IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.816 OF 2024

Savita w/o Devidas Adhane,
Age: 40 years, Occ: Household,
R/o. Viramgaon Village, Tq. Khultabad,
Dist. Aurangabad. ..Applicant

Versus

The State of Maharashtra,
(At the instance of CIDCO
Police Station Dist. Aurangabad) ..Respondents

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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. Mr. Sudhakar Karbhari Gaike, Special Auditor, Class-II, Cooperative Society, Aurangabad lodged FIR alleging that in pursuance to the directions given by District Deputy Registrar, Co-operative Society, Aurangabad (for short 'DDR, Aurangabad'), he conducted 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 during the said audit, various loan files were inspected to find out if loan was distributed as per provisions of Co-operative Societies Act and bye-laws. It was observed that there was gross violation of statutory

provisions. It is alleged that 24 loans were disbursed fraudulently in the form of cash credit in flagrant violation of Rules and Regulations. The Directors have ignored serious irregularities and approved disbursement of loan. The disbursement of loan is without requisite security, applications and supporting documents. The investigation progressed in the matter. The supplementary statement of first informant was recorded. The final charge-sheet came to be filed against accused persons including directors, beneficiaries of loan, employees of the society, auditor etc. The supplementary charge-sheet is also filed on 04.12.2023. The applicant being Director of Adarsh Sahkari Dudh Utpadak Va Prakriya Sangh Limited (for short 'Dudh Utpadak Sangh') as well as founder member of the Aurangabad Jillha Yashaswini Mahila Swayam Sahayak Gat Sahakari Sanstha (for short 'Yashaswini Mahila'), who are beneficiaries of cash credit loan has been added as accused. The applicant came to be arrested on 06.10.2023. Since then, she is behind the bar.

3. Mr. Bhosle, learned Advocate appearing for the applicant submits that applicant is made accused only because her husband was Chief Manager of Adarsh Nagari Sahakari Pat Sanstha. Two offences are registered for one and the same cash credit loan worth Rs.64,78,082/-. The applicant is not beneficiary of any such transaction. Although she is Director of Dudh Utpadak Sangh, there is nothing to indicate that she has made personal gain out of the transaction. The charge-sheet nowhere prescribes specific role of the applicant in commission of offence. The applicant is behind the bar for almost 11 months. The investigation in the matter is complete. The charge-sheet and supplementary charge-sheet are filed. Further detention of the applicant is not necessary. Looking to the pace of the investigation and prosecution machinery, trial would take its own course. The applicant is already enlarged on

bail in connection with connected offence vide Crime No.454/2023. Consequently, he urges to release applicant on bail.

4. Per contra, Mrs. Kandharkar, learned Special PP vehemently opposes the prayer for grant of bail. She would submit that applicant was Director of Dudh Utpadak Sangh, who took cash credit loan of Rs.64,78,082/- from Adarsh Nagari Sahakari Pat Sanstha. The Credit Society was headed by husband of the applicant as a Chief Manager. The loan is disbursed on the day before its sanction and amount is siphoned on the basis of incomplete documents. Although there was no repayment of loan, farce is made that Rs.78,38,410/- was repaid on 31.03.2020 and again the amount is disbursed showing fresh loan. The applicant and her husband are having joint account in Adarsh Mahila Nagari Sahakari Bank vide Account No.3677. It shows transaction of Rs.38,10,000/- and Rs.15,00,000/-. Even these amounts are not repaid. The applicant is President of Yashaswini Mahila. There is transaction of Rs.15,00,000/- from her joint account for Yashaswini Mahila. The forensic audit is still not complete. The release of the applicant may hamper smooth trial. The possibility of tampering evidence cannot be ruled out. The learned Special PP submits that there is no repayment of outstanding loan. The intention to siphon the fund is writ large. The involvement of applicant in commission of offence is clearly established. Hence, she urges to reject the prayer for grant of bail.

5. Having considered submissions advanced, apparently Crime No.455/2023 has been registered on information given by Auditor on the basis of test Audit of the record of Adarsh Nagari Co-operative Credit Society. There appears transactions between Credit Society and Dudh Utpadak Sangh. The applicant is Director of Dudh Utpadak Sangh. *Prima facie*, cash credit facility

of Rs.64,78,082/- made available to the Dudh Utpadak Sangh appears to be fallacious and based on inadequate documentation and security. The entries of credit and debit at the end of financial year depicts camouflage. It is apparent that husband of applicant was a Chief Manager of Credit Society, who facilitated disbursement of amount one day before sanction of loan. As rightly pointed out by learned Special PP there are other doubtful transactions in the account of Yashaswini Mahila, of which applicant is founder member.

6. On the scrutiny of charge-sheet and allegations as against the applicant, there is hardly any evidence to show that the applicant is personally benefited out of transaction, which are subject matter of crime. Her role is asserted in capacity of Director of Dudh Utpadak Sangh. It is true that there are doubtful credit and debit entries on loan account of Dudh Utpadak Sangh maintained with Adarsh Pat Sanstha. However, role of applicant in commission of offence would be subject matter of trial. The applicant is behind bar for more than 11 months. The investigation in the crime is completed. The charge-sheet and supplementary charge-sheet are filed. According to the learned Special PP forensic audit is yet to complete. However, for that purpose detention of applicant would not be necessary. The applicant is a lady. She has already suffered incarceration of 11 months. The apprehension of the learned Special PP that she may tamper with the evidence does not hold water, since prosecution case is based on documentary evidence and same is already part of the charge-sheet. As rightly pointed out by the learned Advocate appearing for the applicant, trial would take its own course, charge is not yet framed and prosecution is also contending that forensic audit is yet to be received, in this background, it is not possible that trial would commence in near future. Further considering the

volume of 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. 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."*

7. Applying aforesaid principles of law in the fact of the present case, further detention of the applicant need not be permitted. Hence, case is made out for grant of bail subject to certain conditions. Hence, the following order:

ORDER

(i) Bail Application is allowed.

(ii) The applicant, Savita w/o Devidas Adhane 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