IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1372 OF 2023

BABAN S/O BANSI BHOR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
...
Mr. N. B. Narwade, Advocate for the Applicant.
Mr. K. S. Patil, APP for Respondents-State.
...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 20th SEPTEMBER, 2023.

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.284/2020 registered with Nagar Taluk Police Station, Dist. Ahmednagar for the offence punishable under 420, 409, 468, 471 r/w 34 of the Indian Penal Code as well as Sections 3 and 4 of the M.P.I.D. Act.

2. The investigation was set in motion on the report lodged by Shri. Bhaurao Vitthal Dhaware, who states that he conducted the audit of Padmavati Gramin Bigar Sheti Sahakari Patsanstha Maryadit Bhorwadi, Tq. and Dist. Ahmednagar (for short 'the Society'). The period of the audit was from 01.04.2008 to 31.03.2018. He found that during the period from 01.04.2008 till 31.03.2013, the loan amount of Rs.2,95,94,501/- has been disbursed through 30 loan accounts in the name of 20 borrowers. The loan is shown to be disbursed against Fixed Deposits, however, receipts of the Fixed Deposits are not made part of the record. Pertinently, all such borrowers have specifically refused to have obtained such loan from the Society. A huge amount has been disbursed without obtaining security. It is further alleged that, unsecured loan worth Rs.84,77,166/- is outstanding. On

further scrutiny, it was noted that Rs.10,00,000/- was disbursed to the Director of the Society namely Arun Bhor through Cheque No.401810. No security is obtained for such loan, which is inconsistent with the bye-laws. Similarly, the loan amount of Rs.9,71,013/- has been disbursed to the Secretary Balasaheb Bhor through Cheque No.707803 dated 21.10.2015. The cash in hand worth Rs.12,77,854/- is kept, which is not permissible as per bye-laws. It is, therefore, alleged that Secretary, Chairman and Directors of the Society have breached the trust of the investors and misappropriated the amount for personal gain. It is further alleged that although there are no signatures of the Directors on the Minutes of the Meeting prior to 10.09.2018, they have accepted the joint responsibility. As such, all of them are guilty of the offences alleged. In view of the aforesaid information, the offence has been registered against in all 14 accused persons. The investigation has been completed and charge-sheet has been filed in the Court of Special Judge at Ahmednagar for aforesaid offences. The applicant has been arrested in pursuance of the aforesaid offence. He is shown as accused no.5 in the charge-sheet. The applicant is behind the bar since 04.05.2023. His plea for grant of bail has been rejected by the Special Court. Hence, the present application.

3. Mr. Narwade, learned Advocate appearing for the applicant would submit that the applicant has been falsely implicated in the aforesaid offence. Although, the applicant is Director of the Society, he has never participated in day to day business of the Society. He would submit that he has not signed any Resolution of the Society. The disbursement of the loan, if any, is behind his back. There is nothing in the entire charge-

sheet to show that the applicant has recommended for any loan or he himself or his relatives were beneficiaries of any loan disbursed by the Society. He would submit that one Babasaheb Bhor, who was Manager of the Society has misappropriated the funds without knowledge of the Directors. He would submit that although the enquiry has been conducted under Section 88 of the Maharashtra Co-operative Societies Act R/W Rule 72 (6 and 7), the responsibility is fixed against each of the Director only on the allegation that they were not vigilant in discharge of their duties as Director. Accordingly, the liability for reimbursement of losses caused to society is fixed against him. He would further submit that the applicant is behind the bar for about six months. The investigation is complete. Further detention of the application would not be necessary. Therefore, he urges to release the applicant on bail.

4. Mr. Patil, learned APP strongly oppose the prayer for grant of bail. He would submit that the applicant had approached this Court alongwith other Directors by filing application for pre-arrest bail. This Court has been pleased to reject the application recording *prima facie* findings that it is serious matter of misappropriation over period of time. The applicants cannot be treated as innocent or oblivious of misdeed. He would further submit that during the audit it is revealed that huge amount of more than Rs.3 crores has been siphoned by way of disbursement of loan without obtaining security. Even, the borrowers have denied to have received amount of loan. He would further submit that the applicant was Director of the Society. He has not denied the said fact. The disbursement of the amount through various loans was even without passing any Resolution. Therefore, only

because the applicant has not signed Resolution, it cannot be presumed that he is innocent. He would submit that the Society was operating in the small village. The innocent investors from Bhorwadi are defrauded for the amount of Rs.2 crores. Under the audit report, the responsibility of the applicant being Director is fixed to Rs.13 lakhs. In that view of the matter, he urges to reject the prayer.

5. Having considered the submissions advanced, apparently audit report shows that the total sum of Rs.3,91,31,973/- is either misappropriated or defrauded. The applicant is admittedly a Director of the Society. Perusal of the averments in the complaint would show that the amount of Rs.2,95,94,501/- has been disbursed in the name of 20 borrowers through 30 loan accounts. The loans are shown to be against FDR, however, none of such receipt has been received by the Society. Even, the borrowers are now denying to have received any loan. Similarly, there is unsecured loan of about Rs.84,77,166/- and cash in hand of Rs.12,77,854/-. Upon over all consideration of the material on record, it appears that the allegations are based on audit report. Thereafter, the enquiry under Section 88 of the Maharashtra Co-operative Societies Act had been made. The observations in the audit report depicts that the Manager of the Society overstepped his powers and without their being Resolution of the Board of Directors, disbursed the loan inconsistent with the bye-laws. The liability of the applicant is fixed on the basis of the responsibilities of Director defined under bye-laws. The allegation against the applicant is that he failed to discharge his obligation and prevent the losses, which could not have gone unnoticed to him as a Director. However,

there is no allegation in the complaint or in the charge-sheet that the applicant has anyway misappropriated the amount or siphoned the funds for his own benefit. There is no allegation that he proposed for any loan or he derived any benefit out of disbursement of the loan. There is no document to show that the applicant could have knowledge of illegal disbursement of the loan. It is true that being a Director of the Society, he was under obligation to be vigilant and keep close watch on the transactions. However, failure of the applicant can be looked into for fixing liability under the provisions of Maharashtra Co-operative Societies Act and bylaws of society. On *prima facie* evaluation of the charge-sheet, the role alleged against the applicant is bereft of making out charged offence. However, it would be subject matter of trial. The applicant is behind the bar for more than five months. The investigation is complete. Further detention of the applicant may not be necessary. In that view of the matter, to secure the presence of the applicant during the course of trial and also to prevent tampering of the evidence, certain conditions can be imposed while releasing the applicant on bail. There is no impediment for grant of bail. Hence, the following order:

ORDER

(i) Bail Application is allowed.

(ii) The applicant, Baban Bansi Bhor be released on bail in Crime No.284/2020 registered with Nagar Taluk Police Station, Dist. Ahmednagar for the offence punishable under 420, 409, 468, 471 r/w 34 of the Indian Penal Code as well as Sections 3 and 4 of the M.P.I.D. Act on furnishing P.B. and S.B. of Rs.1,00,000/- (Rs.One Lakh only) each on following condition:

a. The applicant shall not tamper with the prosecution evidence in any manner.

b. The applicant shall not establish contact with any witnesses named in the charge-sheet.

c. The applicant shall attend the proceedings before the Trial Court on each and every effective date.

(iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2023