IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1027 OF 2024
WITH ANTICIPATORY BAIL APPLICATION NO. 1028 OF 2024

HARISHCHANDRA PANDHARINATH SHELKE
VERSUS
THE STATE OF MAHARASHTRA

Mr. Rajendrraa Deshmukkha, Senior Advocate a/w Mr. K. M. Salve & Ms. Tejashri Nalawade i/b Mr. D. R. Deshmukh, Advocate for the applicant
Mr. S. A. Gaikwad, APP for the respondent/State

CORAM : R. M. JOSHI, J.
DATED : 18th JULY, 2024

PER COURT :-

1. *Suo moto* this motion is moved for speaking to the minutes of order dated 18/07/2024. Inadvertently in title clause Anticipatory Bail Application No. 1028 of 2024 remained to be mentioned.

2. This being inadvertent error, the necessary corrections be made accordingly and corrected copy be uploaded.

(R. M. JOSHI, J.)

ssp

(This order is corrected pursuant to speaking to minutes order dated 18/07/2024)

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Mr. S. A. Gaikwad, APP for the respondent/State

CORAM : R. M. JOSHI, J.
RESERVED ON : 15th JULY, 2024
PRONOUNCED ON : 18th JULY, 2024

PER COURT :-

1. These are second Anticipatory Bail Applications of applicants seeking pre-arrest bail in connection Crime No. 279/2023 registered with Osmanabad City Police Station, District Osmanabad for the offences punishable under Sections 406, 409, 420 r/w 345 of the Indian Penal Code (for short 'IPC') and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short 'M.P.I.D' Act).

2. First informant is the Manager of Prabhat Co-operative Credit Society Limited and it is his contention that it is a Co-operative Credit Society and the amounts collected from its members are deposited with

Vasantdada Nagari Sahakari Bank Marya., Osmanabad. It is claimed that such transaction is in place since year 2004. It is claimed that till 13/11/2017 on current account of society there is a sum of Rs.50,68,472/- similarly from time to time investment is done by the society in the fixed deposits with the bank. It is alleged therein that on account of misappropriations and irregularities in the affairs of the bank, restrictions were imposed by R.B.I. for withdrawal of the amount. It is alleged that the bank had issued overdraft loan to 11 individuals for Rs.60 lakhs each and the said amount was transferred on the same day in the account of Chairman of the bank. It is also claimed that subsequently further amount of loan was issued to them in order to square off previous loan. It is alleged that overdraft facility was allowed to Jaylaxmi Sugar Factory which belongs to the Chairman of the bank. Thus, it is a case of the informant that total sum of Rs.2,31,68,472/- is duped by the Managing Directors of the bank. Applicants had filed applications bearing No. 1538/2023 and 1573/2023 which applications were allowed to be withdrawn after disinclination was shown by this Court to grant relief on 07/11/2023 and 04/12/2023 respectively.

3. Learned counsel for the applicants submits that now there is change in circumstances in order to entertain second bail application. It is his submission that practically investigation of the crime is complete

and charge-sheet is about to be filed against the accused person. It is further argued that the Chairman of the Bank was arrested and is now enlarged on regular bail by this Court by order dated 29/02/2024 passed in Bail Application No. 271/2024 wherein condition was imposed on him to deposit a sum of Rs.1,31,68,472/- and also to provide security towards the remaining amount involved in this crime. It is submitted that the amount is deposited so also the security has been given to the satisfaction of the Court. It is also argued that liberty of the co-accused has been protected by Hon'ble Supreme Court by interim protection and final order in Petition for Special Leave to Appeal (Cri.) No. 15573/2023, 16118/2024 and 15735/2023. It is thus submitted that in view of the orders passed by the Hon'ble Supreme Court so also considering the fact that the entire amount involved in the alleged crime is secured, no custodial interrogation of the applicants would be necessary.

4. Learned APP opposed the applications by contending that the volume of the crime is required to be considered while entertaining present applications. It is his submission that though co-accused has deposited some amount and has also provided security, the custodial interrogation of the applicants is necessary in order to ascertain as to how the yields of the crime are utilized by them. Thus, according to him same cannot be found out unless their custody is obtained. As far as the

orders passed by the Hon'ble Supreme Court is concerned, it is sought to be argued that two accused in the discretion granted interim protection and in order passed in favour of accused Surekha Vijay Dandnaik it is recorded that the learned counsel appearing for the State informed the Hon'ble Surpeme Court that the said accused has cooperated in the investigation and the investigation is over and charge-sheet is also revealed. It is submitted that in that case there was interim protection granted to the said accused and pursuant thereto she had cooperated and participated in the investigation. According to him, the applicants are yet to be interrogated and as such this is not a case for grant of anticipatory bail on parity.

5. Perusal of the papers of investigation disclosed that the present applicants are directors of the bank since year 2016 to 2021 continuously, unlike co-accused Surekha who was director till 2016 only. There is further material on record to indicate that they had actively participated in the transactions in question and that their signatures are also appearing on the minutes of meeting wherein the suspicious loan transactions were approved. The alleged offence covers more than Rs.10 crores and several investors are victims of this crime. The question arises before this Court is as to whether the deposit of amount and furnishing of security by co-accused towards the amount recoverable in this crime

would become a ground for grant of anticipatory bail to the present applicants. The purpose of the investigation is not only to secure the money misappropriated but it is also necessary that there is effective investigation carried out in order to ascertain as to how the crime is committed and the benefits of the crime are utilized. Here in this case co-accused in his individual capacity has given security towards the amount involved in the crime, but misappropriated amount has not been recovered yet. Further still it is to be investigated as to the benefits derived by the applicants from criime. On the face of it there is material evidence to show that they are directors of the bank for substantial time and that they have actively participated in the affairs of the bank including the resolution passed for disbursing suspicious loan to 11 persons to the extent of Rs.60 lakhs each. Having regard to these fact, it cannot be said that *prima facie* involvement of the applicants is not found in the crime. This Court also finds substance in the contention of the learned APP that in order to ascertain the utilization of the money earned from the crime by the present applicants so also to find out the manner in which the crime is committed, their custodial interrogation is essential.

6. As far as the interim reliefs granted by the Hon’ble Supreme Court is concerned, perusal of the order shows that in discretion of the Hon’ble

Supreme Court such relief was granted to two co-accused. In so far as co-accused Surekha Vijay Dandnaik is concerned, statement was made on behalf of the learned counsel for the State that she has cooperated in the investigation and this appears to have become a ground for protecting her from arrest. Herein this case, applicants have successfully avoided their arrest for a long period and that there occurred no occasion for them to participate in investigation. Merely because they were able to avoid the arrest for substantial time, it cannot become a ground for granting anticipatory bail.

7. Having regard to the afore stated facts, no case is made out for grant of anticipatory bail. Hence, applications stand rejected.

(R. M. JOSHI, J.)

ssp