

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1105 OF 2023

Suresh Balwant Sarudkar ...Applicant

vs.

The State of Maharashtra ...Respondent

Adv. S. S. Sayyed a/w Adv. I. S. Thakur a/w Adv. Sahil Sayyed a/w
Adv. Hubab Sayyed - Advocate for the Applicant
Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 17th JULY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP. Officer from the Kopari Police station is present.

2. The present Applicant is appointed as Authorized Officer/Administrator of Shiv Co-operative Housing Society Limited at Kopari, Thane (East). The Managing Committee of the said Society was dissolved by the Deputy Registrar as per Order dated 17/03/2020. The predominant reason was that the Committee has not taking steps for removal of the leakage. The present Applicant took over the charge on 15/08/2020 and his appointment was cancelled on 06/09/2021.

3. The present Applicant was appointed as Competent Officer in all 23 Co-operative Housing Societies and there was direction given by the Commissioner Cooperation to verify the expenses incurred in the societies in which he was appointed as Competent Officer. The first informant/auditor carried out inspection of the Shiv Co-operative Housing Society. He gave report about inspection to the Deputy Registrar on 31/05/2022. The present offence is registered on his complaint on the basis of the said report. The F.I.R. is dated 09/11/2022 for the offence punishable under Sections 409 and 420 of the Indian Penal Code.

4. The sum and substance of the allegation is as follows:-

- a) The present Applicant has not obtained the approval of the general body for incurring the expenses.
- b) Though he has collected Rs. 3,23,969/- towards the maintenance, he has not deposited in the bank.
- c) He has caused wrongful loss of Rs. 13,35,612/- to the Society and accordingly misappropriated the amount.

5. Certain payments are made to suppliers and the contractors. The details are given on page no. 42 which is part of the F.I.R.. Neither of those expenses were carried out nor proper procedure was followed.

6. One of the contention is raised as the present Applicant cannot be considered as Public servant and there is reliance on observations made by the Hon'ble Supreme Court in case of *State of Maharashtra V/s. Laljit Rajshi Shah and Others*¹ and *Ramesh Balkrishna Kulkarni V/s. State of Maharashtra*². Reliance is also placed on observations in case of *G. Sagar Suri and Another Vs. State of U.P. and Others*³. This is not the stage where to consider whether provisions of the Section 409 of the Indian Penal Code is applicable or not.

7. My attention is invited to the inspection report on page no. 61 dated 31/05/2022 given by the first informant and the explanation given by the present Applicant dated 17/04/2022 on page no. 79. The report given by the auditor is challenged before the Divisional Joint Registrar Co-operative Societies, Konkan Division by way of Revision Application at page no. 83.

8. I tried to understand from learned Advocate for the Applicant and learned APP about two aspects. One is about findings given by the auditor and second is the materials collected during investigation. It is very well true that the Court cannot verify each

1 2000 (2) SCC 699

2 1985 (3) SCC 606

3 2000 (2) SCC 636

and every allegation and whether it is supported by vouchers or not.

After hearing them, what I find is that proper procedure was not followed. But from the papers nothing is pointed out to me that expenses was not at all incurred. So to say, some adjustment is given to a member by name Smt. P. C. Jasrani. That is to say instead of she paying arrears of the maintenance of the Society, she incurred that amount towards the repair. In such a away there is impropriety.

9. There is one allegation of purchasing the electrical appliance from Rangravji Electricals for Rs. 23,860/-. The Applicant claims that amount is paid by way of crossed cheque. Prosecution could not find out the concerned person from Rangravji Electricals but certainly these expenses can be verified on the basis of the Bank entries.

10. The allegation is that payment is not made by crossed cheque but by bearer cheque. Even though that allegation may be true, there is no contention that bogus vouchers are prepared and expenses is not at all incurred. The allegation is about not following the procedure.

11. There is allegation of the misappropriation to the tune of Rs. 3,23,969/- towards the maintenance. There are statements

recorded of the members which states that amount is paid during the tenure of the present Applicant. There is statement recorded of the Manager appointed for the Society. He has said that he used to deposit money in the bank.

12. One of the allegation is about expenses incurred on the salary. The Applicant was entitled to get Rs. 3000/- towards salary and amount of Rs. 500 towards Travelling expenses, whereas amount incurred is Rs. 3,500/-, but it is not verified by the auditor. Even though the Applicant has given an explanation, the contention is that it is not considered by the auditor.

13. There is further contention that provisions of Section 82 of the Maharashtra Co-operative Societies Act were not followed in the sense that the opportunity to rectify the defects if any was not given. It is true that there are also other offences against the Applicant, in some of them he was arrested and on regular bail. Whereas some others are pending for consideration of pre-arrest bail.

14. Considering the above, I think that the Police can carry out investigation on the basis of the documents. I do not think that custodial interrogation is required. Hence following order :-

ORDER

- (i) Anticipatory bail application is allowed.
- (ii) In case of arrest in connection with C.R. No. 231 of 2022 registered with Kopari Police Station, Thane City for the offence punishable under Sections 420 and 409 of the Indian Penal Code, the Applicant be released on furnishing Personal Bond and Surety Bond in sum of Rs. 25,000/-.
- (iii) Applicant is directed to give attendance to the Kopari Police Station, Thane City on 2nd and 4th Friday, from 10 to 12 noon until filing of charge-sheet and co-operate the Police as and when required.

15. It is made clear that the these are my prima facie observations and the trial Court shall decide the case on its own merits without influenced by the observations made in this order.

16. Application is disposed of in the aforesaid terms.

17. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]