

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

**ANTICIPATORY BAIL APPLICATION NO. 2067 OF 2023
(SERIAL NO. 901)**

1. Sunil Waghojirao Pol
2. Suresh Sahebrao Ingale
3. Sushila Waghojirao Pol
4. Suresh Laxman Jadhav
5. Suresh Yashwant Jagtap
6. Nilima Sunil Pol
7. Balaso Shankar Katarakar ...Applicants
vs.
The State of Maharashtra ...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 2826 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 2067 OF 2023**

Girish Narayan Kulkarni ...Applicant
vs.
The State of Maharashtra ...Respondent

**ALONGWITH
ANTICIPATORY BAIL APPLICATION NO. 2068 OF 2023
(SERIAL NO. 902)**

1. Padmaja Rajendra Deshmukh
2. Maloji Namdev More ...Applicants
vs.
The State of Maharashtra ...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 2862 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 2068 OF 2023**

Shri Girish Narayan Kulkarni

...Applicant

vs.

The State of Maharashtra

...Respondent

Shri A. P. Mundargi, Senior Advocate a/w Mr. J. Bardeskar i/by Mr. Abhijit B. Kadam - Advocate for the Applicants in ABA 2067 of 2023.

Mr. Abhijit B. Kadam – Advocate for Applicants in ABA 2068 of 2023.

Mr. Aabad H. Ponda, Sr. Advocate i/by Mr. Vishwajeet V. Mohite a/w

Mr. Siddharth R. Karpe,- Advocate for Applicant in IA 2826 of 2023.

Mr. Sanjeev P. Kadam, i/by Vishwajeet V. Mohite a/w Mr. Siddharth R. Karpe - Advocate for Applicant in IA 2862 of 2023.

Mr. H. J. Dedhia - APP for the Respondent-State in ABA 2067 of 2023

Mr. S. R. Agarkar – APP for the Respondent – State in ABA 2068 of 2023.

Officer from Wathar Police Station is present.

CORAM : S. M. MODAK, J.

DATE : 10th AUGUST, 2023

P. C. :-

1. Heard learned Senior Advocate Shri Mundargi for the Applicants in Anticipatory Bail Application No. 2067 of 2023, learned Advocate Shri Kadam for the Applicants in Anticipatory Bail Application No. 2068 of 2023, learned Senior Advocate Shri Ponda for the Intervenor in Interim Application No. 2826 of 2023 and learned Advocate Shri Kadam for the Intervenor in Interim Application No. 2862 of 2023 and also heard learned APP. The

investigating officer from Wathar Police Station is present.

2. In all there are 17 accused persons in a F.I.R. bearing C.R. No. 141 of 2023. They are all directors of Siddhanath Nagari Sahakari Patsanstha Limited, Satara. They are being prosecuted on the complaint of their borrower Girish Narayan Kulkarni. He runs the business of building construction in the name and style as 'M/s. Konark Developers on partnership basis. His wife Pallavi is another partner. Whereas there is another partnership business by name M/s. Konark Promoters and Developers consist of himself and Sunil Pol-Accused No.1/Applicant No. 1 in Anticipatory Bail Application No. 2067 of 2023 as another partner. There are accounts in that Patpedhi in the name of the both partnership firms. There was some discussion in between the first informant- Girish Kulkarni and Applicant No. 1- Sunil Pol about dissolution of the partnership firm by way of retirement. Applicant No. 1- Sunil has expressed desire to retire. Though the deed of retirement was prepared, Applicant No. 1- Sunil never signed on it. On the other hand, the first informant- Girish Kulkarni admitted his son as incoming partner.

3. The F.I.R. pertains to the transaction of sanction of loan in the name of the partnership business by name Konark Promoters

and Developers. Loan was applied by the first informant- Girish Kulkarni and his son. Loan was also sanctioned to the tune of Rs. 50,00,000/-. The relevant dates are as follows:-

- (i) Date of the application for loan – 07/06/2020 – page no. 29 of the compilation by the first informant.
- (ii) Date of the deposit of the amount in partnership firm account on 04/09/2020.

An amount of Rs. 20,00,000/- is transferred in the saving bank account of the partnership firm on 04/09/2020.

