Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2626 OF 2022

Abhijit Hanmant Devkar ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 983 OF 2023

Dadaso Keshav Sase and ors. ...Intervener

In the matter between

Abhijit Hanmant Devkar ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Ganesh Bhujbal, for the Applicant.
Smt. Ashwini Takalkar, APP for the State/Respondent.
Mrs. Suvarna Yadav, for the Intervener.

CORAM: N. J. JAMADAR, J.
DATED: 7th DECEMBER, 2023

ORDER:-

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

2. This is an application for pre-arrest bail in connection with CR No.69 of 2022, registered with Malharpeth Police Station, Satara, for the offences punishable under Sections 420, 406, 409, 465, 468 and 471 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. The first informant is a Chartered Accountant and he was appointed as statutory Auditor of Shivanjali Gramin Bigarsheti Sahakari Patsanstha Maryadit, Nade, Taluka Patan, District Satara, for the financial year 2020 – 2021. The audit of the accounts of the said Society revealed that the Chairman, office bearers and the applicant, who was then the Manager of the said Society had committed a fraud to the tune of Rs.13,41,27,924/-. The audit, *inter alia,* revealed that interest of overdraft balance was credited to the Savings Banks Account No.777 of the applicant. Collective and individual liability of the accused was also sought to be fixed.

4. When the application was listed before the Court on 27th September, 2022, having noticed that the amount of Rs.30,00,000/- was secured as there was balance of Rs.15,00,000/- in the savings bank account of the applicant and fixed deposits in the sum of Rs.15,00,000/- in the name of the applicant and his blood relations, this Court granted interim protection.

5. The learned Counsel for the applicant submitted that the applicant has cooperated with the investigation. The applicant had disbursed the loans only on the basis of the sanction accorded by the Board of Directors. It was submitted that the only role attributed to the applicant is that, interest on the overdraft facility was credited to the savings account of the applicant.

6. The learned APP, on the other hand, submitted that the applicant being the Manager of the Society was the principal officer of the Society and was equally complicit in siphoning off huge funds from the Society. There has been misappropriation of huge amount of Rs.13,41,27,924/- and financial irregularities to the tune of Rs.4,08,17,650/- and thereby the investors have been defrauded to the tune of Rs.17,49,45,574/-. Fraud of such magnitude could not have been possible but for the complicity of the applicant. The learned APP submitted that the applicant is similarly circumstanced like Dadasaheb Ramchandra Mathne, the co-accused, whose first application was withdrawn and the second dismissed.

7. It is pertinent to note that in addition to the credit of interest on the overdraft facility, the Auditor has fixed liability on the applicant for the outstanding amount of loan availed by Directors and their relatives, sanction of loan despite the accounts becoming NPA, sanction of loan beyond area of the operation of Bank, non-charge of interest on the loan account and utilization of the funds of the bank for the whole year and transfer of the amount at the end of the financial year. Therefore, it cannot be urged that the applicant had no role in the alleged fraud.

8. What essentially incriminates the applicant is the fact that in the salary account of the applicant as of 31st March, 2022 there were debit entries to the tune of Rs.3,22,54,786/- and credit entries to the tune of Rs.3,37,94,817. There was balance of Rs.15,40,031/-. It is imperative to note that the applicant was drawing salary of Rs.14,000/- per month. Huge transactions running into the Crores of rupees not only in the savings bank account with the Society but another account maintained with Patan Urban Co-operative Bank Ltd., Patan Branch, Malharpeth, *prima facie,* indicate that there was conversion of the allegedly misappropriated amount to the personal accounts of the applicant. The Investigating Officer has further found that the applicant has acquired immovable properties by entering into big-ticket transactions.

9. Mr. Bhujbal, the learned Counsel for the applicant, attempted to salvage the position by canvassing a submission that the applicant's family is engaged in businesses. I am afraid, there can be transactions running into Crores of rupees, especially in the salary account of an employee who drew a monthly salary of Rs.14,000/-. The allegations in the FIR and the Audit Report are required to be seen in this context.

10. Viewed through the aforesaid prism, the fact that a sum of Rs.30,00,000/- was to the credit of the account of the applicant and his relatives, in the backdrop of the huge fraud and the role attributed to the applicant in the capacity of the Manager of the Society, cannot be a ground to grant pre-arrest bail. Custodial interrogation of the applicant, who was the principal officer of the Society, is indispensable for an effective and complete investigation, unearth the fraud in all its facets, ascertain the money trail and also identify the persons who were privy to the fraud. Release of the applicant on pre-arrest bail in the backdrop of the nature of the accusation would jeopardise the interest fair and effective investigation. I am, therefore, inclined to reject the application.

11. Hence the following order:

: O R D E R :

(i) Application stands rejected.

(ii) Interim order dated 27th September, 2022 stands vacated.

(iii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

(iv) In view of dismissal of ABA, interim application also stands disposed.

[N. J. JAMADAR, J.]