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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1473 OF 2022

Adinath Baburao Chede and Another

APPLICANTS

VERSUS

The State of Maharashtra

RESPONDENT

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Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for
the applicant

Mr. A. V. Deshmukh, APP for respondent - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st MARCH, 2023

ORDER :

1. Applicants apprehend arrest in Crime No. 505 of 2021 registered with Karjat Police Station, District- Ahmednagar for offence punishable under sections 420, 406, 408, 409, 465, 467, 468, 470, 471 r/w 34 of the Indian Penal Code and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act.

2. Eknath Pandurang Khetmalas, Chairman of Sina Parisar Urban Co-operative Credit Society, Mirajgaon (hereinafter for short "society") lodged FIR against Manager, Clerk and borrowers

of the society, alleging that the Board of Directors realized that there were some illegalities as some mortgaged gold bags were found missing and, therefore, the Board of Directors passed resolution No.3 in the meeting dated 20th March, 2021 and resolved to conduct internal audit of the society. Auditor Mr. T. Y. Kore conducted the audit. It was found that there was misappropriation and serious illegalities in the transactions of the society. Total amount of Rs.3,21,04,902/- is misappropriated by the accused persons named in the FIR.

During the course of investigation, the applicants were called by the Investigation Officer, hence they moved anticipatory bail application before the Sessions Court. Though by interim protection, the applicants were protected, ultimately their application was rejected by the Sessions Court. Hence, the present application.

3. Heard Mr. V. D. Hon, learned senior advocate for the applicants and Mr. A. V. Deshmukh, learned Additional Public Prosecutor for the State. Perused the investigation papers.

4. Learned senior advocate submits that the applicant No.1 is the founder Chairman and applicant No.2 is the founder director of the society. Inquiry under section 88 of the Maharashtra Co-

operative Societies Act, 1960 is conducted and as per the inquiry report, 11 directors, including the Chairman and present applicants have been saddled with recovery of Rs.75,04,935/- each. Further submission is that the applicants were not concerned with the day to day affairs and transactions of the society and the Manager and staff were looking after the same. While they were on interim anticipatory bail, the applicants have co-operated in the investigation. Charge sheet in the present crime is filed and in that view of the matter custody of the applicants is not necessary.

5. Learned Additional Public Prosecutor, on the other hand, vehemently opposed the application contending that the applicants are directors of the said Society since its inception i.e. from 1991 till 2022. By pointing out the statement of the Auditor, he submits that the entire record of the said Society was not made available to the Auditor. He submits that though the applicants claim that *Panchanama* about gold bags was prepared, no *Panchanama* in respect of cash in hand was prepared. He also pointed out gold auction notice issued by the Society. He submits that it was the responsibility of applicant No.1 to look after the mortgaged gold bags. During his period, 50 bags containing gold were stolen and only 11 bags could be

traced and still 39 bags are to be recovered. According to him, admittedly, in the inquiry conducted under section 88 of the MCS Act, the applicants are held liable. By relying on the order passed by the Sessions Court, he submits that custodial interrogation of the applicants is necessary for recovery of gold. He submits that duplicate record of the society is created. He, therefore, prays for rejection of the application.

6. Entire prosecution case is based on documents, which are already seized by the investigation officer. In the inquiry conducted under section 88 of the MCS Act, entire Board of Directors are held responsible for the loss and / or illegalities committed in the said Society and all of them are saddled with responsibility of making good the loss suffered by the society. The then Branch Manager is no more. Applicant No. 1 is 82 years old and applicant No.2 is 62 years old. During the course of investigation, they have co-operated. In view of filing of the charge sheet on 26th November, 2022, their pre-trial custodial detention is not necessary.

7. Learned Additional Public Prosecutor has submitted that though the charge sheet is filed, investigation in respect of the applicants and Chairman of the Society, under section 173 (8) of the Criminal Procedure Code is in progress. In case the

investigation officer finds further material showing involvement of the applicants in the present crime, prosecution is at liberty to move application for cancellation of anticipatory bail granted to the applicants.

8. In the result following order is passed-

ORDER

- A. Application is allowed.
- B. In the event of arrest of the applicants in Crime No. 505 of 2021 registered with Karjat Police Station, District- Ahmednagar for offence punishable under sections 420, 406, 408, 409, 465, 467, 468, 470, 471 r/w 34 of the Indian Penal Code and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act, the applicants be released on execution of Personal Bond of Rs.50,000/- each with one surety in the like amount.
- C. Till the investigation officer files report in respect of investigation under section 173 (8) of the Criminal Procedure Code, the applicants shall attend the concerned police station on every Saturday and

Sunday between 10.00 a.m. and 02.00 p.m. and co-operate in the investigation.

D. The applicants shall not tamper prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE