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

ANTICIPATORY BAIL APPLICATION NO. 1526 OF 2022

Ms. Yogita Madhukar Shinde .. Applicant

versus

State of Maharashtra & another .. Respondents

Mr. B. P. Pande, Advocate for the Applicant.
Mr. S. B.Narwade, APP for the State.
Mr. K. J. Suryawanshi, Advocate for the informant.

AND
ANTICIPATORY BAIL APPLICATION NO. 1484 OF 2022

Sanjay s/o Gulabrao Rathod .. Applicant

versus

The State of Maharashtra & another .. Respondents

Mr. B.P. Pande, Advocate for the Applicant.
Mr. S. B. Narwade, APP for the State.

AND
ANTICIPATORY BAIL APPLICATION NO. 1541 OF 2022

Vijay Bhujangrao Chavan .. Applicant

versus

The State of Maharashtra & another .. Respondents

Mr. S. J. Salunke, Advocate for the Applicant.
Mr. S. B. Narwade, APP for the State.

AND
ANTICIPATORY BAIL APPLICATION NO. 1582 OF 2022

Arun Harikishan Hoge .. Applicant

versus

The State of Maharashtra & another .. Respondents

Mr. D. J. Choudhary, Advocate for the Applicant.
Mr. S. B. Narwade, APP for the State.

AND
ANTICIPATORY BAIL APPLICATION NO. 1673 OF 2022

Vinayak s/o Prakashappa Kapse .. Applicant

versus

The State of Maharashtra & another .. Respondents

Mr. D. J. Choudhary, Advocate for the Applicant.
Mr. S. B. Narwade, APP for the State.

AND
ANTICIPATORY BAIL APPLICATION NO. 1585 OF 2022

Nagesh Shivshankar Tale .. Applicant

versus

The State of Maharashtra & another .. Respondents

Mr. D. J. Choudhary, Advocate for the Applicant.
Mr. S. B. Narwade, APP for the State.

AND
ANTICIPATORY BAIL APPLICATION NO. 1584 OF 2022

Arun Janardhan Aade .. Applicant

versus

The State of Maharashtra & another .. Respondents

Mr. D. J. Choudhary, Advocate for the Applicant.
Mr. S. B. Narwade, APP for the State.

AND
ANTICIPATORY BAIL APPLICATION NO. 1583 OF 2022

Kailas Vithalrao Chaval .. Applicant

versus

The State of Maharashtra .. Respondent

Mr. D. J. Choudhary, Advocate for the Applicant.
Mr. S. B. Narwade, APP for the State.

AND
ANTICIPATORY BAIL APPLICATION NO. 1653 OF 2022

Ganesh Achyutrao Avchar .. Applicant

versus

The State of Maharashtra & another .. Respondents

Mr. D. J. Choudhary, Advocate for the Applicant.
Mr. S. B. Narwade, APP for the State.

CORAM : R. M. JOSHI, J.
RESERVED ON : 18th OCTOBER, 2024.
PRONOUNCED ON : 23rd OCTOBER, 2024.

ORDER :

1. Applicants are the employees of Mantha Urban Co-operative Bank Limited. First Information Report came to be lodged

against them on 07.09.2022 with serious allegations such as fabrication of documents, withdrawal of money of depositors without their consent and it is alleged that there is mis-appropriation to the tune of more than 12 Crores, in the said Bank.

2. Applicants approached this Court and sought interim relief. Their liberty was protected. Applicant Yogita Shinde got interim relief on 15.11.2022. Record further indicates that thereafter an application was moved by this Applicant before District Deputy Registrar (DDR) for conducting re-audit for the same period. On that count, adjournments were sought. On 19.06.2023, it was found by this Court that though statement was made by learned counsel for the Applicant as recorded in order dated 27.02.2023 that necessary fees for re-audit shall be deposited within a period of two weeks, it was found that the cheque of Rs. 6,70,000/- issued by the Applicant for re-audit was dishonoured. Learned counsel for this Applicant has undertaken to deposit the said amount and time was sought. On 20.06.2023, a specific statement was made that the said amount is deposited for the purpose of re-audit and on that count adjournment was sought. On 18.08.2023, it was found that the amount has not been deposited though a statement was made by learned counsel for

