IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1530 OF 2023

Deepak Bhivaji Devkate ….Applicant

VERSUS

The State Of Maharashtra …..Respondent

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Mr. M.B. Kolpe, Advocate for applicant.
Mr. S.B. Jadhav, APP for respondent-State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th FEBRUARY, 2024

ORDER :

1. Applicant apprehends arrest in Crime No. 279 of 2023, registered with Osmanabad City Police Station, Dist. Osmanabad, for offences punishable under sections 406, 409, 420 read with 34 of the Indian Penal Code and under sections 3 and 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999.

2. FIR is lodged by Vinod Wadgaonkar, a Manager in Prabhat Sahakari Patpedi Limited, Osmanabad (for short 'Patpedi') stating that Patpedi was established in the year 2003. He is serving as Manager in the Patpedi since 01.04.2005. Said Patpedi used to accept deposits and distribute loans to needy

people. Patpedi after collecting deposits used to keep them in Vasantdada Nagari Sahakari Bank Limited (for short "Bank") in current Account No. 00102142000455, which was opened in the year 2004. The Chairman of the said Bank i.e. Vijaykumar Sitaram Dandnaik and Manager Dipak Bhivaji Devkate assured Patpedi to give good returns, therefore, Patpedi kept the deposits in the current account and also in fixed deposits in the said Bank. From 13.11.2017 onwards an amount of Rs. 50,68,472/- is deposited in the current account of Bank. Fixed deposits kept by Patpedi in the Bank and their maturity dates are as follows:-

Sr. No.	Receipt No.	Amount	Date of receipt	Date of Maturity/date of repayment
1	36742	100000/-	29.03.2017	29.04.2019
2	36749	1000000/-	30.03.2017	30.04.2019
3	36750	1000000/-	30.03.2017	30.04.2019
4	36751	1000000/-	30.03.2017	30.04.2019
5	36757	1000000/-	31.03.2017	30.04.2019
6	36758	1000000/-	31.03.2017	30.04.2019
7	36759	1000000/-	31.03.2017	30.04.2019
8	36760	1000000/-	31.03.2017	30.04.2019
9	36761	1000000/-	31.03.2017	30.04.2019
10	36762	1000000/-	31.03.2017	30.04.2019
11	36763	1000000/-	31.03.2017	30.04.2019
12	36764	1000000/-	31.03.2017	30.04.2019
13	36765	1000000/-	31.03.2017	30.04.2019
14	36766	1000000/-	31.03.2017	30.04.2019
15	37455	1000000/-	01.11.2017	01.12.2019
16	37456	1000000/-	01.11.2017	01.12.2019
17	37453	1000000/-	01.11.2017	01.12.2019
18	37454	1000000/-	01.11.2017	01.12.2019
19	37457	1000000/-	01.11.2017	01.12.2019
	Total	**18100000/-**		

3. Patpedi was in need of money, therefore, cheque bearing No. 002035 for an amount of Rs. 50,65,000/- was drawn and a letter was issued on 19.06.2019 for repayment of fixed deposits of Rs. 18100000/-. By letter dated 17.07.2019, Bank replied to Patpedi that from 14.11.2017 Reserve Bank of India has imposed restriction under section 35(A), therefore Bank is unable to pay more than Rs. 1,000/- to each account holder. Patpedi obtained last five years audit reports of Bank from Reserve Bank of India. On going through audit reports, it was realized that in the year 2015-2016 Bank had advanced overdraft loan of Rs. 60,00,000/- to 11 account holders. Said amount was deposited in the current account of borrowers and on the same day it was deposited in the account of Chairman Vijay Dandnaik. On 31.03.2013, self employed loan of Rs. 55,00,000/- each was sanctioned to the 11 borrowers (same 11 account holders). Loan amounts were deposited in the accounts of said 11 persons and their loan accounts were closed. Self employed loans obtained by those 11 borrowers have remained unpaid. From December-2011 to June-2012, Chairman and Director body disbursed overdraft loan of Rs. 60,00,000/- each to six account holders. Said amount of Rs. 60,00,000/- was deposited in their current accounts and on the same day it was

transferred in the saving account of Chairman Vijay Dandnaik.

These overdraft loan amounts were repaid during the period between 15.03.2014 to 29.03.2014 by sanctioning self employed loan of Rs. 55,00,000/- and depositing it in the overdraft loan account. Thereafter in the year 2014, six self employed loans remained unpaid.

4. Though, as per rules Chairman of the Bank and Director body cannot give loans to their relatives, the Chairman has misused his position and has sanctioned overdraft loan of Rs. 13,12,000/- to Savitribai Mahila Bachat Gut, without obtaining security, as his wife Surekha Dandnaik was President of the same. Said loan is not repaid. Chairman's Jaylaxmi Sugar Factory was given overdraft loan of Rs. 19,88,000/-. Chairman has also given loan of Rs. 3,07,000/- to his brother and his wife. The deposits kept by Patpedi and other depositors are illegally distributed by way of loans, without obtaining security and said loans are not recovered.

