IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1625 OF 2023

Anilkumar s/o Munjajirao Dabshede — Applicant

Versus

State of Maharashtra & another — Respondents

Mr. V. D. Sapkal, Senior Counsel instructed by Mr. P. D. Jarare, Advocate for the applicant.
Mr. D. R. Kale, GP for the State.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1626 OF 2023

Anilkumar s/o Munjajirao Dabshede — Applicant

Versus

State of Maharashtra & another — Respondents

Mr. P. D. Jarare, Advocate for the applicant.
Mr. D. R. Kale, GP for the State.

**CORAM : R. M. JOSHI, J.**
DATE : 23rd OCTOBER, 2023.

ORDER

1. Applicant apprehends arrest in connection with Crime No. 0454/2023 and 0455/2023 registered with CIDCO Police Station, Aurangabad, District Aurangabad for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 217, 120-B read with

Section 34 of Indian Penal Code and Section 3 of Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act.

2. Applicant is the District Deputy Registrar of co-operative societies and at the relevant time was posted at Aurangabad. First Information Reports came to be lodged by the Special Auditors in respect of Adarsh Nagari Sahakari Pat Sanstha alleging mis-appropriation of deposits of thousands of depositors. It is alleged that the directors of the said society in utter disregard of the rules disbursed loan without ensuring return thereof and without obtaining adequate security. Allegations are also made against the auditors of the society for the period from 2017-2018 to 2020-2021 for not reporting the irregularities to the District Deputy Registrar and thereby having failed to comply with the mandatory provisions of Section 81(5)(B) of Maharashtra Co-operative Societies Act (for short "the Act").

3. Learned Senior Counsel appearing on behalf of the applicant submitted that the applicant is not named in the First Information Report nor in the charge-sheet filed against the accused. It is his submission that in absence of any specific allegation made in

the said report as well as non-disclosure of the role of the applicant in the crime, it is not open for the prosecution to seek custodial interrogation of the applicant. It is his further submission that the applicant has taken cognizance of the reports/complaints received by him from time to time and has initiated action as contemplated by the Act. To support his submission, he drew attention of the Court to various orders passed by the applicant directing inquiry, special audit, test audit etc. It is submitted that as per the rules, applicant was not expected to lodge any report unless the test audit is conducted and hence it cannot be said that there was any inaction on the part of the applicant in the present case. He drew attention of the Court to the order passed by this Court in Anticipatory Bail Application No. 1300/2023 with other connected applications wherein the auditors were granted anticipatory bail with observation that non-compliance of Section 81(5)(B) the Act will not constitute any independent offence under Indian Penal Code. It is his further submission that the prosecution, while opposing applications for anticipatory bail of auditors, has specifically averred that one of the auditors though is claimed to have submitted special report in compliance of Section 81(5)(B) of the Act, however, infact such report is not received. It is his submission that the entire record is already seized and as such custody of the applicant is not necessary.

4. Learned counsel Mr. Jarare for the applicant adopted the above arguments and in addition thereto he submitted that Section 81(3)(C) of the Act mandates conduct of test audit before lodging any First Information Report in respect of alleged crime committed in respect of the affairs of the society. It is his submission that during the relevant period when the loans in question were disbursed, applicant was not functioning as District Deputy Registrar.

5. Learned Government Pleader opposed the application by submitting that the District Deputy Registrar for the period prior to the present applicant has already been arrested and sent to police custody in connection with this crime. According to him, it is immaterial as to whether the name of the present applicant is spelt out in the First Information Report as the report has been lodged on the basis of audit conducted by Special Auditor. It is submitted that it was the duty and responsibility of the District Deputy Registrar to take immediate action in respect of the complaints received by him about mis-appropriation of funds in the co-operative credit society.

By referring to the investigation papers, it is submitted that one of the auditors has submitted report to the District Deputy Registrar on 18th September, 2019. The covering letter clearly mentions that the report is submitted along with said letter. Said letter has been attended by the present applicant which is clear from the endorsement made by him thereon. It is thus his submission that there is no substance in the contention of applicant that no special report was received in order to lodge any complaint/report against mis-appropriation/mis-management of the society. Attention is also drawn to the auditor report which specifically describes the irregularities which amount to mis-appropriation and inspite of knowledge of the same, the present applicant has deliberately not taken action in this regard. It is submitted that second proviso to Section 81(5)(B) of the Act clearly indicates that it is the duty of the Registrar to lodge report in respect of mis-appropriation brought to his notice. According to him, mere appointment of inquiry committee and direction to audit etc. is not discharge of duty as expected to be done by the District Deputy Registrar.

6. There is no dispute about the fact that the applicant was functioning as District Deputy Registrar from the period from 15th

June, 2018 to 3rd February, 2023 and was responsible for overall control and supervision of the business and management of the co-operative societies within his jurisdiction. Thus, it cannot be claimed by the applicant that he was not responsible for initiating action as contemplated by law in case it was brought to his notice that any mis-appropriation has been done in any co-operative society. Record indicates that in respect of TV Center branch of the society, a complaint was lodged with police and in respect of the same, an inquiry was directed to be conducted by the authorities . In the said inquiry, it was revealed that there is mis-appropriation not only in the said branch but in the overall functioning of the co-operative society. The said report was well within the knowledge of the present applicant however, inspite of the same, he did nothing in that regard.

7. Though it is sought to be contended that this Court has held that no independent offence under Indian Penal Code can be said to have been committed for non-compliance of provisions of Section 81(5)(B) of the Act, present applicant is not entitled to get benefit thereof. In this regard it is material to note that the finding recorded by this Court is in respect of consequence of non-compliance of Section 81(5)(B) of the Act and the said observations

were made having regard to the facts of the case applicable to the auditors. In this regard it is also relevant to take note of first proviso to Section 81(5)(B), which not only requires lodging of report after obtaining permission of Registrar but it also provides for consequences of not compliance. Section 146 of Act provides for offence which can be attributed to persons other than employees of co-operation department. In this context, it is observed that non compliance of Sectin 81(5)(B) would not amount to independent offence under Indian Penal Code. The position in respect of present applicant differs substantially in view of first and second proviso. First proviso reuires written permission from Registrar for lodging of report by auditor, whereas second proviso mandates Registrar himself to cause report himself or by person authorised by him.

8. This Court was also of the view that the auditors are sought to be made scapegoat in order to save the other beneficiaries who are responsible for not taking action. Perusal of Section 81(3)(C) though provides for test audit, but second proviso to Section 81(5)(B) requires Registrar to lodge First Information Report if auditor fails to do so. Record clearly indicates that when it is brought to the notice of District Deputy Registrar about any offence being made out against

a co-operative society, test audit is not contemplated and it is incumbent on the part of the District Deputy Registrar to lodge report about the same to the police. In the instant case, apart from inquiry in respect of TV Center branch, there is report dated 18th September, 2019, submitted by one of the auditors in compliance of Section 81(5)(B) of the Act. The covering letter of said report indicates that it was attended by the present applicant himself. If it is the case of the applicant that no report was received along with the said letter, it was incumbent on the part of the applicant / office of District Deputy Registrar to place on record any such communication. It is not so appearing from the investigation papers. It is thus clear that there was compliance of relevant rules by atleast one of the auditors and that in such circumstances, there is absolutely no reason or justification for the applicant not to file report with police in that regard. Inaction on the part of the applicant speaks volume of intentions.

9. It is not in dispute that the District Deputy Registrar who was holding charge prior to the appointment of present applicant to this post, is arrested and sent to police custody in connection with this Crime. This indicates that arrest of the then District Deputy

Registrar has relevance with the crime in question. It is pertinent to note that the First Information Report has been lodged by the auditor who is part and parcel of the co-operative department and who functions under the present applicant. In such circumstances, it is obvious that the role of the applicant has not been spelt out in the First Information Report. Needless to say that the First Information Report is not encyclopedia to include everything under the sun. During the course of investigation, if it is found that there is failure on the part of the authority in taking action which leads even to the conclusion that inaction is for the purpose of protecting the culprits, such authority is not entitled for the discretionary relief of pre-arrest bail. Here in this case, there is mis-appropriation of amount to the tune of Rs. 103,16,76,381/- and thousands of citizens are duped of their money. There is reason to accept the submission made on behalf of the prosecution that the applicant has aided and abetted to the commission of the said crime by not taking action. Mere direction to appoint inquiry committee or seek audit from time and again is not compliance of the relevant rules. It is pertinent to note that the Government has issued circular dated 18$^{th}$ January, 2017 which requires the Registrar to conduct immediate inquiry in respect of the complaint about co-operative society for receiving report thereof. Though the applicant has directed such inquiry however, he failed to insist upon immediate conduct of inquiry and report thereof. All these facts clearly indicate that inspite of having more than sufficient knowledge of the mis-appropriation and irregularities committed by the directors of the Adarsh Nagari Sahakari Pat Sanstha, applicant has failed to take action. In such circumstances, having regard to the seriousness of the crime, applicant is not entitled to pre-arrest bail. Hence, application is rejected.

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

dyb