IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 129 OF 2023

BHIMRAO BHIKAJJI PANDAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. A. S. Barlota, Advocate for the applicant
Mr. G. O. Wattamwar, APP for the respondent/State
Mr. V. D. Sapkal, Senior Advocate i/b Mr. S. R. Sapkal, Advocate for Assist to PP.

CORAM	:	**R. M. JOSHI, J.**
RESERVED ON	:	**07/06/2023**
PRONOUNCED ON	:	**13/06/2023**

P.C. :-

1. Applicant apprehends arrest in connection with C.R. No. 402 of 2020 registered with Gangapur Police Station, Tal. Gangapur, Dist. Aurangabad for the offences punishable under Sections 406, 467, 468, 469, 471, 472, 474 read with Section 34 of the Indian Penal Code.

2. Krushna Sahebrao Patil Dongaonkar, informant, lodged report to the police on 18/11/2020 and the allegations made in the FIR can be summarized as under:

. It is alleged by the informant that he is a member of Gangapur Sahakari Sakhar Karkhana which is closed since 2007-2008. It is alleged that the said sugar factory was indebted to

Maharashtra State Central Co-operative Bank. As the property of the said factory was put on sale, proceedings were initiated against the said sale in Debt Recovery Tribunal. When the matter went up to Appellate Tribunal (DRAT) for avoidance of sale, a sum of Rs.9 crore was required to be deposited for that purpose. This amount was collected from the members and well wishers by the directors of factory. It is alleged that after completion of litigation that amount along with interest i.e. sum of Rs.15,75,33,338/- was received by the sugar factory and the said amount was required to be disbursed to the persons who had contributed to the said deposit of the amount in DRAT. However, the Chairman and Managing director with the help of applicant and others hatched conspiracy to siphon said amount. It is alleged that the amounts were paid to those persons who were not entitled to receive any amount. It also alleged that the members of factory were mislead and thereby heavy monetary loss is caused to them. It is alleged that bogus list is prepared including names of persons not eligible for refund. On these amongst other allegations offence came to be registered against applicant and others.

3. Present application is second Anticipatory Bail Application and the first application bearing No. 1227/2017 was rejected by this Court (Croam- Mangesh S. Patil, J.) by order dated 20/01/2021.

4. At the outset learned Senior counsel appearing on behalf of the informant who sought leave to assist learned APP raised objection with regard to the tenability of the application on the ground that merely because charge-sheet has been filed it does not amount to change in circumstance and hence application be rejected as not maintainable. To support the said submission he placed reliance on judgment of this Court in case of ***Kamlesh Dhirajlal Gandhi Versus State of Maharashtra and Another*** reported in ***2007 All. M.R. (Cri) 1572.*** He also referred to judgments of Allahabad High Court in case of ***Raj Bahadur Singh Vs. State of U.P.*** reported in ***MANU/UP/3690/2022***.

5. This submission is opposed by the counsel for the applicant stating that in the present case FIR is registered on 18/11/2020 and within a month application was filed for anticipatory bail bearing No. 1227/2020 and the said application came to be decided on 20/01/2021 and thereafter investigation has been carried out. It is also submitted that in case of ***Kamlesh Dhirajlal Gandhi Versus State of Maharashtra and Another*** (cited supra) second bail application was moved immediately after rejection of the first bail application and at the time of decision of first bail application practically investigation was over and formality of filing of charge-sheet had remained. In support of his submissions reliance is placed

on ***Laxman Irappa Hatti and Another V. State of Maharashtra,*** reported in ***(2004) 2 BomCR (Cri) 525***.

6. There cannot be any dispute made about position of law that successive bail applications are entertainable. Perusal of the judgment in case of ***Kamlesh Dhirajlal Gandhi Versus State of Maharashtra and Another*** (cited supra) shows that this Court has reiterated this position of law with observation that "it is settled that insofar as the application under Section 439 of the Code is concerned, successive application application on new fact situations or change in law could be entertained. As already discussed above, the provisions of sections 438 and 439 of the Code are almost analogous. The Constitution Bench of the Supreme Court in Gurubaksh Singhs case has held that since denial of bail amounts to deprivation of personal liberty the Court should lean against imposition of unnecessary restrictions on the scope of section 438 of the Code especially when not imposed by the legislature, I am, therefore, inclined to hold that successive applications for anticipatory bail, after rejection of earlier application, would be tenable in law." In respect of the circumstances in which successive anticipatory bail application stands maintainable it is further observed that, "however, as held in Kalyan Chandra Sarkars case the said application is tenable only when there is a change in the facts

situation or law which requires earlier view being interfered with or where the earlier view has become obsolete. In that view of the matter, the present applications are tenable in law". The observations made therein, make it absolutely clear that where there is change in the facts situation, there is no embargo on maintainability of the successive bail application.

7. Perusal of the record indicates that the first information report was lodged on 18/11/2020 and though investigation commenced thereafter however major investigation has been carried out after 20/01/2021. Superintendent of Police, by order dated 04/02/2021 constituted special investigation team for the purpose of effective investigation of the crime. Apart from investigation like taking search on the premises of accused persons, collecting relevant information for Cooperative Department and recording of statements of witnesses has been done post January, 2021. The work of recording of statement seems to have been done till 9th June, 2021. Perusal of charge-sheet further shows that the investigation continued even thereafter and ultimately culminated into filing of charge-sheet in the year 2022. These facts clearly show that substantial investigation has been carried out only after passing of the order of the rejection of first bail application. Thus, filing of the charge-sheet is not only the change in circumstance however there is

substantial change in the circumstances indicating change in the facts on the basis of the available material on record. Thus, this Court sees no substance in objection raised to the maintainability of present application and finds no reason or justification to reject the application on this preliminary objection.

8. On merits of the case, learned counsel for the applicant submitted that there is no dispute about the fact the sum of Rs.9 crore was directed to be deposited by DRAT and the said amount was collected on the appeal was made by the concerned directors to members and well wishers. According to him though there are thousand of members of sugar factory but in all 1051 persons members and non members contributed said fund. It is submitted that the board of directors have passed resolutions since 2013 and thereafter from time to time for disbursement of the said amount. Similarly resolutions were passed up to year 2020 and considering the volume of amount and number of beneficiaries to whom payment was to be done for convenience, the amount was transferred in the account of six persons who were authorized by the concerned beneficiaries for further disbursement thereof to them. It is contended that the entire transactions are bank transactions and it involves no cash transaction indicating transparency. It is submitted that the applicant is also one of the general power of attorney holder,

who was authorized by 244 persons to receive money on their behalf for further disbursement. It is stated that till the time his account was freezed, the amount received was transferred to the accounts of eligible persons. In this regard statement is also made that the balance amount of Rs.7 crore was agreed to have been deposited in escrow account however on account of technical difficulties in spite of approaching learned Magistrate, such account could not be opened till date. He however, states that since the account of the applicant as well as other relevant accounts are already freezed the entire amount involved is well secured. It is further stated that after filing of the charge-sheet there is no purpose or reason for keeping applicant in the the custody as there is no chance of his abscondence and that would will be available for facing trial. He placed reliance on judgment of Hon'ble Apex Court in case of ***Siddharth V. State of Uttar Pradesh, AIRONLINE 2021 SC 574***.

9. Learned APP and learned Senior counsel appearing on behalf of the informant opposed the said contentions by stating that the allegations made in the FIR and the investigation papers indicates that there was blatent violations of the provisions of the Co-operative Society Act for the purpose of obtainment of loan and repayment thereof. It is submitted that there are statements of witnesses who claimed that their signature/ thumb impressions were

obtained on power of attorney by misrepresentation. It is submitted that the applicant had moved the application for anticipatory bail before the Hon'ble Apex Court in Special Leave Petition (Criminal) No. 8129/2022 and the said application has not been considered by the Hon'ble Apex Court and therefore he is now not entitled for bail. The said statement is opposed by the learned counsel for the applicant by stating that it was not an application for anticipatory bail and to substantiate the said submission he placed reliance on photo copy of Criminal M.P. No. 173713/2022 in Special Leave Petition (Cri) No. 8129/2022.

10. Considering submissions made on behalf of informant, about applicant being unsuccessful in getting anticipatory bail from Hon'ble Apex Court, the photocopy of intervention application made by applicant herein is perused. It does not show that any application for grant of bail was made and it was refused to be entertained by the Apex Court.