this Applicant on her behalf before this Court. Though apparent incorrect statement was made, in view of the fact that she is a lady and it was further undertaken to deposit the amount, no action was taken against her. Even on the next date of hearing i.e. on 25.08.2023, it was found that the amount though undertaken was not deposited. The Court has also observed that the interim relief was sought to be extended on said pretext. Therefore, order was passed that if the amount is not paid by Demand Draft as undertaken, interim relief would stand vacated. It is thereafter, the amount towards re-audit was deposited. It is after this, re-audit was in progress and therefore the interim relief was continued. This matter is heard finally on 18.10.2024 and till then, on one or the other pretext, Applicants were successful in extending the interim relief.

3. First Information Report in Crime No. 444/2022 registered with Mantha Police Station came to be filed by the Auditor on the basis of report of audit of the bank for the period upto the year 2021. It is specifically stated in the said report that from Sewli, Lakkadkot, Chandanjira branches as well as head office of the bank at Mantha, mis-appropriation was found to have been done by the

Applicants and others. It is alleged therein that mis-appropriation was was found in withdrawal from sundry accounts. Similarly, loans were issued on bogus mortgages. It is also found that money was withdrawn by employees of investors by issuing forged Fixed Deposit Receipts without preparing official record thereof. On these amongst other allegations, mis-appropriation is alleged against present Applicants.

4. Learned counsel for Applicant in Anticipatory Bail Application No. 1526/2022 submits that Applicant is a lady and was working as Junior Officer. It is his contention that she was not responsible for approval of any loan or authorised to take any decision. It is also contended that since 2017 her nature of duty was changed and that she was called upon to perform work of increase in deposits and taking follow up of recovery of loan. It is his submission that the DDR has issued communications dated 20.09.2024 and 30.09.2024 to this Applicant in which it is categorically stated that in the re-audit no mis-appropriation seems to have been done by the Applicant and that she was refunded the amount of Rs. 6,76,000/- deposited for the purpose of re-audit. Thus, it is his submission that there is no substance in the allegations against this Applicant.

5. In Anticipatory Bail Application no. 1484/2022, it is the contention of learned counsel for the Applicant that in view of re-audit, the earlier audit has become infructuous and therefore cannot be relied upon. On merit, it is contended that Satish Deshmukh who was the officer of the bank has accepted guilt and therefore, nothing survives against present Applicant to take action. Allegations are also made against the Chief Executive Officer of the bank alleging that he is responsible for the same.

6. Learned counsel for Applicants in Anticipatory Bail Application Nos. 1653/2022 and 1673/2022 submits that these Applicants have never worked at Mantha, Lakkadkot and Chandanjira branches. It is submitted that the audit report does not attribute any mis-appropriation against them. He adopted submissions made by counsels for other Applicants.

7. Learned counsel appearing on behalf of Applicant in Anticipatory Bail Application No. 1541/2022 submits that the Applicant is a Senior Clerk having no authority to sanction loan etc. It is his submission that the Chief Executive Officer of the bank has

conducted enquiry wherein it is found that Satish Deshmukh who is close relative of the Chairman is responsible for the mis-appropriation. It is argued that this is a case of issue estopple as there was First Information Report lodged bearing No. 136/2022 making allegation against Applicants in respect of the alleged mis-appropriation in which charge-sheet has already been filed. It is contended that it is not permissible in law to file two First Information Reports in respect of the same incident. He relied upon judgment of Hon'ble Apex Court in case of Siddharam Satlingappa Mhetre vs. State of Maharashtra and another, **(2011) 1 Supreme Court Cases 694**.

8. Learned counsel for Applicants in Anticipatory Bail Applications No. 1582/2022, 1583/2022, 1584/2022 and 1585/2022 submitted that re-audit report will prevail which does not indicate any mis-appropriation being done by the Applicants herein and as a result of which their custodial interrogation also would not be necessary. He relied upon judgment of Division Bench of this Court in case of Mahadeorao Uttamrao Rajurkar and another vs. The State of Maharashtra & others, **Criminal Application No. 585/2017**.

9. All the counsel for these Applicants have raised two common issues. One is that there is re-audit and as such the first audit report has become infructuous and cannot be considered. Secondly, it is their contention that the crime is essentially based upon documentary evidence which is in possession of the bank and as such custodial interrogation of the Applicants is not necessary.

10. Learned APP opposed the said submission on the ground that for the purpose of filing of the First Information Report, it is not necessary that the report is lodged only by the Auditor after audit. In this regard, reference can be made to the judgment of the Hon'ble Apex Court in case of Dhanraj N. Asawani vs. Amarjeetsingh Mohindersingh Basi and others in **Criminal Appeal No. 2093/2023**. It is his further submission that the first audit report clearly indicates involvement of Applicants in this crime and for the purpose of lodging First Information Report, the said audit report can be considered even after conducting re-audit. It is his further submission that re-audit has not been conducted as per the order passed by this Court in order dated 27.02.2023 wherein direction was issued to all Applicants as well as Managing Committee to

cooperate in re-audit and investigation by handing over entire record. It is his submission that report of re-audit indicates that no observations made on vital aspects only for the reasons either that documents are not made available to them or the period is not covered by audit. It is thus his contention that on the basis of such re-audit no any benefit can be derived by the Applicants. He drew attention of the Court to the re-audit and observations made therein which according to him, are more than sufficient to show involvement of the Applicants in this crime. According to him, Applicants have obtained loan without even making application or submitting any security to the bank. It is his contention that all these aspects more than sufficiently demonstrate involvement of Applicants in this crime wherein mis-appropriation is huge i.e. more than 12 Crores. It is his submission that custodial interrogation of Applicants is necessary as investigation will be beyond documentation.

11. Though it is contended that in re-audit no mis-appropriation is seen to have been done by the present Applicants, and accordingly, the District Deputy Registrar has issued letters to Applicant Yogita Shinde, prima facie perusal of Part A of re-audit report indicates that in respect of 12 depositors named therein, the

Fixed Deposits are kept by the officers and employees with themselves and Fixed Deposit Receipts are issued to the investors. It is specifically stated therein that entry of Rs. 36,60,997/- is not taken in the day book and thereby the officers and employees have committed mis-appropriation. In respect of obtaining loan on the Fixed Deposit of investors is concerned, there is specific finding that there is mis-appropriation of Rs. 65,92,282/-. Thus, mis-appropriation of Rs. 1,46,00,279/- is done by the officers and employees of the bank by issuing bogus Fixed Deposit Receipts and obtaining loan on Fixed Deposits of other investors.

12. As far as withdrawals from sundry account is concerned, it is stated that doubtful entries pertain to the period prior to re-audit and in the absence of reconciliation statement, it is not ascertained whether these amounts were actually deposited into the account. Moreover, in respect of Sewli branch, specific directions are issued for recovery of amounts from the persons named therein. As far as Chandanjira branch is concerned, record was not provided to the Auditor in respect of expenses incurred towards furniture. Similarly, it is observed that since the entries are prior to the period of audit, reconciliation statement is required. It is also stated that

the sum of Rs. 98,64,900/- is shown to have been taken as advance and the said amount is not deposited. Similar observations are made in respect of Lakkadkot branch. About main branch at Mantha, various observations are made with regard to non-recovery of amounts as well as incorrect statements being prepared. These amongst other observations made in the re-audit report show that it is not concluded in the re-audit that there is no mis-appropriation done by the employees or by the Managing Committee of the bank.

