IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 BAIL APPLICATION NO. 282 OF 2024
WITH
CRIMINAL APPLICATION NO. 852 OF 2024
IN BA/282/2024

BHAUSAHEB TUKARAM YEOLE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Rahul R. Karpe.
APP for Respondent-State : Mr. A. S. Shinde.
Advocate for Depositors to assist APP : Mr. Kakde Y. V.
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CORAM : S. G. MEHARE, J.
DATE : 11.03.2024

PER COURT :-

1. Before starting the arguments, learned counsel Mr. Kakde for the depositors, who has filed an application opposing the bail application, submits that the charge sheet is incomplete. There are no statements of all witnesses. As against this, the learned counsel for the applicant submits that he wants to refer only the audit report and FIR. On that, learned counsel for the depositors has agreed to proceed with the matter.

2. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the depositors.

3. This is a successive bail application of the applicant in Crime No.1155 of 2022, registered with Police Station Rahuri, District Ahmednagar, for the offences punishable under Sections 409, 420, 465, 477-A read with Section 34 of the IPC and Section 3 of the M.P.I.D. Act.

4. The applicant was the Chairman of Rajmata Jijau Nagari Co-operative Patasanstha Ltd. Rahuri. The re-audit of Patasanstha was done. The Auditor had divided the misappropriation under eight heads. The said audit report is genesis of the FIR. The applicant has been arrested on 07.05.2023. Both sides relied upon the said re-audit report dated 26.09.2022. The re-audit was done for the period from 01.04.2016 to 31.03.2021. Everybody has referred to the similar pages from this report and advanced the argument interpreting the clauses mentioned in the application.

5. Learned counsel for the applicant referring to the FIR and re-audit report vehemently argued that the Bank Manager was held personally responsible for the misappropriation. However, in the absence of any direct evidence against the applicant, he has been arraigned as an accused without basis. He has pointed out various paragraphs from the re-audit report

to convince the Court that how this applicant has no concern with the alleged misappropriation. He has also emphasized on the role played by co-accused No.3 Mr. Nimse, who has been granted bail. He argued that since the role attributed to co-accused No.3 Mr. Nimse and the applicant are identical, the applicant deserves bail on parity. He also argued that at page No.8, Clause No.4 of the said re-audit report, to point out that it does bear no independent names. The report reflects that the Manager by granting bogus loan without pledge has misappropriated Rs.4,42,68,948/-. Clause 7 of the said summary again indicates that it was a Manager, who had misappropriated the money without gold pledge. He emphasized that the Manager did all these acts without the approval of the Directors. Reading paragraph No.3, sub para of the chart, he vehemently argued that the auditor observed that accused No.3 Mr. Nimse along with this applicant have been held personally responsible. He referred to the order of this Court passed on 01.03.2023 granting bail to co-accused No.3 Nimse. He would submit that this Court has recorded the findings that the final audit report reveals that mostly the amount without any resolution of the Managing Committee for loan or mortgage or pledge was transferred in the accounts of the then Manager of the Patasanstha. Referring to these observations, he argued again that the role attributed to the applicant is identical to co-accused Nimse. Referring to page Nos.115 and 120 of his application, he argued that the Management has started pointing out the illegal acts of the then Manager long back. All these applications were made before lodging the FIR. Manager was not handing over the charge. Even then, they have paid the money from their pocket and made a good recovery of loan and returned the substantial amount to the depositors. His conduct supports his contention that he was the protector of the depositors. He has also referred to the minutes of the meeting dated 22.12.2021, to point out that how the Manager had played a fraud not with the depositors but also with the Bank/Patasanstha. Relying on the documents referred to above, he claimed the bail mainly on the ground of parity as well as on merits.

6. Learned APP has referred to page No.15 of the charge sheet and vehemently argued that the specific allegations have been levelled against the applicant that he in conspiracy with the Bank Manager and the employees misappropriated the depositors' money. He has vehemently argued that in the investigation, no evidence found against co-accused Nimse that he has played any active role and signed any of the cheques.

Therefore, his role is not identical to the role of the applicant. He has referred to page No.217 onwards which are the statements of the depositors with fixed deposit receipts bearing signature of the applicant/Chairman. There are many fixed deposit receipts under the signature of the applicant. Therefore, he cannot compare his role with the role of co-accused Nimse. He also referred to the cheques at page No.931 to argue that the cheques were bearing the signature of the applicant. Therefore, the applicant cannot escape from offence. A strong *prima facie* case is available against him. He neither deserve bail on parity nor on merit. He further argued that the applicant was looking after the day-to-day affair since 2019. However, he is trying to shift his wrongs exclusively on the shoulder of the Manager. The then Manager Mr. Phatak has already resigned. He was involved in the misappropriation in 67 cases. In a locker the gold of seven members/borrowers was found and the gold pledge by 60 other borrowers was missing. It is a huge misappropriation of the public fund. Hence, his application may be rejected.

7. Learned counsel for the applicant Mr. Karpe in reply argued that the resignation of the then Manager was never

acted upon. The audit report is very specific about the role played by the Manager.