11. During the course of argument a specific query was made to the learned APP as to whether there is evidence/statement of witness who claims that he had contributed to the fund for the deposit of the amount before DRAT and he has not been refunded the said amount by applicant. This query after going through the charge-

sheet was replied by learned APP stating that not a single statement has been recorded during investigation to that effect. He however drew attention of the Court to certain statements on record. Perusal of statement of Khanderao Gaikwad recorded on 30/01/2021 shows that he has stated about attending the meeting which was organized for the purpose of collecting amount for deposit of the same in the Court and that he had contributed sum of Rs.13,350/-. He further stated that for the purpose of withdrawal of the amount his signature was obtained. He however does not state that he was refused the said amount by the directors or the persons who were authorized to disburse the amount. All that he states if that he went to the bank he was told to obtain signature from police. Reference is also made to the statement of Raghunath Sonawane who claimed that he has contributed the amount however the said amount is not received by him. He however further states that the power of attorney shows his name but denies that he has not signed the register of Notary. Further, statement of Sheshrao Sonawane referred to by the learned APP indicates that the amount deposited by the members who are not allowed to be withdrawn as the account was freezed. These statements therefore only indicate that after that filing of the FIR the relevant accounts were freezed which was the reason for non disbursement of further amounts to the eligible persons. According to learned APP there are some of the witnesses who claimed that by misleading them their signatures/ thumb impressions were obtained on power of attorney. However the said witnesses do not claim to have contributed any amount to the said fund. It is thus clear that from the charge-sheet that none of these persons who had contributed to the said fund was denied refund by applicants or the directors of factory. As far as the claim of the persons who had stated about they being mislead while obtaining the Authority/Power of Attorney from them is concerned, there is nothing on record to indicate that the said authorities were misused at any point of time and any loss is caused to the signatories thereof.

12. Perusal of the record indicates that while opposing the application for intervention filed by the present applicant before the Hon'ble Apex Court, an affidavit dated 12/11/2022 was filed by the Investigating Officer by stating that considering the fact that the applicant suffered Covid-19 symptoms in February and April 2021 and his medical conditions thereafter coupled with personal tragedy which he has faced of accidental death of his grandson, conscious decision was taken after confirming the whereabouts of the respondent No.2 not to take any custody. In view of the said statement made in the affidavit filed before the Hon'able Apex Court it was incumbent part of the prosecution to show as to the purpose

for which now custody of the applicant is necessary after conclusion of investigation. Learned APP has made candid statement on query made by Court that charge-sheet has been filed after completion of entire investigation and the same has not been kept open for further investigation in respect of present applicant. This also conclusively shows that custody of the applicant was not necessary for effective investigation. The said affidavit further indicates that applicant has deep roots in the society and that he is not likely to flee from justice.

13. As far as the the contention of the learned APP and Senior counsel for the informant about non compliance of various provision of Societies Act is concerned, first of all question would fall for the consideration is as to whether the such non compliance would constitute any offence and determination thereof needs to be left to the Trial Court. Suffice to say that at this stage there is no evidence on record to indicate that the persons who had contributed to the fund collected by the factory have made any grievance against the directors or the applicant herein for non refund.

14. In circumstances as they appear on record this Court does not find any reason to keep applicant in custody for trial. Needless to reinforce that pre-trial detention as a punishment is not

contemplated by the law. Appropriate condition can be imposed on the applicant which will ensure that he participates in the trial. It is therefor a fit case for grant of pre-arrest bail. Hence order.

ORDER

(i) Application is allowed.

(ii) In the event of arrest of applicant in connection with Crime No. 402/2020, registered with Gangapur Police Station, Tal. Gangapur, Dist. Aurangabad for the offence punishable under Sections 406, 467, 468, 469, 471, 472, 474 read with Section 34 of the Indian Penal Code, he shall be released on bail on furnishing PR Bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount.

(iii) Applicant is directed to appear before the trial on all effective hearings, unless exempted by specific order of Trial Court.

(iv) He shall not contact the witnesses directly or indirectly.

(v) He shall not interfere with the evidence in any manner whatsoever.

(R. M. JOSHI, J.)

ssp