**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1004 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

…

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

…

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

ORDER:-

1. The applicants seek regular bail in connection with Crime No.455/2023 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. Sudhakar Karbhari Gaike, Special Auditor, Class-II, alleging that he caused test audit of Adarsh Nagari Sahakari Pat Sanstha Limited in pursuance to the directions given by Deputy District Registrar, Co-operative Societies, Aurangabad for the period from 2018 to 2022. He submitted his audit report on 13.06.2023 to the concerned Authorities. During the conduct of audit, he found that loan applications and consequential disbursements of the loans were not in accordance with the Maharashtra Co-operative Societies Act and bye-laws of the Society. It is alleged that Board of Directors, Chief Manager, Branch Heads, employees and 24 borrowers and their guarantors have conspired together and intentionally involved in the disbursement of unsecured cash credit loans in fraudulent manner and defrauded the members and depositors of the Credit Society. The Board of Directors have ignored serious irregularities in disbursement of loans and approved the illegal disbursement. The 24 borrowers did not utilize loans for the purpose for which it was obtained. The amount involved in illegal disbursement of loans is Rs.99,07,90,579/-. It is further alleged that during 2018-2019 the Auditors failed to perform their duties in terms of Section 81(5)(b) of the Maharashtra Co-operative Societies Act and failed to submit their audit reports to the Registrar and bring to his notice misappropriation of the amount.

3. In pursuance of aforesaid information Crime No.455/2023 has been registered. The applicants have been arrested on 28.07.2023. The applicants are alleged to be Directors of Credit Society and participated in meetings of Board of Directors that was responsible for disbursement of huge loans ignoring statutory provision and bye-laws. The applicants are alleged to be

conspirators alongwith main accused. On completion of investigation, charge-sheet and supplementary charge-sheet have been filed.

4. Mr. Tope, learned Advocate appearing for the applicants submits that the 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 further submit that applicants are behind bar since 15.07.2023. The family members of the applicants themselves have invested the amount in the Credit Society and victims of mismanagement of respondent no.1. 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. Per contra, Mrs. Kandharkar, learned Special PP vehemently opposes prayer for grant of bail. She invites attention of this Court to the various documents indicating that applicants have attended various meetings of Board of Directors. As such, they actively participated in the business of Credit Society. She would point out that instances where loans are disbursed even to the persons, who had never applied and fictitious loans files are created in their names and no dues certificates were issued, although loans were not repaid. She would further point out that in some of the proposals the applicants are shows as proposers and seconders. She would point out that huge loan amounts are not recovered and even there is no possibility of such recovery in future. The volume of misappropriated amount is huge. The release of the applicants

on bail may hamper smooth trial. By inviting attention to the statements of witnesses she points out that they have specifically stated about direct involvement of applicants in the business of Credit Society.

6. I have considered the submissions advanced on behalf of the respective parties. It cannot be disputed that conduct of business of Adarsh Nagari Sahakari Pat Santha Limited was dubious. It is discernible from the audit report that large amount has been disbursed by way of cash credit loans without requisite security, in contravention with the statutory provisions and bye-laws of Society. There are instances of fictitious loan files. Definitely members of Board of Director cannot shirk their responsibility for loss caused to the Society and consequential to the members and depositors of the Society. On pin point query of this Court as to whether applicants before this Court are parties to resolution approving loan disbursement, which are subject matter of FIR, no specific material is brought to the notice of this Court. Even, there is nothing on record to show that any of the applicant has been personally benefited by said loan transactions. The question that what was actual role of applicants in commission of offence, how far was their complicity in commission of offence and whether there is sufficient material to bring home charges as per charge-sheet would be the matter of trial. Apparently, applicants are behind bar for more than one year. The applicant nos.2 and 3 are senior citizens. The applicant no.1 is also 56 years of age. The trial is yet to be commenced. The learned Special PP submits that Forensic Audit is yet to be received. Considering the submissions and voluminous evidence to be laid at trial, it is difficult to estimate the time required for conclusion of trial. In this background, further detention of the applicants need not be permitted.

7. So far as interest of the prosecution is concerned, care can be taken by imposing requisite conditions. 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."*

8.. 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.455/2023 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.420/2023.

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