2023:BHC-AUG:26631

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.2066 OF 2023

Satish Ashok Mohare
VERSUS
The State Of Maharashtra

...

Advocate for Applicant : Mr. P. R. Katneshwarkar h/f Mr. K.J. Suryawanshi
APP for Respondent : Mr. S.A. Gaikwad

.....

CORAM : S. G. CHAPALGAONKAR, J.
Reserved on : December 11, 2023
Decided on : December 18, 2023

ORDER :-

1. The applicant is seeking regular bail in connection with Crime No.354 of 2023 registered with City Chowk police station, Aurangabad City, District Aurangabad for the offences punishable under sections 406, 409, 420, 465, 467, 468, 471, 477-A, 120-B r/w 34 of the Indian Penal Code.

2. Investigation has been set in motion on the basis of the information given by one Mr. Suresh Panditrao Kakade, District Special Auditor,. Class-I, Co-operative Societies, Aurangabad, who alleges that he was appointed as an Administrator on Ajantha Urban Cooperative Bank Limited, Aurangabad vide order dated 31.8.2023 issued by the Additional Registrar (Administration), Co-operative Societies, Maharashtra State, Pune. He took charge on 31.8.2023 as an

Administrator. He received a confidential letter from Reserve Bank of India, Nagpur for taking legal action as regard to illegalities, irregularities in conduct of the business of Ajantha Urban Co-operative Bank, Limited as per the provisions of Maharashtra Co-operative Societies Act. The letter of Reserve Bank of India dated 28.8.2023 indicates that net worth of the Bank was (-)70.14 crores and CRA was (-)38.30 crores. The amount of Rs.64.60 crores is shown to be disbursed to 36 borrowers based on the bogus fixed deposit certificates. Pertinently, the aforesaid facts have been admitted by the bank in communication dated 23.12.2023 addressed to RBI. A complaint is made to RBI by Ex-employee of the bank pointing out submission of false and fabricated certificates of balances worth Rs.32.81 crores with State Bank of India, Axis Bank and MSC Bank, Aurangabad.

3. Accordingly, informant contends that Chief Executive Officer Shri Pradip Eknath Kulkarni, Chairman Shri Subhash Manakchand Zambad and other Directors and employees of Ajantha Urban Co-operative Bank Limited, Aurangabad conspired together and distributed loans without requisite mortgage, security or pledge in the name of 36 persons during the period from 1.3.2006 to 30.8.2023. It is further alleged that the statutory auditor Mr. Satish Mohare, who was entrusted with the Audit for the period from 2021 to 2022 failed to make reference of 36 forged fixed deposits, in his audit report and failed to report misappropriation and

irregularities of the bank. As such, it is alleged that accused persons caused misappropriation of Rs.97.41.

4. The applicant came to be arrested on 18.10.2023 in pursuance of the aforesaid crime being the Auditor of the Bank. The allegations against the applicant are restricted to the extent that while conducting audit of the bank for the year 2022 to 2023, he failed to report the illegalities in his audit report. He failed to mention about 36 fake fixed deposits in name of different persons against which huge loan was disbursed. Although, he mentioned in his audit report regarding inspection of balances, failed to verify the difference of 32.81 crores falsely shown as fixed deposit with SBI, Axis Bank and MSC Bank. As such, he failed to report misappropriation in his audit report and acted in connivance with other accused persons. The prayer of the applicant for grant of bail has been rejected by the learned Additional Sessions Judge, Aurangabad vide order dated 8.11.2023. Hence, this application.

5. Mr. Katneshwarkar a/w Mr. Suryawanshi, learned counsel appearing for the applicant would submit that the applicant has not created any false document or indulged in misappropriation. The applicant is unconcern with the transactions of the bank, however, he conducted statutory audit for the period from 2022 to 2023 on the basis of the documents supplied to him. Learned counsel for the applicant would further submit that the provisions of the Maharashtra Co-operative Societies Act (for short the Act) mandates

statutory audit. The applicant discharged his duties in terms of section 81(5)(B) of the Act and submitted report thereby bringing irregularities to the notice of the Registrar. Non-compliance of section 81 would constitute an offence under section 146 of the Act which is made punishable under section 147 of the Act. The applicant cannot be attributed with offences under section 406, 409, 420, 467 of the IPC. He would submit that applicant is behind the bar since last two months. Investigation ascribed to role of applicant is complete. Further detention of the applicant would not be necessary.

