada, Advocate for applicant.
Ms. S. Haider, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.
DATE : 15/03/2022

Heard Mr. Bhutada, learned counsel for the applicant and Ms. Haider, learned APP for non-applicant/State.

2. The applicant is prosecuted for the offence punishable under Sections 409, 406 and 420 read with 34 of the Indian Penal Code and Section 3 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 in Crime No.09 of 2020.

3. Mr. Bhutada, learned counsel for the applicant submits, that the applicant was merely Managing Committee Member of the Roz Nagari Sahakari Pat Sanstha Limited, and therefore, had no role to play in the matter. He submits, that the entire charge-sheet would disclose that there is no active

participation of the applicant in the alleged offence, nor is the applicant the beneficiary of any amount. He therefore submits, that the applicant would at the most guilty of dereliction of duty and not of the offence alleged and therefore, would be entitled to release on bail, as the applicant has been arrested on 05.08.2021 and is behind bar since then. He further submits, that though the charge-sheet has been filed on 20.09.2021 there are as many as 64 witnesses and there is no possibility of the trial commencing in the near future on which ground also, the applicant is entitled to bail.

4. Ms. Haider, learned APP for non-applicant/State opposes the application and submits that the applicant was equally involved in the offence for which, he is charged with as the resolutions in which fictitious loans have been granted / approved were passed in the meetings in which, the applicant was a participant and so also the resolutions, which approved the loans of these fictitious persons, bear the signature of the applicant. It is further submitted that the stamp papers on which the documents were executed in relation to the grant of the fraudulent loans were in fact procured by the applicant and in one of the loan agreement, the applicant has even acted as a witness, which would indicate his active involvement and participation. It is therefore, submitted that the application needs to be rejected.

5. It is not in dispute that the applicant is a Managing Committee Member of the Roz Nagari Sahakari Pat Sanstha Limited having registration No.419 and its head office is at Chandrapur. The applicant is one of the office bearers of the Managing Committee of the aforesaid society. On the basis of an audit report for the financial year 2017-18 dated 09.06.2018, conducted by the auditor of Co-operative Society under Section 81(5B) of the Maharashtra Co-operative Societies Act and Rule 69 of the Rules framed thereunder, it was found that there was huge defalcation of the funds of the society. Fictitious loans were sanctioned to as many as 34 members, on the basis of forged documents and these amounts, were diverted to a partnership firm by name, AVG Goat Farm at Chitegaon, Tahsil Sindewahi, of which Gajanan Khanke, Aruna Maraskolhe, Vikas Kulmethe and Dnyaneshwari Yerme were the partners. The applicant, was the Member of the meetings in which these loans were sanctioned and so also a signatory to the resolutions sanctioning these loans. That apart, the active participation of the applicant is further indicated from the fact that stamp papers, for the purpose of executing the loan agreements have been procured by the applicant as these stamp papers at pages 409, 434, 445, 488 and 498 show his name, as the person purchasing those stamps. That apart, in the loan application and the agreement at page 393, the applicant is one of the witnesses to the said document. The election of

the applicant as the Member of the Managing Committee of the aforesaid society, casts an obligation upon him, based upon the trust imposed in him by the Members of the society, to ensure the proper functioning of the society and the protection of the interest of the depositors. It is a solemn duty cast upon each and every member of the Managing Committee, including the applicant. The charge-sheet, however pictures a different story altogether in as much as it indicates the participation of the applicant, not only in the meetings in which the fictitious loans were sanctioned but also the signatory to the approvals as well as the person procuring the stamp paper for the agreement and the execution of the agreement too. The statement of the persons who are alleged to have taken the loans, as sanctioned and approved by the Managing Committee of the aforesaid society, of which the applicant was a Member indicates that they had never applied for taking those loans rather on the contrary, all of those persons had produced original Fixed Deposit (F.D.) receipts from their custody, which would substantiate the allegation of fraudulent transactions being created, otherwise a charge would have been created on those Fixed Deposits (F.D.'s) and they would have been in custody of the society. In one of the instance, one Ankush Banduji Tembhekar, who was the friend of the applicant had become a Member of the said society on 15.06.2015 who had applied for a loan of Rs.1,00,000/-

which had been repaid, however, a bogus application for long term loan of Rs.1,00,000/- was moved in his name which was approved and sanctioned.

6. Though it is correct to say that the applicant is not a partner of AVG Goat Farm, however, he has signed a consent letter executed by the Managing Committee members by the said society committing and making themselves liable for the amount of Rs.39,00,000/- paid over to AVG Goat Farms, which would indicate, connection of the applicant with AVG Goat Farm (page no.1367). The aforesaid position would indicate *prima facie* involvement of the applicant, in the creation of fraudulent loan applications and diversion of funds therefrom, on the basis, of sanction granted by the committee of which the applicant was a Member. This being a position, I do not accept the contention that the applicant is entitled for bail as he has no active role to play. The contention that trial would take a long time as there are as many as 64 witnesses to be examined does not appeal to me, as that cannot be the only factor to enlarge the applicant on bail, when the record indicates his active involvement otherwise.

The application is therefore, rejected.

JUDGE

Sarkate