4. At the time of the applying for the loan, the first informant handed over the following documents:-

- a) Five cheques of the Axis Bank
- b) Ten cheques of the ICICI Bank
- c) Five cheques of bank of Baroda
- d) Sixteen blank withdrawal slips (page no. 25)

5. From 11/09/2020 to 19/09/2020, the first informant was admitted in Symbiosis Hospital, Satara being infected by Corona virus. His grievance is that behind his back the amount is withdrawn

from the saving bank account of the firm and accordingly, he was cheated.

6. The allegation is against all the Applicants in both these applications. Accordingly, offence under Sections 420 and 406 read with 34 of the Indian Penal Code came to be registered.

7. Initially, Shahupuri Police Station has done the investigation. My attention is invited to the avernments in the para no. 5 of the dispute filed by the first informant- Girish Kulkarni and his son- Pushkaraj before the Co-operative Court, Satara page no. 139. They have pleaded that on 30/12/2020 itself they have realized that there are certain entries made in the saving deposit receipts.

8. If it is so, according to the learned Senior Advocate Shri Mundargi, the F.I.R. filed on 16/05/2023 is filed belatedly. Whereas learned Senior Advocate Shri Ponda submitted that his client is making the grievance since 13/12/2020 and there are various correspondences.

9. My attention is also invited by Mr. Mundargi to the report submitted by PSI attached to the Shahupuri Police Station addressed to the PI of the same Police Station on 09/04/2023 on page no. 183. There is mentioned all the following facts:-

- a) As the borrower is defaulter and as action is started, he has lodged the complaint with malafide intention. This was stated during inquiry with the present Applicant, their manager- Mahadev Gonjari and Deputy Branch Manager- Sandeep Dangare.
- b) The branch Manager- Jagtap was relieved from the Patsanstha. He is one of the witness, who has made allegation against the present Applicant about receipt of the misappropriated amount.
- c) Reporting officer has requested to close the complaint.

10. Learned Senior Advocate Shri Mundargi made following submissions:-

- (i) The first informant is not layman but he is aware about the bank procedure.
- (ii) Not only that, he has applied for loan in the name of the partnership firm but after sanction of the loan he has tried to comply with terms and conditions and has also offered a property by way of mortgage.
- (iii) My attention is invited to the deed of mortgage executed in between the Patpedhi as mortgagee, the firm through the partners as mortgagor and the owner of the property as confirming party.
 - (a) This property was taken for development in the

year 2015 by the first informant.

(b) There is recovery certificate issued by the Co-operative authorities under Section 101 of the Maharashtra Co-operative Societies Act. It is on page no. 105. The borrowers are the first informant and his son.

(c) The attachment warrant on page no. 108.

(d) An order thereby attaching the salary of the first informant at page no. 111.

(d) The Revision application filed by the first informant against order of the recovery certificate, at page no. 116.

(e) Dispute application filed by the first informant and his son before the Co-operative Court, Satara against the Patpedhi at page no. 134. There is prayer for declaration that the loan is not sanctioned in the name of the firm.

11. How there is rivalry amongst the group forming a board of the Directors of the Patpedhi, learned Senior Advocate Shri Mundargi invited my attention to copy of the F.I.R. lodged by Ranjit Sahebrao Pol, General Manager Dahiwadi Head Office on 31/08/2019 at Dahiwadi Police Station under Section 3 and 25 of the Arms Act and under Section 392 of the Indian Penal Code is at

page no. 61 of the Interim Application No. 2826 of 2023 against the present Applicant No. 1 in Anticipatory Bail Application No. 2067 of 2023. The general manager himself has filed F.I.R. against Chairman/present Applicant.

12. This Court has granted anticipatory bail to the present Applicant No. 1 in Anticipatory Bail Application No. 2067 of 2023 as per the Order dated 17/07/2020. The Police have dropped Section 392 of the Indian Penal Code and Sections 3 and 25 of the Arms Act as recorded in the order dated 17/07/2020. He submitted that the criminal law is set in motion with malafide intention and if at all any irregularities are there, let Special auditor conduct an inquiry and decide the liability. It is already started and show cause notice is issued to all the members of the Managing Committee. It is on page no. 53 of the Interim Application No. 2826 of 2023 and the relevant allegations are on page no. 56 of the said Interim Application.

