IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1273 OF 2024

Anil Chandulal Kothari,
Age : 65 years, Occu. Business,
R/o Manik Nagar, Ahmednagar,
Tq. and Dist. Ahmednagar. … **Applicant.**

Versus

The State of Maharashtra … **Respondent.**

WITH

CRIMINAL APPLICATION NO.2973 OF 2024 IN BA/1273/2024
(Dhondopant s/o Mohiniraj Kulkarni and another Vs. Anil Chandulal Kothari and another)

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Advocate for Applicant : Mr. R. R. Karpe.
APP for Respondent-State : Mr. S. P. Sonpawale.
Advocate for Depositor to assist APP : Mr. Gholap A. M.
…

CORAM : S. G. MEHARE, J.

RESERVED ON : 09.10.2024
PRONOUNCED ON : 18.10.2024

ORDER :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and learned counsel for the depositor.

2. The applicant seeks bail in Crime No.121 of 2022, registered with Police Station Kotwali, District Ahmednagar, for the offences punishable under Sections 409, 420, 467, 468,

471 and 120-B read with Section 34 of the IPC and Sections 3, 4, 5 of the M.P.I.D. Act.

3. The complainant was the Director of the Ahmednagar Urban Multi-State Co-operative Bank. His panel lost the election in 2014. He was the account holder and a member of the bank. He being the Director of the bank had knowledge about the relevant laws and rules applicable to the banks. He collects the statutory audit reports and the inspection report of the Reserve Bank from 2015 to 2021. He studied it and found that the Chairman, Director, Senior Officers, a few borrowers and other related persons had misappropriated crores of rupees and caused the loss to the bank. He did correspondence with the Central Registrar, New Delhi, Reserve Bank, Bombay and superintendent of Police from time to time. He had filed a Writ Petition No.1224 of 2020 in the High Court for direction to the Superintendent of Police for taking action against the Chairman, Director and other persons. He has given a big list of illegalities and misuse of the powers with the crimes registered against them. In sum and substance, he has a complaint that all the persons responsible for the bank business have benefited by granting loans to the persons, who are close to them and they had interest in such loan transactions. They

have exceeded their powers and jurisdiction. He has also referred to the statutory audit reports and gave the list of the persons, who benefited by illegal acts affecting the interest of the depositors and the bank. He alleged that a fraud of Rs.100 to 150 crores has been played and that amount was withdrawn and used for different purposes. On his report, the above crime is registered. The Investigating Officer filed the charge sheet and summarized the role attributed to each accused. He has summarized the allegations against the applicant that for the period of misappropriation, the applicant was the Director of the bank. From 2014 to 2018, he was a member of the loan and investment committee. He in conspiracy with the then Chairman, Director, Officers and other accused misappropriated the money of the bank for his own as well as their benefit. The documents required for granting a loan were also incorrect. The valuation report of the mortgaged property and financial statement of the so-called borrowers were forged and the valuation of those properties was increased. He deliberately sanctioned the loan to those persons, who were not able to repay the loan. He is responsible for the loss of Rs.291,25,61,000/- to the bank.

4. Learned counsel for the applicant sought the bail on the grounds that the applicant was not involved in any such illegalities. It's the outcome of the political rivalry. Since the complainant had defeated the election, he dug into the past and made a detailed investigation on his own. He never objected to the acts of the applicant when he was Director with him also. He would submit that not a single depositor has a complaint that their deposited money was not returned. However, the complainant is instrumental in sinking such a reputed old bank running for more than 100 years. The statutory auditor never raised any objection as such. The bank was running smoothly with the confidence of the depositors. The documents placed before the committee were satisfactory. There is no evidence, *prima facie*, to believe the prosecution case that out of granting the loan to the borrowers he benefited. He was not named in the FIR. The FIR was registered in 2022 and for two years he was never called upon by the Investigating Officer. He has been arrested on 26.01.2024. His Rs.25,00,000/- (Twenty-Five Lacs) is still lying with the bank. No depositor had complained about non receiving the dividends. The insurance company has reimbursed rupees Sixty-Three Crores for protecting the interest of the depositors. The FIR has a personal vendetta

against the complainant. There was about four-year delay in taking action against the applicant. The applicant is suffering from various ailments and running 65.

5. He also argued that the financial condition of the bank is still sound. The assets of the bank are more than the liability or the loan disbursed to the borrowers. Against some of the defaulters, legal actions were initiated. The forensic audit report has exonerated him. He placed the relevant pages of the audit report and argued that he had given the details of his family, bank accounts and relevant investments to support the auditor to find out his involvement. He would submit that he had raised the objection to the loan granted to Mr. Jaishankar. He has expressed a negative opinion. Therefore, he cannot be blamed for disbursing the loan to the said firm. He also referred to clause (7) from page No.523 of the forensic audit about forgery which reflects that the applicant was not held responsible for the forgery of the documents and with the cash management department. He would submit that so far as the observations regarding conspiracy are concerned, the applicant cannot be blamed for such conspiracy because there is no substantial material before the auditor. It is also observed in the forensic laboratory report that no forged documents were

used to avail better credit facility. The recovery proceedings are taken and the ITAT has not rejected any claim for want of proper documentation. The bylaws of the bank were not violated. No bogus loan was identified.

6. So far as the conspiracy is concerned, it is just an opinion of the auditor. So, it does not bind the applicant at this juncture. So far as sanctioning the financial facility or treating the asset as genuine for primary/collateral security has no concern with the applicant. The observations recorded in the forensic audit report blamed especially the then Chairman of the bank for not accepting the negative reports. The auditor of the forensic audit has also specifically recorded that no such bogus loans were identified. He also specifically observed that the applicant has no financial transactions with the borrower account nor his family was found to have any financial transactions with the borrowers. When no such material was there to believe that the applicant had a financial transaction with the borrower, the opinion of the forensic auditor of criminal breach of trust is unfounded. Even after having such specific findings of the auditor in the forensic audit report, the Investigating Officer incorrectly opined that the applicant was the beneficiary of granting a loan without following due

procedure of law and accepted the forged document. Referring to the financial position of the bank, he would submit that there was absolutely no reason for any of the banking authorities to appoint the liquidator.

7. In the sum and substance, he would submit that the case is based upon the forensic audit report. However, there was no material before it to believe that the loan documents were forged and the applicant benefited by granting the loan to such persons. He prayed for a grant of bail.

8. Per contra, learned counsel Mr. Gholap for the depositor has vehemently argued that the applicant has antecedents. One crime was registered against him when he was the Chairman of the loan committee. Another crime was registered against him for the offences punishable under the Petroleum Act. He would submit that he has a tendency to commit the crime again and again. He also argued that the applicant with other Directors and the Chairman had manipulated the bank records to hide the illegalities. Due to their acts, the NP level of the bank went to such an extent which resulted in the cancellation of the bank license. Due to the acts of the applicant, a large number of depositors have had financial setbacks. The age-old persons who are the depositors have lost hope of their

livelihood. The illegal entries were taken in the bank accounts. They disbursed the loan to the fake borrowers. They have received the money from such borrowers as a gratification. The amount was illegally credited to the accounts of the relatives of the Chairman and it was used for purchasing immovable properties and for clearing dues of another bank. He further argued that the hard-earned money of the depositors had been sunk due to the acts of the applicant and his associates. His custodial interrogation is necessary as the crime is serious. He is the prime accused. If he is granted bail, he will dispose of the evidence and may abscond. He would vehemently argue that the *modus operandi* of the applicant with his antecedents is relevant to show the gravity of the offence. If he is released on bail, it would cause serious prejudice to the victim of the crime in question. He would submit that this MPID Act was meant to protect the interest of the depositors. Though he argued that except for one of the depositors huge amount of lakhs of rupees was deposited with the bank, no pleading as such in his application. The liquidator even did not return a deposit of Rs.500/- to one of the depositors. The liquidator did not give the money towards the insurance. Hence, his application may be rejected.

9. The marathon arguments of the respective learned counsels reveal that after the detailed investigative report of the EX-Director of the bank, the crime was registered. Considering the allegations levelled against the persons named in the FIR, the forensic audit was done and based on that report, various persons have been arraigned as accused. It has been alleged against the applicant that sanctioned the loan to persons who were not eligible and accepted the forged documents. However, the forensic audit report reveals that he had objected to the loan application. But his objection was negatived by the then Chairman of the bank and the financial facility was granted treating the assets of the borrower as genuine/primary/collateral security. As far as the forgery is concerned, a forensic audit report shows that the documents were not forged. He did not find the financial involvement/ transactions in/with any of the borrower accounts during the period of assignment. No funds movement was observed which might have been received from borrowers MUCBL. The bank details of the applicant and his family members were also furnished. The auditor did not find anything adverse. However, the auditor recorded the observations that a conspiracy was plotted by all the office bearers and employees. Was the applicant a member of the conspiracy is the matter of

appreciation of evidence. The relevant observations against the applicant do not show that he was the beneficiary of the borrowers granting them loans. *Prima facie*, it also appears that the assets of the bank are more than the liability and the total deposits as of 19.02.2019 were more than the balance to be paid. The bank has repaid the amount of Rs.9,29.27 crores to depositors in five years from 2019 to 2024. It appears that the applicant has supported the investigating agency. He is a senior citizen suffering from various ailments. There are a large number of witnesses. Therefore, it may be presumed that the trial will take its time. The material investigation against the applicant has been completed. Therefore, his further detention would serve no purpose. However, to protect the interest of the bank as well as the depositor, certain conditions may be imposed. Hence, the following order :

ORDER

(i) Bail Application is allowed.

(ii) Applicant **Anil Chandulal Kothari** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount, on the following conditions :

(a) The applicant should not interfere with the business of the liquidator.

(b) He should not leave the place of his residence without the leave of the Court.

(c) He should surrender his passport with the Court, if any.

(d) He should not contact the other office bearers, Chairman, Directors and any of the bank officials, till the trial is concluded, unless he is entitled to.

(iii) Criminal application No.2973 of 2024 stands disposed of.

(S. G. MEHARE, J.)

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