IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1300 OF 2023

Dinkar s/o Baburao Dighe Applicant

Versus

The State of Maharashtra & another Respondents

Mr. V. D. Hon, Senior Counsel instructed by Mr. A. V. Hon, Advocate for the applicant.
Mr. D. R. Kale, Public Prosecutor for the State.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1296 OF 2023

Maroti s/o Ramkishan Giri Applicant

Versus

The State of Maharashtra Respondents

Mr. S. S. Tope, Advocate for the applicant.
Mr. D. R. Kale, Public Prosecutor for the State.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1301 OF 2023

Maroti s/o Ramkishan Giri Applicants

Versus

The State of Maharashtra Respondents

Mr. S. S. Tope, Advocate for the applicant.
Mr. D. R. Kale, Public Prosecutor for the State.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1308 OF 2023

Prasanna Prkashchand Kala ... Applicants

Versus

The State of Maharashtra ... Respondents

Mr. R. N. Dhorde, Senior Counsel instructed by Mr. V. R. Dhorde, Advocate for the applicant.
Mr. D. R. Kale, Public Prosecutor for the State.

CORAM : R. M. JOSHI, J.
RESERVED ON : 22nd AUGUST, 2023.
PRONOUNCED ON : 24th AUGUST, 2023.

ORDER

1. Chartered Accountants who were appointed as Auditors to conduct audit of Adarsh Nagari Sahakari Pat Sanstha are apprehending arrest in connection with Crime No. 0454/2023 and 0455/2023 registered with CIDCO Police Station, Dist. Aurangabad for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 120-B, 217 read with Section 34 of Indian Penal Code and Sections 3 and 4 of Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999.

2. First Information Report lodged by Dhananjay Chavan, Special Auditor, Class II, Aurangabad vide Crime No. 454/2023 shows that in the test audit conducted of the accounts of Adarsh Nagari Sahakari Pat Sanstha for the period 2016-2019, various illegalities and irregularities were found in the accounts of 23 loan transactions. It was further found that disbursement of said loans were done without following the rules, procedure and taking precaution for recovery thereof. It is further alleged therein that while accepting the sureties, no care was taken and that the forms and documents are incomplete. It is alleged that there is mis-appropriation of funds to the extent of Rs. 103,16,76,381/- by March, 2019. As far as the Auditors who conducted audit of the society, it is alleged that they did not submit report under Section 81(5)(B) of Maharashtra Co-operative Societies Act (for short "the Act"). With these allegations, all accused persons including applicants herein are said to be responsible for mis-appropriation of the said amount.

3. Crime No. 455/2023 came to be registered by Sudhakar Gayake, Special Auditor, Class II, Aurangabad, with similar allegations as made in Crime No. 454/2023. In this report, 24 transactions are included and it is claimed that the disbursement of

loan has been done in utter non-compliance of the provisions of the Act and without obtaining adequate security for recovery of the same. Against one of the applicants, it is alleged that he did not submit report under Section 81(5)(B) of the Act within 15 days. This Auditor has conducted audit for the period from 2019-2020, 2020-2021 and 2021-2022.

4. Learned counsel for applicants submitted that except for one, in all other 23 transactions, the discrepancies found during the course of audit are duly mentioned by applicants in the audit reports submitted to the society as well as to the Registrar of Co-operative Societies for each financial year. As far as allegations in the First Information Report are concerned, it is submitted that there is no allegation against the applicants that they colluded with co-accused in mis-appropriation of funds and that infact there is no evidence to show involvement of these applicants in the crime in question nor they are beneficiaries of the same. As far as compliance of Section 81(5)(B) of the Act is concerned, it is submitted that consequences of non-compliance thereof are duly provided in the Act and hence at the most the said consequences would attract against the applicants but

they cannot be held to have committed any offence under Indian Penal Code.

5. Learned Senior Counsel for applicant in Anticipatory Bail Application No. 1308/2023 has drawn attention of Court to the communication dated 18th September, 2019, whereby compliance of submission of special report as contemplated under Section 81(5)(B) of the Act is duly made. It is thus his submission that in no circumstances, no offence is attributable against the applicant. Without prejudice to these submissions it is further submitted by counsels for applicants that at the most, offence punishable under Section 217 of Indian Penal Code may get attracted which is punishable with imprisonment of two years. According to them, no recovery is to be made at the instance of the applicants and hence their custodial interrogation is not called for. It is also contended that applicants are respectable persons in the society and that applicant Dinkar Dighe is aged about 74 years with ailments and there is no possibility of applicants fleeing from justice.

