IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1812 OF 2023

1. Shakuntala Bhausaheb Kute,
Age: 63 years, Occ. Agri.
2. Vimal Bhausaheb Kute,
Age: 62 years, Occu. Agri.,
3. Amol Bhausaheb Kute,
Age: 39 years, Occu. Business,
4. Sow. Sonali Dadasaheb Kute,
Age: 42 years, Occu. Business & Agri.,
5. Dadasaheb Bhausaheb Kute,
Age: 43 years, Occu. Business,
6. Sandeep Bhausaheb Kute,
Age: 41 years, Occu. Business,

All R/o. Ganpati Mala, Kute Wasti,
Sukhewadi, Tq. Sangamner
Dist. Ahmednagar ...Applicants

Versus

The State of Maharashtra …Respondent

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Mr. Satej S. Jadhav, Advocate for Applicants
Mr. N.B. Patil, Advocate for Respondent/State
Mr. Shrinivas S. Wagh, Advocate for Assist to APP

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 14th MARCH, 2024
PRONOUNCED ON : 04th APRIL, 2024

ORDER :

1. Applicants apprehend arrest in C.R. No.740/2023, registered with Sangamner City Police Station, Dist. Ahmednagar, for offence punishable under Sections 420, 408, 409, 465, 467, 468, 471, 477-A r/w 34 of the Indian Penal Code and Section 3 of the

Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2. Rajendra Fakira Nikam, District Special Auditor (Class-1), Co-operative Societies, Ahmednagar, was authorised by District Deputy Registrar, Co-operative Societies, Ahmednagar, to lodge FIR against 21 accused persons. He, therefore, lodged FIR alleging that he conducted re-audit of Dudhganga Nagari Sahakari Patasanstha Maryadit, Sangamner (for short 'the Patasanstha') for the period between 01/04/2016 to 31/03/2021 and he found that accused persons have misappropriated total amount of Rs. 80,79,41,981/-. Bhausaheb Damodar Kute, Chariman, Bhausaheb Vitthal Gunjal, Manager and Bhausaheb Santu Gaikwad, Chief Accountant, along with other accused persons have committed misappropriation in the following manner:-

Sr. No.	Details of the amount misappropriated	Amount
1	The amount of term deposit receipts have been withdrawn by making forged signatures and issuing receipts in the name of depositors, without paying to the actual depositors	3,96,425/-
2	Misappropriation by crediting the amounts of Federation dues for recovery of loan to the accounts of two saving account holders and withdrawal from these accounts.	8,15,000/-
3	Misappropriation by crediting the interest and interest payable to Account No.1035	2,72,21,968/-
4	Misappropriation by creating bogus term deposit account with Union Bank of India to the tune of	19,26,90,368/-

	Rs. 15,34,61, 875/- plus interest accrued thereon of Rs. 3,92,28,493/-	
5	Misappropriation by not crediting Bank overdraft to the ledger.	19,60,82,097/-
6	Chairman in collusion with borrowers, for monetary interests, misused his powers and sanctioned loan in the name of Shri Kadam and his family, despite of the objections of Board of Directors and Manager in illegal and out-of-way manner and misappropriated amount	18,30,42,901/-
7	Cash credit and fixed loan in the name of Chairman and his family members were approved, sanctioned and disbursed illegally and in out-of-way manner.	12,04, 28,866/-
8	Sanctioning the loan in the name of Manager and Members of Society illegally	2,07,96,768/-
9	Illegal borrowing of the loan in the name of Chief Accountant of the Society and his family members	1,32,84,017/-
10	Personal greetings and advertisement are published in the newspaper and personal expenses have been shown in revenue expenditure of the Society and misappropriated the funds to that extent.	6,90,719/-
11	Chetan Kapate has transferred amounts from various savings and current accounts of the Society through RTGS and cheques. This misappropriation has been admitted in the Point no. 4 and 5. The loss of interest as per the prevailing rates of the Society on the amount misappropriated is of Rs. 2,85,06,225/-	2,85,06,225/-
12	Rebate given to the Chairman, Manager and the Chief Accountant with prior approval of the Registrar	1,58,67,975/-

