IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 494 OF 2024

Bhimashankar Nilkanthrao Patil ...Applicant

Versus

The State of Maharashtra & Another ...Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO. 493 OF 2024

Somnath Gorakh Pandit ...Applicant

Versus

The State of Maharashtra & Another ...Respondents

Mr. A.N. Irpatgire, Advocate for applicants
Mrs. P.V. Diggikar, APP for State
Mr. P.P. More, Advocate for informant.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 18th APRIL, 2024
PRONOUNCED ON: 06th MAY, 2024

ORDER :

1. Applicants apprehend arrest in C.R. No. 76/2024, registered with Gandhi Chowk Police Station, Dist. Latur, for offence punishable under sections 406, 409, 420, 201, 465, 467, 468, 471 r/w 34 of Indian Penal Code.

2. Board of Directors of Maheshwari Bahuddeshiya Nagari Sahakari Sanstha Maryadit (for short "credit society") by resolution dated 21.01.2024 authorized Fulchand Shrirang Pallod

to lodge FIR. Accordingly, he lodged FIR on 14.02.2024 stating that the credit society is registered and doing banking business at Latur since the year 2008. It is engaged in doing business of accepting deposits from people, disbursing loans, operating savings and current accounts and loan accounts. All the affairs of credit society are being conducted through the staff under the supervision of Manager. Accused No. 1- Bhimashankar is the Manager and co-accused Somnath is cashier in the credit society. From last few days, huge discrepancy was found in the financial turnover of the society. When accused Bhimashankar, Manager of the credit society was asked about it, he gave unsatisfactory explanation that all transactions and entries are done with the ID of Accused No. 2-Somnath Pandit. When informant checked all the daily transactions, deposits, loans, pygmy accounts, vouchers and withdrawal slips he found huge discrepancies in the financial transactions and their entries in the record. During that period Accused No. 1 Bhimashankar remained absent without intimation and thereafter tendered his resignation. Accused No. 2- Somnath has also submitted his resignation. Informant found that FDs were given to the investors without depositing the amount in the credit society. Many FD certificates were given and transferred in the computerized account even when original certificates were in the possession of depositors. Accused persons caused disappearance of records of the credit society. They made cash entries in the computer system and in the records of the account of depositors that amounts of depositors were given to them, without recording FD certificates. FD amounts of the depositors has been transferred in their own accounts for personal use and thereafter the amounts have been transferred from the credit society in the name of depositors without recording the certificates. Accused have taken the records of early payment in the depositors accounts and have withdrawn amount from there in cash. On 16.01.2024, it is revealed that accused conspired to enter the computerized cash registers and took the records of paying the amount of the fixed depositor's account without recording deposit certificate. During period 01.06.2021 to 22.03.2022, amount of Rs. 21,89,900/- has been withdrawn in cash and the deposit of term depositors has been withdrawn before maturity on 27.01.2021 amounting to Rs. 09,08,988/-. Accused have diverted amounts in their own accounts from the account of Lakshmi Urban Co-operative Bank, Latur. They have given no dues certificates to the creditors, even when the loan was outstanding. Accused have embezzled by disbursing loan without approval of credit society. They have shown huge amount in their saving account deposited under the head of reinvestment deposit. Applicant- Bhimashankar Patil in collusion with Somnath Pandit and computer system agency have tampered with the computer system and embezzled inappropriate transactions by using the computer ID. They have committed breach of trust of credit society, misappropriated the funds for their personal gain and caused financial loss to the credit society. They have caused disappearance of valuable records of the credit society. They have committed fraud of estimated amount of Rs. 5 to 6 Crores.

3. Heard learned advocate for applicants, learned APP for State and learned advocate for informant. Perused the investigation papers and citations relied upon by respective parties.

4. Learned advocate for applicants submitted that applicant- Bhimashankar Patil, at the relevant time, was working as Manager in the credit society in the year 2010-11. Applicant- Somnath Pandit was working as accountant/cashier and he has resigned on 13.12.2023. He submitted that both applicants are falsely implicated at the instance of Chairman of credit society with a view to overcome fraudulent and corrupt acts done by

Chairman, applicants are made a scapegoat. The allegations made in the FIR are imaginary and self contradictory. A concocted story is prepared to overcome the misappropriation done by Chairman. There are no complaints of fixed depositors against applicants, about alleged transfer of fixed deposit amounts to the accounts of applicants. There is inordinate delay in lodging FIR. Financial audit of the credit society is done yearly by auditor and no objections are raised by the auditor. Authorized signatory on the cheques or payment vouchers of the credit society are the Chairman or Secretary. Therefore, it is not possible that amounts deposited by credit society in Laxmi Urban Co-operative Bank were transferred in the accounts of applicants.

