2024:BHC-AUG:8199

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.329 OF 2024

Suraj Rambhau Jogdand APPLICANT

VERSUS

The State of Maharashtra and Another RESPONDENTS

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Mr. Abhaykumar D. Ostwal, Advocate for the applicant
Mr. K. K. Naik, APP for respondent - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th APRIL, 2024

ORDER :

1. Applicant apprehends arrest in Crime No.162 of 2021 registered with Bhoom Police Station, District - Osmanabad for offence punishable under sections 406, 409, 420, 465, 467, 468, 471, read with 34 of the Indian Penal Code and under section 3 and 4 of the M.P.I.D. Act.

2. Sunil Jogdand, lodged a private complaint in the Court of Judicial Magistrate First Class, Bhoom, alleging that he and his wife have deposited Rs.5 lakh with Suraj Urban Mahila Co-operative Credit Society, Bhoom for a period of 36 months as

fixed deposit on 6th March, 2018, which was to mature on 6th March, 2021. He has also deposited Rs.82,000/- in RD account in the name of his wife and also Rs.5 lakh in fixed deposit for 42 months. In March, 2021, he demanded the amount back, however, accused No.1 to 3 who have constituted said credit co-operative society, refused to return the amount. Various irregularities committed by accused are pointed out by the complainant. It is alleged that accused No.1 has played main role in the alleged misappropriation. Accused No.2 and 3 are wife and son of accused No.1. It is further alleged that accused persons prepared false record of gold loans and utilized public money. Learned Judicial Magistrate First Class, had sent the complaint for investigation under section 156 (3) of the Criminal Procedure Code. Economic Crime Branch, Dharashiv, investigated the matter and Crime No. 162 of 2021 for offence punishable under sections 406, 409, 420, 465, 467, 468, 471 read with 34 and under sections 3 and 4 of the MPID Act is registered with Bhoom Police Station.

3. Heard learned advocate for applicant and learned APP for the State. Perused the investigation papers.

4. Learned advocate for applicant submits that, applicant is a student and he is innocent. He has not played any role in the

alleged crime. His parents and other accused were arrested and their properties are attached. Alleged misappropriation in the present crime is of Rs.1,75,00,000/-, whereas properties of parents of applicant worth Rs.5 crores are already attached, as is reflected in the bail order passed by this Court. He submits that in view of filing of charge sheet and as applicant has no role to play in the present crime, he may be granted anticipatory bail.

5. Learned APP, on the other hand, by relying on papers of investigation, strenuously opposed the application. He pointed out active involvement of applicant in the present crime.

6. Present crime is registered on 5th September, 2021 and on completion of investigation, charge sheet came to be filed on 24th February, 2022. Applicant is arrayed as accused No.3 in the charge sheet. After filing of charge sheet, case is numbered as Special Case No. 3 of 2022. Since the date of registration of crime, applicant is absconding.

7. Record indicates that applicant he is son of founder of the society Rambhau Wamanrao Jogdand and Chairman Rani Jogdand and he has acted as Shakha Vyavsthapak (Manager) of Suraj Urban Mahila Co-operative Credit Society, Bhoom from 14th August, 2020. During the investigation it is revealed that, applicant was asked to produce certain documents for

conducting audit, but he has not produced it. In spite of repeated persuasion on the part of auditor, applicant has not produced necessary documents before auditor. Because of non submission of record by applicant, society's audit could not be conducted. *Prima facie*, applicant appears to have played active role in commission of crime and he has failed to co-operate with investigating officer. According to prosecution, applicant has absconded along with society's record and for seizure of record of the society, custody of applicant is necessary.

8. It is revealed in the investigation that applicant is the key person, who has operated software of the society. His cellphone number 9168184381 was given, on this number OTP used to be received and by entering OPT software could be operated. As applicant is absconding, data in the hard disk cannot be verified.

9. It is further transpired in the investigation that applicant under his signature has shown that Amol Gatkal, Ravindra Borade and Rajendra Borade were sanctioned gold loans without their consent. He has issued no dues certificate to them on the letterhead of the society, under his signature. Applicant has absconded in Innova No. MH-14 EP-4902, which according to prosecution, is purchased from the misappropriated amount. Since sections of MPID Act are applied in the present crime,

properties standing in the name of applicant are required to be attached.

10. It appears from the investigation papers that all the accused persons, in collusion, have siphoned off and misappropriated an amount of Rs.6,72,36,481/-. Since applicant has absconded with record of society, applicant's active involvement in the present crime is reveled during investigation.

11. Learned advocate for applicant has relied on ***"Siddharth V/s State of Uttar Pradesh and Another" 2022 (1) SCC 676***, wherein it is held that arrest of the accused prior to taking charge sheet on record is mandatory, as per section 170 of Criminal Procedure Code and, therefore, anticipatory bail cannot be denied solely on the ground that as police were ready to file charge sheet, it was mandatory to arrest accused.

12. This rulling is of no assistance to the case of applicant. Considering complicity of applicant in the serious economic offence, in which applicant and co-accused have systematically siphoned off crores of rupees of poor depositors, he is not entitled for discretionary relief of anticipatory bail. Applicant is absconding with record of society since registration of crime on 5th September, 2021, charge sheet against him is filed under section 299 of the Criminal Procedure Code and, therefore,

investigation to his extent is yet not completed. Therefore, his custodial interrogation is necessary for recovery of record of the society and effective investigation. Hence, applicant is not entitled for anticipatory bail. Application is, therefore, rejected.

[NITIN B. SURYAWANSHI]
JUDGE

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