IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
ANTICIPATORY BAIL APPLICATION NO.957 OF 2024

Bhausaheb S/o. Malharrao Mogal,
Age: 65 years, Occ. Agril,
R/o. Nilajgaon, Tq. Paithan,
Dist. Aurangabad. ..Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector, CIDCO Police Station,
Cha. Sambhajinagar, Tq. & Dist. Cha. Sambhajinagar.

2. Superintendent of Police,
Cha. Sambhajinagar,
Tq. & Dist. Cha. Sambhajinagar. ..Respondents

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Mr. S. S. Tope, Advocate for the Applicant.
Mrs. Komal Kandharkar, Special PP for Respondents-State.

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

ORDER:-

1. The applicant seeks pre-arrest bail in connection with Crime No.454/2023 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. On information given by Mr. Dhananjay Hiralal Chavan, Special Auditor, Class-II, Co-operative Societies, Aurangabad, Crime No.454/2023 came to be registered on allegations that informant was instructed by District Deputy Registrar, Co-operative Society, Aurangabad (for short 'DDR, Aurangabad) to conduct test audit of Adarsh Nagari Sahakari Pat Sanstha Limited for the period from 2016 to 2019. The report of such test audit has

been submitted by the informant on 13.06.2023. During test audit, it was revealed that disbursement of loans has been made by credit society without proper loan applications and relevant documents. The loan has been sanctioned de-hors the provisions contained under Maharashtra Co-operative Societies Act, Rules and bye-laws of the Society. The Directors, employees of the Society in collusion with borrowers, guarantors conspired together and disbursed cash credit loans by adopting fraudulent means and duped depositors. In meeting dated 30.04.2019 the Board of Directors approved disbursement of loans ignoring serious deficiencies. As on 31.03.2019 the amount of misappropriation under 23 loans is quantified to Rs.95,75,24,064/-. These loans could not be recovered, disbursement was dehors bye-laws of the Society. The requisite security was not taken. The possibility of recovery of such loans is not discernible.

3. The applicant is named as accused no.5 in FIR being Director of Credit Society. Although initially charge-sheet do not show applicants name, in supplementary charge-sheet his name is added. The applicant moved Sessions Court vide Criminal Bail Application No.1568/2023. However, his application came to be rejected vide order dated 04.10.2023. Hence, this application.

4. Mr. Tope, learned Advocate appearing for the applicant submits that applicant is not responsible for disbursement of loans. The entire business of the Society was handled by accused no.1. He would submit that since 2016 onwards, applicant has raised voice against illegalities in conduct of business of society and persuaded the Competent Authorities for taking action. Mr. Tope placed on record a communication dated 03.05.2017, that refers to complaint dated 12.12.2016 and 19.12.2016 made by the applicant to DDR,

Aurangabad. In pursuance of aforesaid complaints, the enquiry was caused. Consequently, Special Auditor, Class-II submitted his enquiry report to DDR, Aurangabad. Mr. Tope would submit that the applicant is the only Director, who raised voice against irregularities in conduct of business of the Credit Society. According to Mr. Tope, the applicant has never consented for disbursement of loans, which are subject matter of crime. Mr. Tope would further submit that although applicant is named in the FIR, he was not charge-sheeted, since there was no incriminating material against the applicant. However, later on by way of supplementary charge-sheet applicant has been falsely implicated. Mr. Tope would further submit that applicant is aged about 66 years and requires medical assistance. The investigation in the matter is complete. The charge-sheet is filed. The arrest or custodial interrogation of applicant would not be necessary. He would, therefore, urge to enlarge applicant on pre-arrest bail.

5. Per contra, Mrs. Kandharkar, learned Special PP vehemently opposes the prayer for grant of pre-arrest bail. She would submit that the applicant was active Director of Credit Society. His presence can be seen in various meetings of Board of Directors. He is absconding since the date of registration of offence. The applicant has availed loan facility using his position as Director. She would submit applicant has never raised protest against illegal disbursement of loans which are subject matter of present crime. His protest applications to DDR are unconcerned with the loan transactions, which are subject matter of present crime. She invites attention of this Court to minutes of meetings of Board of Directors depiction active participation of the applicant. She would submit that if applicant was not agree with the conduct of business of the Society, he could have resigned or at least raised protest in

the meetings of of Board of Directors. She would further submit that custodial interrogation of the applicant is necessary. The offence is serious pertaining to economical affairs of the Credit Society, wherein large number of depositors have been duped. She would invite attention of this Court to the police statement of Mr. Mohan Chauhan, stipulating role of the applicant. Similarly, police statement of Eknath Yamji Wagh also names applicant being one of the Director, who was actively involved in the illegal disbursement of cash credit loans and creation of false record regarding repayment and again disbursement of loans.

6. I have considered submissions advanced on behalf of learned Advocates appearing for the respective parties. I have perused documents tendered into service. Although the applicant had initially took stand that he had resigned from Directorship of Credit Society, later on conceded that he was Director. The record shows that in 2016-2017 the applicant had raised certain grievance regarding affairs of Society and was also instrumental to some sort of inquiry by Competent Authority, it is not discernible from record that the applicant raised any objection for disbursement of loans or brought illegalities to the notice of the Authorities particularly as regards loan transactions which are subject matter of crime,. On the other hand, the presence of the applicant in meetings of Board of Directors is discernible from the record. It is a matter of record that applicant has availed certain loans and claims to have repaid the same. The prosecution is coming with the case that those transactions were dubious and there is nothing to show that interest amount on such loans was paid. According to the prosecution, there are many fictitious transactions, wherein disbursement of loan is shown and without any repayment, no dues certificates are issued.

7. If this was the state of affairs of society during the period of applicants Directorship, his custodial interrogation would be necessary. All other Directors of the Credit Society have been arrested. They were remanded to police custody. The investigation in relation to other Directors is completed. Unless investigation machinery is given sufficient leverage to find out actual role of the applicant in this crime, they would be handicapped to bring on record relevant facets of the matter.

8. The applicant could not be traced out for more than one year from date of registration of crime. In that view of the matter, no case is made out to grant protection of pre-arrest bail.

9. Consequently, Anticipatory Bail Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2024