Finally, in Clause No. 16, it is observed as follows :-

१६) **लेखापरीक्षण वर्गवारी** :-

बॅंकेचे आर्थिक परिस्थिती, बॅंकेने ठेवलेले रेकॉर्ड, संचालक मंडळाचे कार्य, शाखेचे सर्व अधिकारी व कर्मचारी यांचे कामकाज, बॅंकेला झालेले आर्थिक नुकसान, एन.पी.ए. सतत वाढ, बॅंकेत झालेला अपहार व अनियमीतता इत्यादी परिस्थिती पहाता बॅंकेचे सन २०१९-२०२० व २०२०-२०२१ या कालावधीचे लेखापरिक्षण पूर्ण केले असून सन २०२०-२१ या आर्थिक वर्षासाठी कॅमल रेटींग प्रमाणे (ड) वर्ग प्रदान करण्यात येत आहे.

With these observations in the re-audit, it cannot be said that mis-appropriation of money is not found to have been done by Employees/Applicants and management of bank.

13. Section 81 of the Act deals with audit of co-operative societies. Sub-section 2 mandates audit to include examination of subjects enumerated in Clauses (i) to (ix). No doubt, under sub-section 6 of Section 1, re-audit of the accounts of the society may be ordered. Section 83 mandates enquiry by the Registrar. As per Section 88, it is within the powers of the Registrar to assess the damages against the delinquent promoters etc. and as per sub-section 3 thereof, notwithstanding that the act is one for which the person concerned may be criminally responsible, this Section shall apply. It is thus clear that other than criminal prosecution it was necessary for the Registrar to invoke provisions of Section 88 when in both audit reports irregularities as well as mis-appropriations are flagged by the Auditor. The DDR instead of exercising his statutory duties, has granted clean chit to the Applicants which is not supported by the material on record including both audit reports. Thus, this is a case wherein with the help of the concerned authorities, the Applicants are successful in sabotaging the process of law to their advantage. Blame is also put on Chief Executive Officer, who is dead. As far as so called admission of Satish Deshmukh is concerned, any such admission given by him would not be conclusive as there is no recovery of amounts mis-appropriated.

In any case, it is the responsibility of the investigating agency to investigate into the crime and to ascertain the role of the Applicants in causing mis-appropriation of the funds.

14. Though it is sought to be contended that liberty of the Applicants was protected for over 2 years period and that they attended the police station and therefore, their custodial interrogation is not necessary, the same deserves no acceptance. As recorded hereinabove, the Applicants have obtained interim relief and thereafter hearing of the Applications was sought deferred by adopting dilatory tactics and also sometimes by making false statement on behalf of Applicant in Anticipatory Bail Application No. 1526/2022. It is not the law that if the Applicants are successful in dragging the proceeding by adopting unwarranted tactics, still they can be granted benefit of the fact that their liberty was protected now for long time. Apart from this, having regard to the nature of offence and considering the requirement of custodial interrogation since the offence is beyond documentation, this is not a fit case for grant of bail. Hence, applications deserve rejection.

15. It is disheartening to note that inspite of this being case of mis-appropriation of over 12 crores, apparently the authorities under the Co-operative Societies Act have failed to discharge their duties and the whole endeavour of them seems to be aimed at protecting the Applicants as well as the management of Mantha Urban Co-operative Bank Limited.

16. Pursuant to the application of Applicant Yogita Shinde for re-audit, an order seems to have been passed on 05.04.2023 whereby Suresh Kakde, District Special Auditor (Class I), Co-operative Societies, Jalna was appointed to conduct re-audit. As per the report of the said Auditor, he conducted re-audit for the period from 01.04.2019 to 31.03.2021. Perusal of the entire audit report does not show that all documents were provided to the Auditor as at various places it is observed that the verification of documents has not been done, entries are required to be reconciled, verification is required to be done for the purpose of ascertaining the amount due. Observations are also made against the Managing Committee members and office bearers of the bank. Finally, it is also stated that if it is found on the basis of verification of record that there is illegality or mis-appropriation, appropriate direction was sought.

