

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1744 OF 2023**

Milind Vasant Patil

...Applicant

vs.

State of Maharashtra

...Respondent

Mr. A. K. Shukla for the Applicant.

Mr. S. R. Agarkar APP for the Respondent - State.

Mr. Jaymala Vasave, API, Kasarvadavali police station present.

CORAM : S. M. MODAK, J.

DATED : 24TH JULY 2023

P. C. :

1. Heard learned Advocate Mr. Shukla for the Applicant, then Secretary of Jacaranda Co-operative Housing Society, Anandnagar, Ghodbunder Road, Thane and learned APP for the Respondent-State. The Investigating Officer is present.

2. On the basis of permission given by the Deputy Registrar, Co-operative Society, Thane dated 30th May 2023, present FIR

came to be lodged by the first informant-Prakash Mandre with Kasarvadawali police station. Along with present Applicant, then President-Mr.Amit Sharma is also one of the accused. The offence is registered under Sections 420, 406, 409 read with 34 of IPC.

3. The sum and substance of the allegation is that both accused persons have misappropriated an amount of Rs.95,66,355/- in between 21st September 2019 to 31st March 2022. My attention is invited to the report, more specifically from page 53 to page 64 of the Application. The auditor has explained how the expenses were incurred without following procedure. There is further allegation that certain payments are made to Om Sai Enterprises and Siddhi Enterprises. Whereas amounts are re-transferred from the bank accounts of these entities to the account of present Applicant.

4. There is challenge to this auditor's report for the reason that explanation of present Applicant was not taken as mandated by the law. On page 62, the report mentions that notice was given to then Managing Committee members on 1st February

2023, and explanation was offered. Learned Advocate Mr.Shukla for the Applicant disputed this contention.

5. Whereas, my attention is invited to the supplementary statement recorded by the police of the first informant-Prakash Mandre on 19th July 2023, which mentions that notice was sent to the present Applicant, however, he is not residing in the premises of the society and he has shifted to Vikramgad and that's why notice was sent at that address.

The auditor's report is not acceptable to the Applicant and he has challenged that report before the Authorities under the provisions of Maharashtra Co-operative Societies Act. As on today, there is no interim relief granted.

6. Earlier to that the Applicant claims that one Mr. Sachin Maid has given report on 25th October 2021. It is on page 192, and as per his report there is no misappropriation. Whereas, the prosecution relied upon one letter dated 15th May 2020, given by said Maid addressed to then President and Secretary informing that he has not carried out audit. Learned Advocate for the Applicant invited my attention to the date of letter.

According to him, subject says about the inspection carried out between 2019-20, 2020-21 and 2021-22. However, the Investigating Agency has recorded statement dated 16th June 2023, wherein he has categorically denied doing audit and even denied to have signed on any report, even he has informed to the society as per email dated 15th May 2022.

7. Today, the compilation of documents produced on record by the Applicant's Counsel is taken on record. He made two submissions. One money is paid by these two entities to the Applicant because he has offered catering services and those correspondence is there on page 238 to page 263. The Applicant wants to contend that the money is transferred to his account for the services he has rendered and not as per the allegations made by the first informant in the audit report. Whereas as per learned APP this explanation was not offered before the auditor-first informant and these two entities are not traceable as per investigation. Secondly my attention is also invited to NC reports filed by the Applicant to the same police station of page 265, 267 and 268. Whereas, learned APP submitted that there are counter

Ncs also.

8. CHANGE PARA

9. I am not inclined to accept contentions of learned Advocate for the Applicant. It is for the reason that in respect of objection about retransferring the amount by those entities, explanation is now offered now about receiving the payment from these two entities for catering services.

10. Furthermore, the auditor Mr.Maid has disowned the report which is relied upon by the Applicant at page 192. No documents is produced, what the Managing Committee of the society has done about this report, that's is to say whether they have accepted it or not. Furthermore, there are no orders produced on record which suggest that the stay is granted to the action initiated by the auditor. Copy of the notice sent from the Divisional Joint Registrar dated 4th July 2023, is annexed to the compilation filed today. The hearing was held on 18th July 2023.

11. On this background, what I find is that there are allegations of misappropriation against present Applicant. So, I find that custodial interrogation of the Applicant is required. Hence, no

case for anticipatory bail is made out.

12. Application is dismissed accordingly.

13. These are my *prima facie* observations and the trial Court may not be influenced by that.

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

[S. M. MODAK, J.]