IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 897 Of 2023

Ravindra s/o Ramesh Wani — Applicant

Versus

The State of Maharashtra — Respondent

Mr. B. S. Deshmukh, Advocate for the applicant.
Mr. G. O. Wattamwar, APP for the State.

**CORAM : R. M. JOSHI, J.**
DATE : 31st AUGUST, 2023.

ORDER

1. Applicant apprehends arrest in connection with FIR No. 71/2023 registered with Sawda Police Station, Tq. Raver, Dist. Jalgaon, for the offences punishable under Sections 406, 420, 464, 465, 467, 468, 471, 474 of Indian Penal Code.

2. Liquidator of Savda Merchant Credit Co-operative Society Ltd., Savda lodged report with the police stating that the applicant herein was working as Chief Manager with the said society and was

responsible for receiving amount of loan and to deposit it in the account and maintain record in respect of the same. It is stated in that in the year 2013, due to financial irregularities, Administrator was appointed. It is contended that record of the society was taken into custody by the Administrator however, record for the period of 2012-2013 was not made available. It is stated that during the period of tenure of the applicant as Manager, there is misappropriation of funds of the society. It is alleged that in respect of loan account No. 6/6, 1/40, 1/35, 1/37, 5/99, 1/30, 1/42, 1/33 amount was shown to have been deposited on basis of bogus receipts. It is apprehended that possibility of involvement of Branch Manager from Savada and Faijapur branch also cannot be ruled out. By giving specific names of borrowers, it is alleged that inspite of loans being outstanding from these borrowers no due certificates are issued and therefore proceedings initiated under Section 101 of Maharashtra Co-operative Societies Act, came to be dismised. There is specific allegation regarding preparation of bogus receipts by using false seal of society etc. On these amongst other allegations, report is lodged with police.

3. Learned counsel for applicant submits that allegations pertain to the year 2013 and considering the inordinate delay in

lodging First Information Report, said allegations become doubtful. He also claims that the report is motivated and the same is lodged on the basis of person/District Deputy Registrar, against whom complaints are made by applicant and that the officers of Registrar of Co-operative Societies have vested interest in keeping control of society. It is alleged that in the year 2021, elections took place, however, by adopting illegal means, two elected directors were disqualified and thereby the said authority has maintained its control over the society. It is submitted that the applicant had filed suit against the concerned authority including the person who has conducted inquiry on the basis of which report is lodged. It is also submitted that the said authorities were having control of the society for last ten years and hence it does not stand to any reason as to why no cognizance of alleged illegalities was not taken at the relevant time and it is only after election, false report is lodged. In order to support these submissions, reference is made to various documents filed along with the application. He also sought to counter submissions of learned APP by referring to affidavits filed by some of borrowers during enquiry conducted by District Deputy Registrar.

4. Learned APP opposed the application by contending that the allegations made by the applicant against Administrator are false. According to him, it is the *modus operandi* of the applicant to level allegations against any person who tries to take action against him. It is submitted that during the relevant period applicant was managing the affairs of the society and hence he cannot deny his responsibility by making allegations against District Deputy Registrar. It is submitted that merely on the ground that no immediate report was lodged, applicant is not entitled to get benefit thereof if there is evidence on record to indicate his involvement in the crime. By referring to the investigation papers, it is sought to be contended that the applicant herein has failed to handover the record of the society from 31st March, 2013 to 4th December, 2013 and even today the said record is with him. It is also argued that applicant had issued no due certificates to the borrowers after accepting money from them but without depositing the same in the account of the society. It is submitted that in this manner, in number of proceedings under Section 101 of Maharashtra Co-operative Societies Act, orders of dismissal thereof came to be passed. It is submitted that prima facie there is material on record to show that applicant has accepted the money from borrowers and has issued no dues

certificates whereas the notice came to be issued against such borrowers in the year 2019-2020 seeking recovery of the said amount. It is also argued that applicant herein has released the mortgaged property without complete recovery of the loan amount. According to him, these instances are more than sufficient to show involvement of the applicant in this crime. It is contended that custodial interrogation of applicant would be necessary to find out other cases and in order to recover documents such as bogus receipts, seals of society and misappropriated amount.

5. The question before this Court is as to whether applicant can be granted anticipatory bail when there is prima facie evidence placed on record to indicate his involvement in the misappropriation of funds of the society, only on the ground that action in this regard is initiated belatedly or there is allegation against District Deputy Registrar made by applicant. In such situation, the Court may be on guard to accept mere statements of witnesses as truth if same is not supported by other material evidence on record.

6. Undisputedly, since December 2013, Administrator came to be appointed for conducting affairs of the society. First

Information Report is lodged in the year 2023. Apparently, therefore, after a period of around 9 years, action is sought to be taken in respect of said misappropriation. It could also be said that the concerned authorities have failed to initiate immediate action to bring crime to books. This however, cannot become ground for pre-arrest bail, if there is material evidence on record, showing involvement of applicant in crime.

7. Considering the delay in lodging First Information Report, the Court should be slow in accepting the contentions of the Investigating Agency unless evidence, oral statements of witnesses get corroboration from other reliable material on record. Here in this case, applicant was Chief Manager of the society till December, 2013. The attempt made to seize record in his possession from March 2013 to 4th December, 2013, is unsuccessful. It cannot be denied that applicant being Chief Manager, was responsible for entire affairs of society, including receipt of amount towards repayment of loan, issuance of no due certificates, release of mortgage etc. The material collected during course of investigation reveals that statements of witnesses are recorded to the effect of acceptance of money and issuance of receipt and no due certificate by applicant. There is

further material on record by way of Audit Report that such amount is not credited to account of society. Such statement is supported by the document as well as postal receipt of year 2019-2020 and acknowledgment of notice issued to such borrower. Similarly, there is deed of release of mortgaged property without clearing the loan apparently executed by applicant.

8. In the light of aforesaid evidence, it needs to be considered that the present applicant was the Manager of the society and it was part of his duty to receive amount towards repayment of loan, credit the same to the account of the society and to maintain accounts. Prima facie evidence on record shows that no due certificate is issued to one of the borrowers. Receipt also seems to have been issued to such borrower, genuineness of which is questioned. However, the money is not accounted and thus, the said loan account was not closed. Similarly, audit report indicates that loan account No. 186 was not closed. However, before that, applicant had released the mortgaged property by virtue of which the loan was secured. This evidence is more than sufficient to show that there is prima facie substance in the allegation against present applicant that he had issued no due certificate after accepting money from the

borrowers and without accounting the same to their loan account and depositing it with the society and for that purpose, bogus receipts are issued as alleged by the prosecution.

9. The record of society for the period from 31st March, 2013 to 4th December, 2013 is said to be with the applicant and applicant has not placed anything on record to show that he handed over the same to Administrator. Thus, for the purpose of seizure of said record as well as in order to ascertain how bogus receipts were prepared for the purpose of issuance to the borrowers and also for recovery of the amount involved, custodial interrogation of the applicant would be necessary.

10. In instant case, amounts involved in the misappropriation belong to the common people/agriculturists. Thus it would be responsibility of Investigating Agency to effectively investigate the crime and to ensure that no one responsible for such misappropriation, may be private individual or Government Authorities, is spared.

11. In view of above discussion, the application is rejected.

12. Learned counsel for applicant prays for extension of interim relief.

13. Learned APP opposes extension thereof.

14. Since liberty of the applicant was protected by interim order, in order to give him opportunity to challenge this order before the Hon'ble Apex Court, interim order to remain in force for a period of two weeks from today.

**( R. M. JOSHI)**
**Judge**

dyb