In support of applications he has relied on the decision of Apex Court in ***Siddharth vs. The State of Uttar Pradesh & Anr.*** (Criminal Appeal No. 838/2021) and ***Naveen Singh vs. State of Uttar Pradesh and Another*** (2021) 6 SCC 191.

5. Learned APP by relying on investigation papers submitted that there is sufficient material on record to show that applicants are involved in commission of offence. Learned APP placed reliance on ***Nimmagadda Prasad vs. Central Bureau of***

Investigation, 2013(7) SCC 466 and ***P. Chidambaram vs. Directorate of Enforcement*** (2019) 9 SCC 24.

6. Learned advocate for informant has opposed the applications by relying on ***Dhanraj N. Asawani vs. Amarjeetsingh Mohindersingh Basi and others***, 2023 DGLS(SC) 942.

7. Record reveals that applicants were working as Manager and Cashier respectively in the credit society. They have gained confidence of board of directors. The board of directors suspected foul play as there was huge difference in the financial transactions of credit society and the difference was noticed in computer entries and bank statements. When applicant- Bhimashankar Patil was asked about the same he had given evasive replies. Since computer transactions and entries are done with the help of applicant Somnath Pandit, when he was asked about the same, he also gave evasive replies. When the board of directors started checking daily transactions, fixed deposit accounts, loan accounts, pygmy accounts, daily vouchers, deposit slips, withdrawal slips etc, Bhimashankar Patil started remaining absent without intimation and applicant- Somnath gave his resignation. In spite of repeated calls both the applicants have failed to respond to the board of directors.

8. It is revealed during the investigation that while checking the record of credit society it was revealed that though there were no deposits in the credit society, applicants had given fixed deposit certificates. Many of the fixed deposit certificates, though were in the custody of depositors, entries were made in the computer that amounts of those fixed deposits were paid and/or transferred. Though, loan accounts were in operation, no dues certificates were issued to the borrowers. It was further found that applicants in collusion have taken away the record i.e. proceeding books, meeting registers, record of deposit slips, withdrawal slips, vouchers, fixed deposit receipts, loan documents etc.

9. It is also transpired that both applicants have made cash entries in the computer system and have created a record to show that depositors were paid amounts of their deposits in the account and without closing the said transactions, they have again taken entries that said amounts are again paid to depositors. Without closing fixed deposit certificates, applicants have taken entries to the effect that before maturity amounts were paid to the depositors and have transferred said amounts in their own accounts and have withdrawn the same in cash and

misappropriated it.

10. Applicants have also transferred amounts from credit society's account in Laxmi Urban Co-operative Bank, Latur, in their own accounts. Applicant- Bhimashankar Patil has transferred amount of Rs. 8 Lakhs from the said bank to his own account on 15.11.2023 and Rs. 36,58,341/- on 29.11.2023, on the pretext of stationery.

11. Applicants have disbursed loans without sanction of board of directors and have caused financial loss to the credit society. In the investigation it is revealed that both applicants have committed misappropriation of 5 to 6 Crores. Thus, prima facie, there appears sufficient material collected during the investigation showing collusion and active involvement of applicants in commission of present rime. Considering the seriousness of allegations of commission of economic offence and complicity of applicants in the present crime, custodial interrogation of applicants is necessary for effective investigation.

12. Learned APP was right in relying on P. Chidambaram (supra), wherein it is held;

78. Power under Section 438 Cr.P.C. being an extraordinary *remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.*

79. ……...

80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitamalji Porwal and others (1987) 2 SCC 364, it was held as under:-

> *"5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest….."*

81. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, the Supreme Court held as under:-

> *"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." [emphasis supplied]

82. …...

83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

In the light of aforesaid observations, applicants are not entitled for discretionary relief of anticipatory bail.

13. In Siddharth (supra) Apex Court has held;

"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating

Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar's case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the chargesheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C.

In the present case when the appellant has joined the investigation, investigation has completed and he has been roped in after seven 7 years of registration of the FIR we can think of no reason why at this stage he must be arrested before the chargesheet is taken on record. We may note that learned counsel for the appellant has already stated before us that on summons being issued the appellant will put the appearance before the trial court.

We accordingly set aside the impugned order and allow the appeal in terms aforesaid leaving the parties to bear their own costs."

In the above case it appears that investigation was complete and appellant therein was roped in after seven years of registration of FIR and Apex Court was considering the question whether appellant should be arrested before the charge sheet is taken on record. In that context aforesaid observations were made. This ruling is of no help to the case of applicants.

14. For the aforestated reasons, applications are rejected.

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde