IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1001 OF 2024

1. Ashok Narayan Kakde,
Age: 56 Years, Occ: Agri,
R/o: Wadkha, Post: Warzadi,
Tq: and Dist: Ch. Sambhajinagar.

2. Kakasaheb Limbaji Kakde
Age: 71 Years, Occ: Agri,
R/o: Wadkha, Post: Warzadi,
Tq; and Dist: Ch. Sambhajinagar.

3. Trimbak Shesherao Pathade
Age: 65 Years, Occ: Agri,
R/o: Warzadi,
Tq; and Dist: Ch. Sambhajinagar. ..Applicants

Versus

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

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Mr. S. S. Tope, Advocate for the Applicants.
Mrs. Komal Kandharkar, Special PP for Respondent-State.

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

ORDER:-

1. The applicants seek regular bail in connection with Crime No.454/2023 registered with CIDCO Police Station, Dist. Aurangabad dated 11.07.2023 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 Ordinance, 2019.

2. The investigation was set in motion on the basis of complaint given by Mr. Dhananjay Hiralal Chavan, Special, Auditor, alleging that he is discharging his duties as Special Auditor, Class-II, Co-

operative Societies at Aurangabad. In pursuance of directions given by Deputy District Registrar, Co-operative Societies, Aurangabad he carried audit of Adarsh Nagari Sahakari Pat Sanstha Limited for the period from 2016 to 2019 and submitted his report dated 13.06.2023. It is alleged that on scrutiny of various loan transactions of Credit Society, it was found that loans are disbursed in contravention to the provisions of Co-operative Societies Act, sub Rules and bye-laws. It is alleged that in all 23 borrowers and their guarantors in collusion with the Directors and employees of the Bank got disbursement of unsecured cash credit loans by adopting fraudulent means and defrauded depositors. It is further alleged that in March 2019, the documents relating to 23 loan applications were incomplete or without requisite security. The Board of Directors approved such loans on 30.04.2019, thereby intentionally ignoring aforesaid deficiencies. As such, there is misappropriation of huge amount of Rs.91,79,44,064/-. Such loans could not be recovered or no steps were taken for recovery of such loans. Even there is no possibility of recovery of such loans. Consequently, Crime No.454/2023 came to be registered against Directors of Credit Society, Chief Manager and borrowers.

3. The applicants who are Directors of Credit Society have been arrested on 15.07.2023 in pursuance of aforesaid crime. After due investigation, charge-sheet came to be filed on 11.09.2023. The applicants moved application for regular bail before the Additional Sessions Judge at Aurangabad in Special Case No.386/2023 below Exhibit-54. However, said application came to be rejected vide order dated 24.05.2024. Hence, present application for grant of bail.

4. Mr. Tope, learned Advocate appearing for the applicants submits that applicants were non-functional Directors of Credit

Society. The entire business was handled by accused no.1. The applicants were not aware about the decisions taken as regards to the disbursement of loans. He would submit that applicant no.2 is aged about 71 years and applicant no.3 is aged about 65 years. They are behind bar for more than one year. The investigation in the matter is complete. The charge-sheet and supplementary charge-sheet are filed. The trial would take its own course. Therefore, he seeks release of applicants on bail.

5. Mrs. Kandharkar, learned Special PP vehemently opposes prayer for grant of bail. She would submit that applicants were active participants in meetings of Board of Directors, wherein illegal loans are ratified. She would further point out that applicant nos.1 and 2 are also Directors of Jai Kisan Ginning and Pressing Society, which was illegally sanctioned cash credit worth Rs.9,94,13,227/-. However, actual amount disbursed is more than Rs.16,00,00,000/-. She would submit that applicant nos.1 and 2 are, therefore, directly responsible for disbursement of loans and also beneficiaries in capacity of Directors of Jai Kisan Ginning and Pressing Society. She would point out that till this date loan amount could not recover. By inviting attention of this Court to the audit report, she would submit that applicants were regularly participating in meetings of the Board of Directors and they were party to the decision in disbursement of loans. She would, therefore, submit that the applicants cannot disown their liability for the charges leveled against them.

6. Having considered submissions advanced, it is apparent that there are serious illegalities in conduct of business of Adarsh Nagari Sahakari Pat Sanstha Limited as pointed out in audit report. It is also not in dispute that applicants were Directors of Credit Society. As rightly pointed out by the learned Special PP,

the applicants are signatories to various decisions of Managing Committee. It is also matter of record that applicant nos.1 and 2 are Directors of Jai Kisan Ginning and Pressing Society, who is beneficiary of loan of Rs.9,94,13,227/-. The said loan is still not recovered.

7. On specific query from this Court as to whether applicants were party to the Resolution regarding disbursement of loans to Jai Kisan Ginning and Pressing, no specific material is brought to the notice of this Court. The various Resolutions wherein applicants are shown to be party does not pertain to the disbursement of loan to Jai Kisan Ginning and Pressing. Further, there is nothing on record to demonstrate that applicants have personally gained benefit out of such transaction. Although it cannot be disputed that applicants being Directors of Credit Society and also Directors of Jai Kisan Ginning and Pressing, cannot shirk the responsibility. What was actual role of the applicants in commission of offence and whether there is sufficient material to bring home charge against them would be the matter of trial. The learned Special PP submitted during the course of argument that Forensic Audit of the Society is still awaiting, as such, trial could not commence. In that scenario, possibility of commencement of trial in recent future is not discernible. Further, charge-sheet depicts that voluminous evidence and large number of witnesses to be examined at the trial. Therefore, trial is not likely to be finished in near future.

8. The applicant no.2 is aged about 71 years. The applicant no.3 is aged about 65 years and he is not Director of Jai Kisan Ginning and Pressing. In that view of the matter, further detention of the applicants would serve no purpose. At this stage 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 principles of law in the fact of the present case, further detention of the applicants 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 applicants, (1) Ashok Narayan Kakde, (2) Kakasaheb Limbaji Kakde and (3) Trimbak Shesherao Pathade be released on bail in No.454/2023 registered with CIDCO Police Station, Dist. Aurangabad dated 11.07.2023 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 Ordinance, 2019 on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:

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

b. The applicants shall attend each and every effective date of hearing before Sessions Court in Special Case No.386/2023.

c. The applicants 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