6. Learned Public Prosecutor opposed the said submissions basically with the contention that in the instant case huge amount

belonging to common people has been mis-appropriated by the accused persons in collusion with each other. By referring to the Test Audit report, it is submitted that Auditors were responsible for pointing out the discrepancies in the loan transactions which they have failed to show, which indicates their participation in crime. It is further submitted that Section 81(5)(B) of the Act mandates the Auditors to submit special report in case of any offence being found in respect of accounting and inspite of there being incomplete documents, incomplete applications and for want of adequate security against the said loan, the applicants herein have failed to place on record the special report as contemplated by the said provision. He drew attention of the Court to the Circular dated 19th May, 1997 which requires inclusion of serious discrepancies in Part A of the Audit Report. It is submitted that the applicants herein have failed to mention the same in Part A of the Audit Report which has resulted into non taking of cognizance thereof by the authorities / Registrar of Co-operative Societies. With regard to contention of applicant in Anticipatory Bail Application No. 1308/2023 that he had complied with the said provision, it is sought to be argued that no such report has ever been received by the office of District Deputy Registrar of Co-operative Societies. To support his submissions he invited attention of the Court to the statement of Prashant Sadaphule, Superintendent, District Deputy Registrar, Co-operative Societies, Aurangabad, recorded during the course of investigation, who stated that such special report has not been received from Auditor Prasanna P. Kala. To support the submission that provisions of Section 81(5)(B) of the Act are mandatory, reliance is placed on judgment of the Hon'ble Apex Court in the case of Dhanraj N. Asawani vs. Amarjeetsingh Mohindersingh Basi and others in Criminal Appeal no. 2093/2023. Thus, it is his submission that having regard to the serious nature of offence and as the applicants have failed to discharge their duty as Auditor, it is not a fit case to grant pre-arrest bail to them.

7. Broadly, for grant or refusal of pre-arrest bail, nature and seriousness of crime, prima facie material showing involvement of accused therein, need of custodial interrogation, likelihood of tampering of evidence or fleeing from justice would be factors relevant for consideration. While deciding applications for pre-arrest bail of applicants, it would be relevant to take note of judgment of Hon'ble Apex Court in case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and others, **(2011) 1 Supreme Court Cases 694**,

wherein factors and parameters which can be taken into consideration while dealing with anticipatory bail are laid down, which read thus :

> (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
>
> (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
>
> (iii) The possibility of the applicant to flee from justice;
>
> (iv) The possibility of the accused's likelihood to repeat similar or other offences;
>
> (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
>
> (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
>
> (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;
>
> (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between

> two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
>
> (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
>
> (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

7. There is no dispute about the fact that the applicants herein were appointed as Auditor to conduct audit of Adarsh Nagari Sahakari Pat Sanstha in view of provisions of Section 81 of the Act. As held by Hon'ble Apex Court in case of Dhanraj (supra), Section 81(5)(B) of the Act requires the Auditor to submit a special report wherever any Auditor comes to the conclusion in audit report that any person is guilty of an offence relating to the accounts or any other offences, he is mandated to file specific report to the Registrar. Where the Auditor has failed to do so, the Registrar is empowered to file First Information Report. The obligation is cast upon Auditor and Registrar to bring the irregularities to the knowledge of police.

8. The Hon'ble Apex Court thus has held the said provision to be mandatory in nature. The question arises before this Court is as to what would be the consequences of non-compliance of such mandatory provision. Maharashtra Co-operative Societies Act and in particular, Chapter VIII thereof provides for audit, inquiry, inspection and supervision. It contains all relevant provisions pertaining to audit, compliance of rules and consequences of non-compliance thereof. Section 146(j) of the act provides thus :-

> 146. Offences :
>
> (j) [any person, wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under sections 81, 83, 88, or any other provisions of the act; or] a committee of a society or an officer or member thereof wilfully neglects or refuses to do any act, or to furnish any information required for the purposes of this Act by the Registrar, or other person duly authorised by him in writing in this behalf;

Correspondingly, Section 147 of the Act prescribes punishment for offences under Section 146 and punishment for offence under Section 146(j) is provided as under :-

> 147. Punishments for offences under section 146 :-

> (j) if it is an offence under clause (j) of that section, with imprisonment for a term which may extend to one month, or with fine which may extend to [five thousand rupees] or with both.

This provision clearly indicates that Co-operative Societies Act in general and Chapter VIII of the Act in particular is self contained code, which prescribes obligations of Auditor and also deals with offences for non-compliance of the said obligations / provisions of the Act. The mandatory nature of Section 81(5)(B) corresponds with non-compliance thereof becoming an offence under Section 146(j), punishable under Section 147(j) of the Act. Thus, non-compliance of Section 81(5)(B) of the act will lead to offence under Section 146(j) of the Act punishable under Section 147. Prima facie, this Court is of the view that non-compliance of Section 81(5)(B) of the Act will not constitute an independent offence punishable under provisions of Indian Penal Code.