13. The withdrawal slips are also annexed to the application. They are on page no. 83 to page no. 103 of the Anticipatory bail application no. 2067 of 2023. My attention is invited to signatures appearing on it.

- (a) On the front side;
- (b) On the back side as a token for receipt of the amount.

14. Learned Senior Advocate Shri Ponda submitted that the present Applicant No. 1-Sunil has sanctioned the loan and he being the chairman of the Patpedhi has played vital role in all these transactions. He submitted that though he expressed desire to retire from the partnership business, he has not signed the deed of the retirement. According to him, he has misused his position as a Chairman. Firstly, in sanctioning the loan in the name of the firm and secondly, in withdrawing the amount. He invited my attention to the following documents:-

- (a) The Application form on page no. 29 dated, 07/06/2020.
- (b) The medical papers about the first informant from page no. 48 to page no. 52.
- (c) The attendance of the members of the Directors in the meeting dated 07/06/2020 at page no. 71.
- (d) Page no. 73 is the extract of the Register, and serial no. 67, there is reference of sanction of the 50,00,000/-.

15. According to him, it is not in the name of the Konark Promoters and Developers, but in the name of the Kulkarni-Jadhav Associates and according to him, it shows the dishonest intention on the part of the board of Directors. He placed on record the list of the relevant dates.

16. Whereas learned Advocate for the Applicant in **Anticipatory Bail Application No. 2068 of 2023** submitted that these Applicants became members of the board of the Directors on 25/08/2021 and 30/10/2021 and appointment letters are on page nos. 31 and 33. He submitted that there were not the Directors either at the time of the sanction of the loan or at the time of the alleged withdrawal of the money.

17. Learned APP submitted that during investigation, the involvement of the present Applicant No. 1-Sunil is confirmed. Whereas other Applicants being members of the board, they are also responsible. He invited my attention to the statements of the following witnesses:-

- i) Statement of the Rajkumar Jagtap, then Branch Manager dated 24/02/2023 and 08/05/2023, in those statements he has stated the following facts:-

a) The borrower-Kulkarni has never come to the Bank for withdrawal, in fact amount is withdrawn by Clerk Sandeep Dangare and Yogesh Nalawade, on the say of the Applicant No. 1-Sunil and they have handed over the amount to him.

(Shri Dangare is arrested and Mr. Nalawade is not traceable)

b) he has explained the procedure for sanction of the loan and about approval by the board of the directors.

(ii) The statement of one Mahadev Gonjari, he has stated that the first informant-Kulkarni has mortgaged the property at Pune and he is in arrears. Action is initiated and that is why he has made that complaint application.

(iii) Statement of Sunil Pol and of one Mahesh Matkar recorded by Shahupuri Police Station.

(iv) They said about repayment of the part of the loan by the first informant and about sanction of the loan with signatures of the chairman.

18. By way of reply, learned Senior Advocate Shri Mundargi submitted that they have initiated action against the said Ranjit Pol

and there is suit initiated by him wherein interim injunction was refused, on page no. 17 of the short compilation. He has also submitted that the witness Nalawade wants to take side of the minority directors of the board and at their behest he wants to blame the present Applicant.

Consideration

19. Amongst these Applicants, it consists of the director who are appointed after August, 2021. It consists of the Chairman who is not only the Director but he is also a partner of the M/s. Konark Promoters and Developers. Whereas other Applicants they are the members of the board of Directors.

20. So far as the Applicants in **Anticipatory Bail Application No. 2068 of 2023 is concerned**, they are neither Directors at the time of the sanction nor at the time of the disputed withdrawal. No materials are pointed out against them to show the involvement and as such their custodial interrogation is not required. Their application deserves to be allowed.

21. So far as Applicants in **Anticipatory Bail Application No. 2067 of 2020 is concerned**, Applicant No. 1-Sunil Pol is not only the

party to the sanction of the loan but there is an allegation that at his behest, the money is withdrawn by two of the employees.

