2024:BHC-AUG:1806

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1610 OF 2023

Shaikh Naseeb S/o Shaikh Rahim … Applicant

VERSUS

The State Of Maharashtra
and another … Respondents

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Mr. M.A. Tandale, Advocate for the Applicant
Mr. N.B. Patil, APP for Respondents – State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd JANUARY, 2024

ORDER :

1. The applicant apprehends arrest in connection with Crime No. 56 of 2017 registered with Itwara Police Station, Nanded for offences punishable under sections 420, 409, 467, 468, 471 read with section 34 of the Indian Penal Code and sections 3 and 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act.

2. FIR is lodged by Irfan Abdul Rauf alleging that he had account in Shri Ratneshwari Mata Urban Co-operative Society (for short, 'the said society'), which he was operating from last one year for making payments to the wholesalers. He used to deposit amounts with the said society and society used to issue cheques of the said amounts of his account in the name of wholesalers. Three months before he purchased 827 k.g.

dry fruits from Mansi International Wholesale Shop for Rs.89,432/-. He deposited the said amount in the said society and the said society issued two cheques of the said amount of S.B.H. Bank to him. From K.G.N. Enterprises Wholesale Shop, he purchased dry fruits worth Rs.92,000/-. He deposited amount of Rs.92,000/- in the said society and the said society issued him two cheques of I.D.B.I. and S.B.I. Bank. He deposited an amount of Rs.5,00,000/- in the said society for purchasing dry fruits from Al Asar Trading Company. The said society issued 16 cheques of Rs.30,000/- each and one cheque of Rs.20,000/- of S.B.H. Bank. He was informed by Mansi International Wholesale Shop, K.G.N. Enterprises and Al Asar Trading Company that the cheques given by him are dishonoured. He, therefore, went in the said society and inquired with Manager, Jitendra Thete, Uddhav Ghorpade and Sandip Gore, who were operating the said society. He was told that due to demonetization (*Note bandi*), their transactions were stalled. He was asked to wait for some days, and not to deposit the cheques in the Bank, and he will pay the amount after few days. Thereafter, he was never paid the said amount. On 06.04.2017, when he went to the society, he found the said society closed. On inquiry, he was told that the society 23 has become bankrupt and all the Directors had fled away. He, therefore, lodged FIR.

3. Investigation of the said FIR was transferred to the Economic Offences Wing, Nanded. A supplementary statement of informant was recorded on 25.10.2017 that after few days of lodging FIR, Shaikh Naseeb Shaikh Rahim from the said society contacted him and assure to return his money and requested him to withdraw the complaint. However, informant told him that unless and until he receives his money back, he will not withdraw FIR lodged by him. Balaji Sunnewar, Branch Manager Jagannath Ghumare, Director Uddhav Ghorpade, and Jitendra Thete repeatedly contacted informant and requested him to withdraw the complaint. He also gave an agreement in writing on 14/07/2017, by which he assured to repay the amount of informant within two months and gave cheque of I.D.B.I. Bank of Tipu Sultan Urban Multistate Co-operative Society. When the cheque was deposited on 11/09/2017, it was dishonoured. Applicant again requested informant to again deposit the cheque. Informant, therefore, again deposited the cheque. However, it was dishonoured on 14/10/2017. Informant, therefore, contended that all the Directors of the said Society, employees of the Bank have

conspired and obtained Rs.6,81,431/- from him and issued cheques of the same amounts, though there were no funds in their accounts.

4. Heard learned advocate for applicant and learned APP for respondents – State. Perused the investigation papers.

5. Learned advocate for applicant submits that name of applicant is disclosed by co-accused. Charge-sheet is filed in the present case, and therefore, applicant's custody is not required. Applicant was Chariman of Tipu Sultan Urban Multistate Co-operative Society at Sirola, Taluka Parli, District Beed, which was transferred to Balaji Sunnewar on 04.07.2014, and the transfer deed was executed. All the deposits and account holders money is also transferred to Ratneshwari Mata Urban Multistate Co-operative Credit Society. At that time and thereafter applicant has no concern with Ratneshwari Mata Urban Multistate Co-operative Credit Society. Balaji Sunnewar was the Chairman of the said society and he was looking after all the affairs of the said society. Applicant has no role to play in the alleged offence and therefore he may be granted anticipatory bail. Learned advocate for applicant placed reliance on ***Siddharam***

Satlingappa Mhetre Vs. State of Maharashtra and Ors., *AIR 2011 Supreme Court 312*, in support of his arguments.

6. Learned APP, on the other hand, opposed the application by relying on the charge-sheet. It is submitted that applicant has committed forgery and has given forged licence and fake registration certificate of Ratneshwari Mata Urban Multistate Co-operative Credit Society. Amounts were transferred from Ratneshwari Mata Urban Multistate Co-operative Credit Society to the account of applicant. Custody is therefore necessary for investigation purpose.

7. From the record, it is clear that applicant has also executed an agreement on 04.07.2017 with main accused Balaji Sunnewar in the capacity of Chairman and Chief promoter of Tipu Sultan Co-operative Society, thereby transferring Tipu Sultan Co-operative Society to Balaji Sunnewar and to provide registration of all the Directors, original by-laws, original registration certificate, bank statement, audit balance sheet, share certificate, members register, etc., copy of NOC, bank closer certificate, and depositors details and transfer the said society in the name of new Management represented by Balaji Sunnewar. Applicant was Chairman of Tipu Sultan Urban Multistate Co-operative

Society, which he has allegedly sold to Balaji Sunnewar and other accused persons. Applicant along with other accused went to Delhi for completing the process for transfer of Tipu Sultan Urban Multistate Co-operative Society to Ratneshwari Mata Urban Multistate Co-operative Credit Society. It appears that applicant provided fake registration certificate and banking permit of Ratneshwari Mata Urban Multistate Co-operative Credit Society to the other accused persons. Balaji Sunnewar and other accused believed that the said licence and banking permit is genuine to start operating Ratneshwari Mata Urban Multistate Co-operative Credit Society.

8. From the investigation papers, it appears that applicant is actively involved in the fraud committed by the accused persons. Applicant has entered into several transactions prior and subsequent to the transactions of informant, and substantive amount were transferred in applicant's account from Ratneshwari Mata Urban Multistate Co-operative Credit Society.

9. Some of the depositors of Ratneshwari Mata Urban Multistate Co-operative Credit Society have stated that after registration of crime applicant approached them and offered cheques of their deposited amount and requested that not to

lodged any complaints. Cheques given by applicant were dishonoured subsequently. It thus appears that since beginning applicant intend to commit cheating and criminal breach of trust. There is sufficient material on record to show involvement of applicant in commission of serious offence. For recovery of necessary record and for effective investigation, custody of applicant is necessary. He, therefore, does not deserves discretionary relief of anticipatory bail.

10. There cannot be any dispute about the ratio in ***Siddharam Satlingappa Mhetre*** (supra). However, in the facts of the present case, applicant is not entitled for discretionary relief of anticipatory bail.

11. The application is therefore rejected.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane