

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.90 OF 2022**

Noel MascarenhasApplicant
Versus
The State of MaharashtraRespondent

WITH

CRIMINAL BAIL APPLICATION NO.751 OF 2023

Elcy John RodriguesApplicant
Versus
The State of MaharashtraRespondent

WITH

CRIMINAL BAIL APPLICATION NO.974 OF 2023

Prakash Aitappa Kotian & Anr.Applicants
Versus
The State of MaharashtraRespondent

Mr. Bhavesh Parmar a/w. Mr. Vivekanand Akshali i/b. Ms. Devmani Shukla for Applicant in BA/90/2022.
Dr. Abhinav Chandrachud a/w. Mr. Ravi Kotian a/w. Mr. Pankaj Shinde a/w Gurunath Aire i/b. Ms. Jayshree Tripathi for Applicant in BA/751/2023 and BA/974/2023.
Ms. Pallavi Dabholkar, APP for the Respondent/State.
API – Ramkrishna Bodke, Mira Road Police Station.

CORAM : G. A. SANAP, J.

DATE : 6th NOVEMBER, 2023.

P.C. :

1. These three applications arise out of Crime No.224/2020, registered on 2nd October, 2020 with Mira Road Police Station for the offences punishable under Sections 406, 409, 465, 468, 471, 420, 120-B read with 34 of the Indian Penal Code, 1860 (for short “IPC”) read with Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short “MPID Act”).

2. The applicant in BA No.751/2023 is accused No.3. The applicants in BA No.974/2023 are accused Nos.6 and 7. The applicant in BA No.90/2022 is accused No.5.

3. In short, it is the case of prosecution in the FIR registered on the report of one of the investors that various investors were lured by the accused persons, who are the members of the Credit Co-operative Society Limited (for short “Society”). Due to false promise made of hefty returns, near about 1,409 investors invested their money. The amount invested as per the case of prosecution is more than Rs.2,25,53,28,733/-. In the Mira Road Branch, an amount of Rs.1,58,95,06,230/- was deposited. After investigation, charge-sheet

has been filed. In the charge-sheet, main role has been attributed to the Chairman and Director - Manohar Shetty.

4. Learned advocate for the accused in BA No.751/2023 submitted that the wife of the Chairman has been granted bail *vide* order dated 15th February, 2023 in BA No.2583/2021. Learned advocate submitted that compared to the role attributed to the wife of the Chairman, the role attributed to the applicants in these three applications is not that much serious. Learned advocate pointed out that they have been roped in this crime, being connected with the Society in their capacity as employee or office-bearers. Learned advocate submitted that no specific role has been attributed to them. It is pointed out that the applicants/accused in all these applications are not the direct beneficiaries of the amount of misappropriation. Learned advocate submitted that on the ground of parity, bail has been granted to accused No.4 - Lovel Baptist. Learned advocate submitted that the role attributed to the applicants/accused in all these applications is somewhat similar to the role attributed to Lovel Baptist. Learned advocate further submitted that the charge-sheet has been filed. It is pointed out that as yet, charges have not been framed. It is pointed out that on account of misdeeds of the

Chairman and one Mr. Shetty, these applicants have been made to face this prosecution. Learned advocate submitted that for the purpose of investigation or interrogation, their further detention is not warranted. Learned advocate submitted that they are ready to abide by the conditions that may be imposed by this Court.

5. Learned APP submitted that the ground of parity is not available to these applicants/accused, inasmuch as the role attributed to them is somewhat different from the role played by the accused, who have already been released on bail. Learned APP, however, conceded that Marceline Baptist, wife of Chairman, is attributed serious role in the crime, but considering the other relevant factors, she was granted bail. Learned APP submitted that considering the enormity of the crime and the amount of misappropriation involved in the crime, the applicants/accused do not deserve bail.

6. In order to appreciate the rival submissions, I have perused the record and proceedings. I have also gone through the bail orders, passed in case of accused Marceline Baptist and Lovel Baptist. It is to be noted that while deciding the bail application, merits of the

matter cannot be gone into. The Court has to undertake *prima facie* analysis of the evidence on record to find out the role attributed to a particular accused. It is undisputed that the applicants/accused persons in these applications were concerned in their respective capacity in the affairs of said Society. It is seen on perusal of the record that no specific role in actual collection of money from the investors and misappropriation of the said money has been attributed to them. It is further seen that in case of some of the accused, the evidence on record indicates that there is no clarity about their position in the Society. In my considered opinion, the ground of parity put-forth by the accused needs to be appreciated keeping in mind the role attributed to them.

7. Perusal of the applications, evidence compiled in the charge-sheet and the role attributed to the accused, who have been granted bail, would show that ground of parity is available to them. It is to be noted that the role attributed to Marceline Baptist, being the wife of Chairman by applying any standard is more serious than the role attributed to the applicants/accused in these applications. Therefore, I do not see any reason to deny the bail to them on the ground of parity.

8. Learned APP has put-forth an apprehension that in case of their release on bail, they would tamper with the prosecution evidence as well as they may extend threat, promise etc. to the witnesses. In my view, on this apprehension, bail cannot be denied to them. The apprehension put-forth by learned APP can be taken care of by imposing appropriate conditions. Hence, I pass following order:

ORDER

- (i) The applications are **allowed**.
- (ii) Applicant – Noel Mascarenhas in BA No.90/2022, Applicants – Prakash Aitappa Kotian and Dinesh Timappa Pujaari in BA No.974/2023 and Applicant – Elcy John Rodrigues in BA No.751/2023 in connection with Crime No.224/2020, registered with Mira Road Police Station, shall be released on bail on their furnishing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousand Only) each with one or more sureties in the like amount.
- (iii) The applicants are permitted to furnish temporary cash bail surety in the sum of Rs.25,000/- (Rs. Twenty Five Thousand Only) each for a period of six weeks in lieu of surety.

(iv) The applicants shall report to the Investigating Officer of the concerned Police Station once in a month on every first Monday of the month between 11:00 a.m. and 1:00 p.m. and thereafter, as and when called.

(v) The applicants 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 applicants shall not tamper with evidence.

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

(vii) The applicants shall not leave the jurisdiction of Mumbai/ Mumbai Suburban District without the leave of the trial Court.

(viii) The applicants to abide by the statements made in the affidavit.

9. The applications are disposed of accordingly.

(G. A. SANAP, J.)