9. Apart from the fact that two applicants herein did not comply with the said provision of Section 81(5)(B) of the Act, it is claimed by applicant in Anticipatory Bail Application No. 1308/2023 that vide letter dated 18th September, 2019, report was submitted in

compliance of Section 81(5)(B) of the Act. Learned Senior Counsel for applicant has placed before this Court original acknowledgment of the office of District Deputy Registrar showing receipt of the said letter on 13th October, 2019. Though learned Public Prosecutor has sought to dispute receipt of the said letter as well as report on the basis of statement of Prashant Sadaphule, however, statement of Prashant Sadaphule only shows his claim that the office of District Deputy Registrar has not received the said report. He does not claim non-receipt of the letter which is duly acknowledged by the office. Apart from this, perusal of the First Information Report itself clearly indicates that on 3rd October, 2019, explanation was given to the effect that the special report is submitted by him to the said office. Prosecution was unable to show any document on record to indicate that the office of District Deputy Registrar has ever written to this applicant contending that the special report as mentioned in letter dated 18th September, 2019 received on 3rd October, 2019 was never received by the said office. Moreoever, reference of the said letter in First Information Report prima facie indicates that there is compliance of provisions of Section 81(5)(B) of the Act by this applicant. Thus, at this stage, it can be said that there is compliance of Circular dated 19th May, 1997, requiring mention of discrepancies in Part 'A' to enable Registrar to take action.

10. Record indicates that in the year 2019 itself, an inquiry was directed into the affairs of the society may be in respect of TV Center branch but in this report also there are observations in respect of the entire affairs of the society indicating that there is mis-appropriation. It remains unexplained as to why the concerned Registrar of Co-operative Societies failed to take any action which was mandated by Section 81(5)(B) of the Act. The material placed on record clearly indicates that at least in 23 transactions out of 24, there was special report of one of the applicants indicating the irregularities done by the managing committee of the society in disbursement of loan but no action was taken in this regard for last four years.

11. Though there is allegation of criminal conspiracy being hatched by all the accused for commission of the said crime, prima facie, there is no evidence on record to indicate that the present applicants were part of such conspiracy. Similarly, there is no material on record to indicate that they are in collusion with the co-

accused or are beneficiaries of the crime in question in any manner or to any extent. Pertinently, most of the loan transactions have taken place before the appointment of applicants as Auditors. Though it is sought to be argued by learned Public Prosecutor by relying upon the test report that certain transactions are not mentioned by the Auditors and therefore they are party to the crime, it cannot be accepted for the reason that the Auditor is required to audit the accounts which are made available to him by the society. Auditor can not act as Investigating Officer. When there is material on record to indicate that all Auditors had raised necessary objection in their Audit Reports indicating irregularities done in disbursement of loan, merely because one such transaction is not reflected in the Audit Report it cannot lead to the conclusion that the Auditors are party to mis-appropriation done by the other accused persons. It would have been different case if Auditors suppressed these irregularities in their Audit Reports. Moreover, there is material on record to show that special report was submitted in year 2019, in respect of 23 loan transactions, but no action is taken in that regard by concerned Authorities under the Act.

12. Having regard to the nature of offence and the role of the applicants which is restricted to audit of accounts of the society and as there is no prima facie material on record to indicate that they received any benefit of the crime and also in view of the fact that all documents in question are not in their custody, question of their custodial interrogation does not arise. Further, this Court is of prima facie view that non-compliance of Section 81(5)(B) of the Act would attract an offence under Section 146(j) of the Act and not under Penal Code. This Court finds substance in the contention of learned counsel for the applicants that the offence alleged against the present applicants cannot travel beyond Section 217 of the Indian Penal Code which is punishable with imprisonment of either description for a term which may extend to two years or with fine or with both. Applicants have no criminal history. They are residents of Aurangabad and that they are not likely to flee from justice. Having regard to the aforesaid circumstances, it is a fit case to protect their liberty. Hence, applications are allowed in view of the following order :-

ORDER

(i) Applications are allowed.

(ii) Anticipatory Bail Applications No. 1308/2023 and 1301/2023 are allowed in terms of the interim order with condition that the applicants shall attend the concerned police station as and when called by the Investigating Officer till filing of the Charge-sheet.

(iii) In the event of arrest of applicant Maroti Ramkishan Giri in Anticipatory Bail Application No. 1296/2023 and applicant Dinkar Baburao Dighe in Anticipatory Bail Application No. 1300/2023, in connection with Crime No. 455/2023, registered with CIDCO Police Station, Dist. Aurangabad, for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 120-B, 217, 34 of the Indian Penal Code and Sections 3 and 4 of Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999, they be released on bail on furnishing PR Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) each with one solvent surety each in the like amount.

(iv) They shall attend the concerned police station as and when called by the Investigating Officer till filing of the charge-sheet.

(v) They shall not contact the witnesses directly or indirectly.

(vi) They shall not interfere with the evidence in any manner whatsoever.

(vii) They are further directed to cooperate the investigating agency for further investigation.

(R. M. JOSHI)
Judge

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