22. Though learned Senior Advocate Shri Ponda emphasized on few of the lacunae in the loan proposal that is to say the date of the application is 07/06/2020 and loan is disbursed on 04/09/2020, learned Senior Advocate Shri Mundargi has clarified that compliance are made on 30/10/2020 as per page no. 73 that is on 30/10/2020. The date is appearing on page no. 27. After hearing both the sides, what I gather is that the main grievance is about withdrawal of the amount on the basis of the withdrawal slips. When the first informant was suffering from Covid and was admitted in Symbiosis hospital Satara, the grievance is how he can go to the bank for the purpose of the withdrawal.

23. Learned Senior Advocate Shri Mundargi has tried to explain that there are two possibilities either he might have visited and signed on the back side of the withdrawal slips or he might have signed on the back side and sent someone for the purpose of the withdrawal. His contention is when the first informant has also executed deed of the mortgage, this complaint was made with malafide intention.

24. After going through all the papers, I think the Applicant Nos. 2 to 7 in Anticipatory Bail Application No. 2067 of 2023 has made out the case for anticipatory bail. The reason is even though they are part of the board of the Directors, at the time of the sanction, no material is pointed out that they have played any part during the alleged withdrawal. Even learned APP could not point out that any of the witness said that this withdrawal is at their behest. However so far as the Applicant No. 1-Sunil Pol is concerned, I think the materials pointed out to me, shows his prima-facie involvement. Even though learned senior Advocate Shri Mundgargi attempted to suggest that the statements pointed out by learned APP were recorded at the behest of the rival members and the investigating agency is having partisan approach at this stage, it is difficult to believe the said contention. Mr. Jagtap has stated that at the behest of this Applicant money is withdrawn and paid only to him. So if it is true, no case is made out by him. His custodial interrogation is required. Hence following Order:-

ORDER

ANTICIPATORY BAIL APPLICATION NO. 2068 OF 2023

(i) Anticipatory Bail Application No. 2068 of 2023 is

allowed.

- (ii) In case of arrest in connection with C.R. No. 141 of 2023 registered with Shahupuri Police Station for the offence punishable under Sections 420, 406 read with 34 of the Indian Penal Code, the Applicant No. 1- Padmaja Rajendra Deshmukh and Applicant No. 2- Maloji Namdev More be released on furnishing Personal Bond and Surety Bond in sum of Rs. 25,000/- each.
- (iii) Applicants are directed to attend the Shahupuri Police Station on 21/08/2023, 28/08/2023 and 04/09/2023 and thereafter as and when required by the Police.
- (iv) Applicants shall not be threaten the prosecution witnesses.
- (v) They are directed not to leave the territorial limits of the Satara District till filing of charge-sheet.
- (vi) Accordingly, interim application no. 2862 of 2023 is disposed of.

ANTICIPATORY BAIL APPLICATION NO. 2067 OF 2023

- (vii) Anticipatory Bail Application No. 2067 of 2023 is partly allowed.
- (viii) In case of arrest in connection with C.R. No. 141 of 2023 registered with Shahupuri Police Station for the offence punishable under Sections 420 and 406 read with 34 of the Indian Penal Code, the Applicant No. 2-

Suresh Sahebrao Ingale, Applicant No. 3-Sushila Waghojirao Pol, Applicant No. 4-Suresh Laxman Jadhav, Applicant No. 5 - Suresh Yashwant Jagtap, Applicant No. 6 - Nilima Sunil Pol, Applicant No. 7 - Balaso Shankar Katarakar be released on furnishing Personal Bond and Surety Bond in sum of Rs. 25,000/- each.

- (ix) Applicant Nos. 2 to 7 are directed to attend the Shahupuri Police Station on 21/08/2023, 28/08/2023 and 04/09/2023 and thereafter as and when required by the Police.
- (x) Applicant Nos. 2 to 7 shall not be threaten the prosecution witnesses.
- (xi) They are directed not to leave the territorial limits of the Satara District.
- (xii) Anticipatory bail for the Applicant No. 1- Sunil Pol is rejected.

25. Both anticipatory bail applications and interim applications are disposed of in the aforesaid terms.

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

[S. M. MODAK, J.]