IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.595 OF 2023

NANDKUMAR DNYANESHWAR KHAMKAR ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Satyavrat Joshi i/b. Adv. Shubham Mhatre for the applicant.
Ms. Rutuja Ambekar, APP for the State.
PI Gengaje, E.O.W., Satara.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 31, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 420, 464, 465, 467, 468, 471, 34, 120(B) of the Indian Penal Code (hereafter 'IPC' for short), under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, ("MPID Act", for short) and under Section 81(5)(B) of the Maharashtra Co-operative Societies Act, 1960 registered on 25.08.2021 vide C.R. No.167 of 2021 with Wai Police Station, District Satara.

3. The applicant who is the accused No.3 was the founding Director of Harihareshwar Sahakari Bank Limited, Wai. It is the accusation that the applicant during the period of 2011 to 2018 has allegedly misused his position to make false and bogus loan transactions in the said bank in the name of his employees. These loan transactions were done for the financial benefit of the applicant. The accusations are in respect of 62 such bogus loan transactions out of which 46 loan proposals have been sanctioned by executing forged documents regarding non-existent construction in property bearing Survey No.25/1A/2 and 25/1A/3 which was standing in the name of the mother of the applicant. The remaining 16 loan transactions were sanctioned against the apartments constructed in Survey No.71/2 which stood in the name of Ramesh Khamkar, the brother of the said applicant. It is further alleged that the applicant has deceived his own employees by making the loan transaction amounting to Rs.14,17,77,563/- in their name and withdrawing the said amount from the bank through challan for his own economic benefit. It is alleged that the applicant has embezzled an amount of Rs.10,24,42,154/- which was deposited in the bank.

4. Learned APP opposed the application for bail. Learned APP has invited my attention to the FIR and other materials on record. It is submitted that the accusations against the applicant are serious and that the applicant is responsible for such large scale financial irregularities amounting to Rs.37,46,89,344/-. Learned APP placed on record the fact that there is one more antecedent reported against the applicant being C.R. No.63 of 2022 of Wai Police Station in which he is in custody. The said matter also pertains to similar allegations in respect of the very same bank made by different investors.

5. The applicant was arrested on 15.02.2022 and is now in custody for almost 20 months. The trial is likely to take some time to conclude. All the documents are in the possession of the Investigating Agency. The investigation is complete and the charge-sheet has been filed. On behalf of the applicant an affidavit has been filed by his sister – Maya Sanjeev Mohite regarding list of properties in which she is a joint shareholder alongwith the applicant stating that she does not have any objection for the properties being used to secure the interest of the depositors. The applicant’s brother – Ramesh Dnyaneshwar Khamkar has filed an affidavit dated 25.10.2023 in this Court also stating that being a joint shareholder, in respect of the 12 properties enlisted in the affidavit, he does not have any objection for the properties being used to secure the interest of the depositors. The applicant's other brother – Suryakant Dnyaneshwar Khamkar has filed a similar affidavit. The applicant himself filed an affidavit indicating the details of the immovable properties in his name individual/jointly and encumbrances which exist on the said properties. It is stated by the applicant that subject to the clearance of the encumbrances, the applicant will not alienate his share in the said properties except for the purpose of satisfying the liability amount that shall be finally determined and fixed in any civil proceedings. So far as the share of the applicant’s two brothers and sister is concerned they have already stated that they do not have objection for the properties being used to secure the interest of the depositors in the matter. The statements in the affidavit are accepted as an undertaking to this Court. The affidavits which are filed are without prejudice to the rights and contentions. It is material to note that as per the enquiry under Section 88 of the Maharashtra Co-operative Societies Act the liability of the applicant was determined as Rs.8 crores.

6. It is also pertinent to note that 99.59 % of amount of investors is insured and which is release by deposit insurance and credit guarantee corporation and maximum amount is paid to investors of insured amount. The amount remaining is 0.41% which will be paid after the applicant is enlarged on bail. This does not mean that the applicant is absolved of his criminal or civil liability or any action as well as that the insurance company may have against the applicant in the light of the terms and conditions of such policy. Suffice it to observe that the interest of investors to a substantial extent is secured. The applicant will face the consequences of the trial if found guilty. The applicant has roots in Wai and therefore there is no likelihood of his absconding. The applicant can be enlarged on bail by imposing stringent conditions as no purpose will be served by prolonging the custody of the applicant which will only be by way of a pre-trial punishment. The applicant is in custody as an undertrial for 20 months. Hence, the following order :-

O R D E R

(a) The application is allowed.

(b) The applicant-Nandkumar Dnyaneshwar Khamkar in connection with C.R. No.167 of 2021 registered with Wai Police Station, District Satara shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more solvent sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Wai Police Station, District Satara twice a month on the first and third Monday of every month between 11.00 a.m. to 1.00 p.m.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(g) The applicant shall not leave the country without permission of the trial Court.

(h) The applicant shall surrender his passport, if any, to the investigating officer.

(i) The applicant to abide by the statements made in the affidavit.

7. The application is disposed of.

8. The observations are prima facie limited for considering the bail application. The proceedings before the Civil/Criminal Court or other forum shall proceed on its own merits without being influenced by any observations made in this order.

(M. S. KARNIK, J.)