8. Learned counsel for the depositors would argue that the resignation of the Manager was approved in the meeting of the Managing Committee dated 07.11.2020 and he had handed over all papers to the Managing Directors. The Chairman under his signature has certified that on that day, nothing was due against him. He was relieved on 26.12.2020. He also referred to the saving account of the then Manager to point out that it was for the period prior to his resignation and entries in statement of bank accounts are about his salary and P. F. deduction. He referred to the Government audit report for 01.04.2020 to 31.03.2021 at page 154 and argued that after this report, the re-audit was done and the misappropriation was unearthed. He further argued that in the earlier audit for 01.04.2016 to 31.03.2021, the auditor found that *prima facie* misappropriation of Rs.2,97,23,027/-. He again, referred to page No.237 of his compilation to point out that how the applicant was involved in the misappropriation. He further argued that after the resignation of the Manager in 2020, the Managing Committee did the business of the Patasanstha. The lockers were opened by the Court orders. The panchnama was

done. In that panchnama, seven sealed bags of gold were seized. He referred to this panchnama to bolster his argument that out of 67 gold pledged cases only seven bags were found. Further he relied on the panchanma, he referred to page No.237 of the re-audit, particularly, a clause of the misappropriation by fraudulent gold pledge and contended that there were 68 gold pledge loan accounts. The Directors again fingering towards the then Manager. However, findings were adverse against the applicant. The applicant was again held liable jointly with the Bank Manager for misappropriating the money under the fake gold pledged loan cases. He referred to the bylaws of the society at page No.834 of the charge sheet. Particularly, bylaws No.41-E and argued that there were the duties and the powers of the Chairman and Vice Chairman to control the day to day business and supervision over the Officers and the employees. He failed to discharge his duties. Therefore, he cannot escape from the liability. He again, referred to the cheques at page No.358 of his compilation to show that how the applicant was active in misappropriating the money. These are the cheques bearing the signature of the applicant. He also argued that the above cheques are part of the charge sheet. The applicant had no explanation for signing the cheques in 2021 with Secretary-cum-Manager of the Bank when his resignation was accepted in 2021. These circumstances are against the applicant. He further argued that it is an economic offence. It is an offence against the society. The offence is serious. Hence, the applicant does not deserve the bail.

9. He relied upon the case of ***State of Gujarat Vs. Mohanlal Jitamalji Porwal and others; AIR 1987 Supreme Court 1321*** and referred to paragraph 5 of the said judgment and pointed out that due to the economic offences, the entire Community is aggrieved. Such a crime is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. Lastly, he prayed to dismiss the application.

10. In reply, learned counsel Mr. Karpe for the applicant again referred to page Nos.238 and 239 which are the re-audit report. He argued that the findings of the auditor, reflects that the then Manager was responsible for the misappropriation. Again he referred to this document to show that the co-accused Nimse was held jointly liable has been granted bail. The second FIR covering the old period of audit. Therefore, it cannot be connected with this application. He replied this, in response to the argument of the learned counsel for the depositors that a

second FIR is also registered against the applicant. Learned counsel for the applicant prayed that there is no force in the arguments opposing the in bail.

11. After hearing the respective counsels and having gone through the relevant papers, it appears that there was a dispute about the acceptance of the resignation of the Bank Manager. However, from the papers as referred to above by the learned counsel for the complainant it reveals that the resignation of the Manager was accepted in 2020 itself, giving him a clean chit of having no amount to be recovered from him. Thought it has been argued that the applicant started making complaints against the Manager for not supplying the documents. However, the said letter dated 22.12.2020 reveals that the resignation of the Bank Manager was accepted on 07.11.2020. This letter bears the signature of the applicant. The question is when he himself had issued the letter to the Manager accepting his resignation in 2020 itself how can he take the advantage of the complaints lodged against him for the same action.

12. There is nothing on record to show that after the resignation of the Bank Manager was accepted, no another person was appointed as a Bank Manager. The record reveals that the Management was running the bank and observing the

day to day business of the Patasanstha. The audit report was very specific that for every act of misappropriation, the applicant was jointly liable with the Bank Manager. Allowing the Manager to sign the papers subsequent to his resignation creates a serious doubt why was he allowed to sign the cheques or the FDRs after his resignation. In the circumstances, there appears no force in the argument of the learned counsel for the applicant that his resignation was never acted upon. On reading the document as a whole, particularly, the audit report to compare with the role of the applicant with co-accused Nimse, there appears substance in the argument of learned APP that though the auditor primarily held responsible to Mr. Nimse jointly with the co-accused, there was no evidence to show that he had played an active role. He was the Vice President. Vice President had to act only in the absence of the President. It is also not a case that the President was absent and Mr. Nimse played same role. There is no evidence against Mr. Nimse that he accepted the FD receipts and sanctioned the loan against the pledge of the gold. In the circumstances, it cannot be said that the role of the applicant is identical to the role of co-accused Nimse, who has been granted bail. Avoiding the repetition of the arguments and observations above, the Court finds *prima facie* case against the applicant. He seems to have played an active role. A huge amount has been misappropriated. In the facts and circumstances of the case, the observation of the Hon'ble Supreme Court in the case of *State of Gujarat (cited supra)* should be borne-in-mind while considering the bail application. It was a case decided on merit. A large number of depositors have been affected due to the acts of the applicant. Therefore, bail application deserves to be rejected.

13. Bail application stands rejected.

14. Criminal application No.852 of 2024 stands disposed of accordingly.

(S. G. MEHARE, J.)

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vmk/-