**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.2021 OF 2023

RAOSAHEB VISHWANATH CHAUTHE
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicant : Mr. Sambhaji Subhashrao Tope
APP for Respondents: Mr. A.S. Shinde.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 28th NOVEMBER, 2023.

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 307 of 2023 registered with Satara Police Station, Aurangabad for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 120-B, 217 r/w. Section 34 of IPC and Section 3 of the Maharashtra Protection of Interest of Depositors (Financial Institutions) Act, 1999 and Section 81(1)(b) of Maharashtra Cooperative Societies Act.

2. The investigation has been set in motion on the basis of information given by Dattatray Prabhakar Dhumal, who is an Auditor of Cooperative Societies. He was assigned the job to conduct the audit of Devai Mahila Nagari Cooperative Credit Society, Aurangabad for the period from 1.4.2021 to 31.3.2022.

3. In record for financial year 2021-22 and 2022-23, he found large number of irregularities in the conduct of the business of the society. There is flagrant violation of the provisions of the Cooperative Societies Act, so also, By-laws of the Society, in disbursing the loans. He

found that during the financial period from 1.4.2022 to 31.3.2023, huge amount has been siphoned by way of loan disbursement without following due process of law and amount has been misappropriated by the Chairman and Director of the Society. The FIR refers to various transactions which attract the offences as alleged. On the basis of the aforesaid information, Crime No. 307 of 2023 came to be registered against in all 6 accused persons, two of them are named in the FIR and rest of the accused are unnamed. The applicant who has conducted the audit of the concerned society for the period from 1.4.2021 to 31.3.2022 came to be arrested in pursuance of the aforesaid crime. His application for grant of bail has been rejected by the Sessions Judge vide order dated 3.11.2023. Hence, the present application.

4. Mr. Tope, learned advocate appearing for the applicant would submit that the applicant was responsible to conduct the audit for the financial year 2021 to 2022. He has diligently done his job and submitted his audit report which points out various deficiencies in conduct of business of the society. By inviting attention of this court to the contents of the Report submitted by applicant, Mr. Tope would point out that gross irregularities in the conduct of the business of society were specifically noted in the report. He would submit that the applicant has noted disbursement of the loan without obtaining necessary security and documentation and expressed possibility that the society would go in losses. The documents relating to Fixed Deposits invested with the ICICI bank were not made available to the applicant and applicant had taken serious note of the said fact in his report.

5. Mr. Tope would invite attention of this Court to the

provisions of Section 81 of the Maharashtra Cooperative Societies Act which prescribes the duties of the auditor and submit that the applicant has complied with his obligation in terms of law. Mr. Tope would further submit that majority of the transactions which are found objectionable and referred in FIR relates to subsequent year. Therefore, the applicant cannot be attributed any role in offences as alleged.

6. Mr. Shinde, the learned APP would oppose the prayer for grant of bail. He would invite attention of this Court to the transaction dated 3.1.2022 and 15.2.2022, whereby, huge amount of loan has been disbursed in the name of the Chairman of the society i.e. Mr. Mahadeo Kakade. He would submit that all these transactions have taken place during the period of audit done by the applicant. There is no whisper as regards to the said transactions in his report. He would further submit that the audit report submitted by the applicant depicts Fixed Deposits of more than 5 Crores with the ICICI bank. However, the applicant failed to verify the necessary record and report accordingly. Mr. Shinde would further submit that in absence of connivance of the applicant with the main accused, offences alleged in the FIR could not have been given effect to. He would submit that the main accused are still absconding and confrontation of the applicant with the applicant would be necessary for effective investigation and for that purpose, his custody needs to be continued. As such, he opposes the prayer for grant of bail.

7. Having considered the submissions advanced, apparently, the applicant was assigned the job of an auditor of the subject society for the financial year from 2021 to 2022. As per the allegations in the FIR, the offences alleged took during the period from 1.4.2022 to 31.3.2023 i.e. subsequent to the audit period undertaken by the applicant. As rightly

pointed out by Mr. Tope, learned counsel for the applicant, the role of the applicant was limited to the extent of finding out the deficiencies in the maintainance of records and accounts by the Society in terms of the provisions of Section 81 of the Maharashtra Cooperative Societies Act. In report submitted by the applicant, he has highlighted the serious irregularities in the conduct of business by the society. The report was submitted to the society as well as the competent authorities under the Maharashtra Cooperative Societies Act. Perusal of the report specifically depicts that the applicant has given specific remark that the record in respect of Fixed Deposit with ICICI Bank was not made available to him, which is a serious lapse. Apparently, in absence of the documents further comments are not made in the report.

8. So far as the contentions raised on behalf of the prosecution that two transactions dated 3.1.2022 and 15.2.2022 by which huge amount of loan/cash credit was advanced to Mr. Mahadeo Kakade, is not made part of the report, it can be observed that non specification of such transactions itself would not be prima facie sufficient to hold that the applicant being conspirator with the main accused persons in commission of the offences. It appears that the applicant has been arrested on 16.10.2023. He was subjected to police custody, however, nothing is placed on record to point out that the applicant has derived any financial advantage or benefit or otherwise, by extending undue favour to the main accused persons. Since the applicant is behind bars for more than six weeks, his further detention would not be necessary. In that view of the matter a case is made out for grant of bail . Hence, the following order :-

O R D E R

(i) The application is allowed.

(ii) Applicant – Raosaheb S/o. Vishwanath Chauthe, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (rupees fifty thousand) with one solvent surety of the like amount, in connection with Crime No. 307 of 2023 registered with Satara Police Station, Aurangabad for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 120-B, 217 r/w. Section 34 of IPC and Section 3 of the Maharashtra Protection of Interest of Depositors (Financial Institutions) Act, 1999 and Section 81(1)(b) of Maharashtra Cooperative Societies Act, on the following conditions :-

[a] The applicant shall visit the concerned police station once in a week i.e. on every Saturday between 10.00 a.m. and 2.00 p.m. till filing of charge sheet;

[b] The applicant shall cooperate in the investigation.

[c] The applicant shall not tamper with the prosecution evidence.

[d] The applicant shall also attend the police station in case a specific notice is given to him by the I.O. in furtherance of investigation in the matter.

[e] The applicant shall not leave the State of Maharashtra without prior intimation to the concerned I.O. till filing of charge sheet.

[iii] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-