IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.802 OF 2024

Sunanda W/o. Anil Patil
Age: 50 years, Occupation: Homemaker,
R/o. Shivjyoti Colony, N-6,
CIDCO, Aurangabad,
Tal. and Dist. Aurangabad, Maharashtra. ..Applicant

Versus

The State of Maharashtra,
Through the Police Inspector/Investigating Officer
in Crime No.0455/2023,
CIDCO Police Station, Tal. and Dist. Aurangabad. ..Respondent

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Mr. A. K. Bhosle, Advocate for the Applicant.
Mrs. Komal Kandharkar, Special PP for Respondent-State.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 23rd AUGUST 2024.

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.455/2023 registered with CIDCO Police Station, Dist. Aurangabad for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 120-B, 217 r/w 34 of the Indian Penal Code, Sections 3 and 4 of the M.P.I.D. Act and Sections 21 and 23 of the Banning of Unregulated Deposit Scheme Act, 2019.

2. The investigation was set in motion on the basis of information given by Mr. Sudhakar Karbhari Gaike, Special Auditor, Class-II, Cooperative Society, Aurangabad. It is alleged that in pursuance of directions given by District Deputy Registrar, Co-operative Society, Aurangabad (for short 'DDR, Aurangabad'), he conducted test audit of Adarsh Nagari Sahakari Pat Sanstha Limited for the period from 2018 to 2022 and submitted audit report dated 13.06.2023 to DDR, Aurangabad. It is alleged that on examination of various loan applications and relevant documents it

was noticed that loans were disbursed in contravention of provisions of Co-operative Societies Act, Rules and bye-laws of the Society. The accused persons who are Directors, employees, borrowers and guarantors of loans have misappropriated large sum by adopting fraudulent means and duped depositors and members of the Society. It is alleged that during the period from March-2019 to 2021, in all 23 cash credit loans were found to be disbursed without adequate security. The Board of Directors during meeting dated 30.04.2019 conveniently ignored serious irregularities in loan proposals and facilitated disbursement of loans, thereby causing serious prejudice to the interest of depositors. The statutory Auditors also failed to adhere with statutory obligation and failed report of serious irregularities to Registrar under Section 81(5)(b) of the Maharashtra Co-operative Societies Act. In all accused persons are responsible for misappropriation of amount of Rs.99,07,90,579/-.

3. In pursuance to the aforesaid information, Crime No.455/2023 came to be registered with Police Station CIDCO, Aurangabad against accused persons. The applicant has been arrested on 06.10.2023 for the reason that applicant is ch of Adarsh Jan Kalyan Pratisthan Private Limited. It is alleged that loan of Rs.20,17,036/- has been secured by Adarsh Jan Kalyan Pratisthan. As on 31.03.2019 dues were worth Rs.76,50,896/- against said loan. Similarly, on 31.03.2019, the loan of Rs.1,95,90,156/- has been sanctioned, however a day before actual amount has been disbursed from the account with Adarsh Mahila Nagari Sahakari Bank. There is no security to this loan.

4. Mr. Ostwal, learned Advocate appearing for the applicant submits that applicant has been falsely implicated in aforesaid crime. He submits that applicant was not Chairman of Adarsh Jan

Kalyan Pratisthan but she was mere member during the period from 2010 to 2020. Applicant was not responsible for any loan transactions. According to Mr. Ostwal charge-sheet is bereft of legal and admissible evidence to bring home complicity of the applicant in commission of offenses as alleged. The investigation in the matter is complete. The charge-sheet and supplementary charge-sheet are already filed. The applicant is behind the bar for more than 10 months. There is no possibility of tampering of the evidence. The applicant is already enlarged on bail in Crime No.454/2023. The allegations in both the offenses are intermingling. The trial would take its own course. Hence, he urges to release applicant on bail.

5. Per contra, Smt. Kandharkar, learned Special PP vehemently opposes application. She submits that applicant is daughter-in-law of main accused Ambadas Mankape, who is supremo of Adarsha Group. Applicants participation in business of society can be observed from from record, Her husband who is also accused in offence is absconding. During the investigation, many dubious transactions in the name fictitious borrowers were traced out. The release of the applicant may hamper further investigation and smooth trial. The learned special PP invites attention of this Court to loan accounts of Adarsh Jan Kalyan Pratisthan and submits that cash credit loan of Rs.33,00,000/- has been availed from Credit Society in dubious manner. There is withdrawal of huge amount of Rs.1,95,90,156/- a day before actual sanction of loan. The guarantors to loan are fictitious. Looking to the specific allegations and gravity of the offence, special PP urges to reject the bail application.

6. Having considered submissions advanced on behalf of learned Advocates appearing for the respective parties and upon

perusal of record produced before this Court. It is apparent that applicant was Chairman of Adarsh Jan Kalyan Pratisthan, who borrowed three loans from Adarsh Nagari Sahakari Co-operative Credit Society. So far as transactions in the year 2019 are concerned, those are covered under FIR in Crime No.454/2023. The present offence pertains to transactions from 2019 to 2021. Although it is contended on behalf of the applicant that she was not Director of Adarsh Jan Kalyan Pratisthan, *prima facie*, such submissions are inconsistent with record. The supplementary charge-sheet indicated some doubtful transactions in personal account of applicant worth Rs.1.5 crores. The applicant is also accused in Crime No.454/2023 which covers majority of transactions wherein she has been already enlarged on bail. The material in charge-sheet in present crime, *prima facie*, indicates role of the applicant in subject transactions.

7. However the fact remains that applicant has been already enlarged on bail in connected offence. The transactions in question are intermingling between two offences. The applicant is behind bar since 06.10.2023 i.e. more than 10 months. She is a lady. The investigation in the matter is completed. The charge-sheet and supplementary charge-sheet has been filed. According to the learned Special PP forensic audit is yet to be received. Thereafter matter can be taken for framing of charge and the trial. In view of the aforesaid submissions, it is evident that trial is not likely to commence in recent future. Further considering the voluminous evidence relied by the prosecution, in all probabilities trial is likely to be prolonged. The prosecution is not in a position to assure early disposal of trial.

8. The questions as to whether applicant is personally or vicariously responsible for misappropriation and whether material

on record is enough to bring home charges against the applicant are questions to be deliberated during the course of trial. However, there is no reason to permit further detention of the applicant in the facts and circumstances of the case. In this background, reference to the observations of the Supreme Court in case of ***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another*** (***Criminal Appeal No.2787/2024***) dated ***03.07.2024*** would be necessary, which states as under:

> *"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."*

9. Applying aforesaid preposition of law in the facts of present case, further detention of the applicant need not be permitted. The interest of prosecution can be protected by imposing necessary conditions for enlargement of applicant on bail. Hence, case is made out for grant of bail application subject to certain conditions. Hence, the following order:

ORDER

(i) Bail Application is allowed.

(ii) The applicant, Sunanda W/o. Anil Patil be released on bail in Crime No.455/2023 registered with CIDCO Police Station, Dist. Aurangabad for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 120-B, 217 r/w 34 of the Indian Penal Code and Sections 3 and 4 of the M.P.I.D. Act and Sections 21 and 23 of the Banning of Unregulated Deposit Scheme Act, 2019 on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) on following condition:

a. The applicant shall not tamper with the prosecution evidence in any manner or pressurize witnesses.

b. The applicant shall attend each and every effective date of hearing before Sessions Court in Special Case No.420/2023.

c. The applicant shall not leave State of Maharashtra without prior intimation and submission of itinerary with the Sessions Court.

(iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2024