6. Learned A.P.P. strongly opposes the prayer for grant of bail. He would submit that applicant while discharging his statutory duties failed to make reference regarding irregularities in transaction of business of the bank. The applicant carried Audit for the period from 1.4.2022 to 31.3.2023. He submitted memo on 17.7.2023, however, he could not disclose material irregularities as regards to false entries of fixed deposits or failed to tally actual balance in State Bank of India, Axis Bank and MSC Bank, which is falsely shown in the record. Present one is the matter pertaining to economic offence. Hard earned money of public has been misappropriated. Offence could not have been given effect without connivance of the applicant.

7. Having considered the submissions advanced and on perusal of the investigation papers, it is evident that applicant was assigned job of statutory auditor of Ajanta Urban Co-operative bank limited during period from 2022 to 2023.

The applicant submitted his memo wherein, no reference is made as regards to 36 bogus fixed deposits. Similarly, no reference is made regarding balances with State Bank of India, Axis Bank and MSC Bank. As such, he failed to disclose serious irregularities which were highlighted by RBI. Apparently, applicant being statutory auditor has to perform his duties in accordance with section 81 of the Act. It was obligatory on his part to file his audit report to the Registrar with necessary particulars containing details regarding irregularities that can be brought to the notice of the Registrar for further action. Provisions contained in the Act makes the provisions of punishment for the various offences. Failure of auditor to perform his duties in terms of section 81(5)(B) constitute an offence under section 146 (j) of the Act and punishable under section 47 of the Act. It is, therefore, evident that non-compliance as to the audit reports constitute an offence punishable under section 147 of the Act. Even, it is assumed that applicant has failed to discharge his obligation as per provisions under section 81(5)(B) of the Act, he can be dealt with under the provisions of M.C.S. Act.

8. Now coming to the allegations against applicant, it can be observed that applicant failed to report illegality /irregularities in conduct of the bank in his audit report for the year 2022-2023 in reference to the inspection remarks of RBI during period from 2021-2022. Further, he failed to make reference regarding 36 bogus Fixed deposits so also difference regarding deposits with SBI, Axis Bank and MSC Bank.

Pertinently, FIR constitutes allegation that directors of the bank in connivance with the officers have prepared false record regarding fix deposits and disbursed the loan against such entries so also prepared false record regarding deposits with SBI and Axis Bank. Mr. Katneshwarkar, learned counsel for applicant invites attention of this Court to communication dated 25.6.2023 addressed by applicant to C.E.O. of Ajanta Urban Co-operative Bank regarding requirements pending for the purpose of statutory audit. It is duly acknowledged by the bank. Perusal of said communication would show that applicant had called for ledger of branch adjustment (soft copy), ledger of sundry debtors, sundry creditors, clearing suspense, bank balance confirmation/reconciliation statement alongwith the bank official stamp and employer-ID, top 20 borrowers list and all loan balancing report (soft copy in excel format). Similarly, applicant had called balance confirmation of deposit accounts as on 31.3.2023 from Axis Bank, MSC Bank and SBI. However, those were not supplied to applicant. Prima facie, it can be inferred that applicant was not provided with requisite information and he was required to rely upon the documents supplied by the bank. Allegations against applicant do not suggest that he had knowledge of falsity of record prepared by the bank or he has knowingly suppressed the same in his report.

9. Apparently, investigation to the extent of applicant is practically over. He is behind the bar for more than two months. Prima facie, no material indicting him to be a

conspirator. Hence, there is no necessity to continue his further detention.

10. The observations made herein above are prima facie in nature and are based on the material placed before this Court and are made only for purpose of deciding this application.

11. Hence, the case is made out for grant of bail. Hence, the following order.

O R D E R

i. Bail Application is hereby allowed.

ii. The applicant - Satish Ashok Mohare be released on bail in connection with Crime No.354 of 2023 registered with City Chowk police station, Aurangabad City, District Aurangabad for the offences punishable under sections 406, 409, 420, 465, 467, 468, 471, 477-A, 120-B r/w 34 of the Indian Penal Code on his furnishing P.B. & S.B. of Rs.1,00,000/- (Rs.One Lakh) on following conditions :-

a] The applicant shall not tamper the prosecution evidence.

b] The applicant shall attend the concerned police station once in a week i.e. on every **Saturday** between 10 am to 2 pm till filing of the charge-sheet.

c] The applicant shall cooperative with the investigating agency.

iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE

...

aaa/-