Perusal of the entire report does not show any clean chit being given by the Special Auditor to the employees/Applicants or Managing Committee or the office bearers of the bank. However, inspite of the same, the DDR, in his correspondence dated 20.09.2024 and 30.09.2024 has communicated that there is no observation about there being mis-appropriation done and promptly audit fee is refunded to her. On the face of it, such communication is contrary to the provisions of the Co-operative Societies Act as it is the obligation of the Registrar to ascertain, verify and to take appropriate steps in respect of irregularities as well as mis-appropriation done in the societies. This Court, therefore, is of prima facie view that the correspondence issued by the District Deputy Registrar is contrary to the provisions of law as well as to the re-audit report.

17. The judgment relied upon of the Division Bench in case of Mahadeorao Uttamrao Rajurkar (supra) deals with the issue of quashment of the First Information Report. As mentioned in paragraph No. 21 of the said judgment the First Information Report was not lodged by the Auditor and it was lodged by the President of the society. Since the said report was lodged without prior consent/permission of the Registrar, it was set aside. In paragraph

No. 25 of the said judgment, the Court has dealt with the issue of re-audit and in the said case, the Registrar himself decided to conduct re-audit and therefore it was held that it would erase out the earlier audit and it will loose the sanctity which is the source of filing of the First Information Report. In considered view of this Court, the facts of the present case materially differ as this is not a case wherein the Registrar suo motu has decided to conduct re-audit superseding the application made by one of the Applicants the audit is done. More particularly when there is no verification of the entire record in the re-audit, the question of said re-audit being superseded the earlier audit report does not arise. This Court is therefore of the view that the judgment cited supra has no application to the present case.

18. With regard to the point of issue estopple is concerned, prima facie this Court does not accede to the submissions made by learned counsel for the Applicants that here in this case two First Information Reports are lodged in respect of the same offence. Pertinently, the first offence bearing Crime No. 221/2022 pertains to the mis-appropriation wherein informant is the investor. Said offence pertains to the individual acts and at the most in respect of one branch of the bank. Whereas the offence registered at the instance of

Auditor covers mis-appropriation in other branches including head office of the bank. The Hon'ble Supreme Court in case of Dhanraj Asawani (supra) in paragraph No. 14 has held that registration of crime at the behest of a person such as share holder of co-operative society is maintainable. Thus, there was no impediment for the said individual to lodge crime in respect of mis-appropriation done of the amount invested in the bank. Similarly, as mandated by Section 81(5)(b) it was imperative for the individual that there is mis-appropriation to lodge First Information Report. Thus, both the crimes being independent in nature and scope, are apparently tenable. This Court, therefore, finds no substance in the contention of learned counsel for the Applicants in this regard.

19. As observed herein above, the employees are held to be party to the mis-appropriation as recorded in both audit reports. Having regard to the facts of the case, this is not a case wherein false allegations are made against Applicants to cause embarrassment to them by making their arrest. On the contrary, there is more than sufficient material on record to indicate their involvement in the serious embezzlement of funds. Thus, this is a fit case wherein

custodial interrogation of the Applicants is necessary. As such, applications are dismissed.

(R. M. JOSHI)
Judge

dyb

<u>Later On</u> :

1. After pronouncement of the order, Mr. Ranjit Gaikwad, learned counsel holding for Mr. D. J. Choudhary, learned counsel for the Applicants in Anticipatory Bail Application Nos. 1582/2022, 1583/2022, 1584/2022, 1585/2022, 1653/2022 and 1673/2022, and Mr. P. B. Pande, learned counsel for Applicant in Anticiipatory Bail Application No. 1526/2022, seek continuation of interim relief for a period of four weeks from challenging this order before the Hon'ble Supreme Court.

2. Learned APP opposed the request.

3. Since the Applicants in Anticipatory Bail Application Nos. 1582/2022, 1583/2022, 1584/2022 and 1585/2022 were protected

vide interim order dated 22.11.2022, Applicants in Anticipatory Bail Application No. 1653/2022 and 1673/2022 were protected vide interim order dated 08.12.2022 and Applicant in Anticipatory Bail Application No. 1526/2022 was protected vide interim order dated 15.11.2022, the protection of these Applicants is extended for a period of four weeks from today.

(R. M. JOSHI)
Judge

dyb