5. By letter dated 09.05.2018, some of the directors of the Bank complained to District Deputy Registrar that CEO/Manager and Chairman have obtained overdraft on saving accounts of the Bank, they have illegally sanctioned loans and

after sanction of loan they have transferred the said loan amounts in their saving accounts, they have not permitted recovery notices to be issued to borrowers, they have prevented recovery process of the loans, and loans in the name of 190 borrowers of the Bank were obtained by them and those were not repaid.

6. Informant therefore alleged that accused persons named in the FIR have committed cheating, criminal breach of trust and misappropriation of Patpedi’s total amount of Rs. 2,31,68,472/- kept in the current account and Fixed Deposits and of the amounts kept by other depositors.

7. Heard learned advocate for applicant and learned APP for respondent-State. Perused the investigation papers.

8. Learned advocate for applicant submits that applicant has tendered resignation on 23.07.2019 from the post of Manager, and he claims that same is accepted in General Body Meeting on 31.07.2019. According to him, in view of restriction under section 35(A) of Banking Regulation Act, imposed by Reserve Bank of India, the Bank could not repay fixed deposits and amounts lying in current account of Patpedi. It is submitted

that there is delay of more than two years in registering FIR. Applicant has co-operated in the investigation and as liquidator is appointed on the Bank, custodial interrogation of applicant is not necessary.

9. Learned APP, on the other hand, strenuously opposed the bail application by relying on papers of investigation.

10. Applicant has worked as Manager and CEO of the Bank during the period between 2011-2019. Bye-laws of Bank provide that, CEO shall be functional director of the Board. Under the general superintendence, direction and control of the board, he has to exercise powers and functions i.e. a) day to day management of the business of the Bank, b) operating the accounts of the Bank and will be responsible for making arrangements for safe custody of cash, c) signing on the documents for and on behalf of the Bank, d) making arrangements for the proper maintenance of various books and records of the Bank and for the correct preparation, timely submission of periodical statements and returns in accordance with the provisions of this Act, the Rules and the Bye-laws, e) convening meetings of the General Body of the Bank, the Board and Executive Committee and other committees or sub-

committees constituted under the Act and maintaining proper records for such meetings, f) making appointments…….., g) assisting the Board in the formulation of policies, objectives and planning, h) furnishing to the Board periodical information necessary for appraising the operations and functions of the Bank, as per calendar of reviews issued by the Reserve Bank of India, i) to give proper suggestion and clear opinion in writing for all the matters placed before the board of directors, j) appoint the person……, k) to accept resignation……., l) present the draft annual report and financial statements for the approval of Board within thirty days of closure of the financial years.

11. Perusal of record indicates that, applicant is party to all the resolutions passed by the Board. Without involvement and collusion of applicant, loans sanctioned and transferred in the accounts of borrowers, could not have been transferred in the saving account of Chairman.

12. Investigation conducted so far has revealed misappropriation to the tune of Rs. 5,91,23,621/-. It is further revealed that illegal overdraft loans were sanctioned without obtaining security and said overdraft loan amounts were diverted to the account of Chairman. Said overdraft loan amounts were

repaid by sanctioning self employed loans to the same borrowers, however, their self employed loans have remained unpaid. Loans are advanced to the relatives of Chairman and to the Sugar Factory of Chairman, so also to the self help group of which wife of Chairman was President.

13. Reserve Bank of India in its report has noted serous illegalities and irregularities committed by management, like sanctioning of overdraft of Rs. 60,00,000/- to six borrowers between 12.12.2011 to 01.07.2012 and said amounts was transferred on the same day to current accounts of respective borrowers. Immediately, said money was transferred to saving account of Chairman of the Bank, who used that money. Sanctioning of self employed loan of Rs. 55,00,000/- to the same six borrowers between 15.03.2014 to 29.03.2014, transferring said loan amount in the current accounts of respective borrowers and then transferring those amounts to settle their overdraft account is also noted by Reserve Bank of India. It is therefore clear that loans illegally disbursed are repaid, fresh loans were given and record is created to show that loans earlier granted are recovered. This is done with a view to camouflage the act of misappropriation. Applicant is signatory to

the resolutions passed in respect of these transactions. Applicant being CEO was responsible for day to day business of the bank. He therefore cannot now shirk his responsibility by saying that he was merely CEO/Manager and he is not involved in the same and that he is not beneficiary to misappropriation. Report of Reserve Bank of India, *prima facie,* indicates misappropriation done by accused.

14. There is sufficient material on record to *prima facie* hold that applicant is involved in commission of serious offence of cheating, misappropriation and criminal breach of trust and he is one of the beneficiary of the crime. In these facts, it is not possible to accept that applicant is innocent and he has not played any role in commission of offence.

15. This Court has rejected anticipatory bail application No. 1481/2023 of Chairman, 1482/2023 filed by wife of Chairman, 1476/2023 filed by three directors and 1485/2023 filed by a director, vide order dated 15.09.2023.

16. Considering the complicity of applicant and gravity of accusations and huge amount involved in the present matter, custodial interrogation of applicant is necessary for effective

investigation. Applicant, therefore, is not entitled for discretionary relief of anticipatory bail. Application is therefore rejected.

17. At this stage, learned advocate for applicant prays for continuation of ad-interim protection granted to applicant. For the reasons stated in the order, prayer is rejected.

[NITIN B. SURYAWANSHI, J.]