13	Chairman of the society has charged personal expenses into the revenue expenditure and credited to own account and have misappropriated the funds as a personal asset	81,18,652/-

3. Amount of maturity of fixed deposits was not paid to the depositors and the same was withdrawn by making their bogus signatures. Accused persons in collusion have withdrawn amounts from saving accounts, current accounts and bank overdraft accounts by cheques and entries in that regard have not been shown in ledger. Misappropriation is done by showing credit entries in ledger without actually crediting the amounts. No investment in term deposit has been made in the bank, but it was shown in the balance-sheet and the said amount is misappropriated. Chairman of the Patasanstha has shown his personal expenses in revenue expenditures of the Society and charged the same to Society and misappropriated funds of the Society. Chairman for his extraneous financial considerations illegally sanctioned the loan to Mr. Kadam and his family members which was not secured, in spite of objections raised by the Board of Directors and misappropriated funds of the Society. Misappropriation is committed by sanctioning illegal bogus loans contrary to the by-laws and dispensing loan amounts in cash credit and fixed loans in the name of Chairman and his family members, Manager and Chief Accountant. Funds of the Society was misappropriated by extending rebates to the Chairman,

Manager and Chief Accountant in illegal manner and without prior approval of Registrar of the Societies. To conceal the illegal transactions and entries, illegal accounting was done from time to time. Persons involved in misappropriation of Society's funds are:

1) Bhausaheb Damodar Kute, 2) Bhausaheb Vitthal Gunjal, 3) Bhausaheb Santu Gaikwad, 4) Chetan Nagraj Kapate alis Sudarshan Baba, 5) Dadasaheb Bhausaheb Kute, 6) Sandip Bhausaheb Kute, 7) Amol Bhausaheb Kute, 8) Vimal Bhausaheb Kute, 9) Shakuntala Bhausaheb Kute, 10) Sonali Dadasaheb Kute, 11) Krushnrao Shripatarao Kadam, 12) Pramila Krushnarao Kadam, 13) Ajit Krushnrao Kadam, 14) Sujit Krushnrao Kadam, 15) Sandip Dagadu Jare, 16) Lahanu Ganpat Kute, 17) Uttam Shankar Landge 18) Ulhas Raosaheb Thorat, 19) Somnath Karbhari Satpute, 20) Arun K. Burud and 21) Amol Prakash Kshirsagar.

4. Heard learned advocate for applicants, learned advocate assisting learned APP and learned APP for respondent/State. Perused the investigation papers.

5. Applicants claim that they are family members of Chairman and they were not Board members at any point of time. Applicant Nos.1 and 2 are wives of Chairman. They contend that, at the most it can be said that there are irregularities, but there is no wrongful loans from the Patasanstha. They claim that, in fact, Chairman had approached the Registrar of Co-operative Societies

and sought audit, complaints were also forwarded to the police inspector and re-audit was done for the period from 2016 to March, 2021. All the loans given to family members were repaid and all members were given rebate. It is further claimed that there are fixed deposits of applicants of Rs.2,00,00,000/- and on maturity applicants are entitled to received Rs.6,00,00,000/-. Applicant Nos.1, 2 and 4 being woman, be granted anticipatory bail.

6. Learned APP vehemently opposed the prayer contending that as per the by-laws Patasanstha can sanction loan upto Rs.60,00,000/- and for family business, loan of Rs.75,00,000/- can be sanctioned. It is revealed during investigation that applicants being family members of Chairman were illegally sanctioned unsecured loan of Rs.1,00,00,000/-, Rs.50,00,000/- and Rs.30,00,000/-, which were disbursed to them and only paper entries are taken about repayment of said loans. Also, paper entry on the voucher is taken that amount of Rs.2,75,00,000/- is given to Manager Gunjal and the said amount is transferred to family members of Chairman. Provisions of M.P.I.D. Act, are attracted to the present crime and properties of others are yet to be ascertained.

7. Learned advocate assisting learned APP submits that the trial Court while rejecting bail has observed that, in the loan accounts of applicants no amount is deposited towards repayment.

8. As per the by-law No.53 Schedule c(5) of the Patasanstha, individual can be granted loan of Rs.60,00,000/- or above and for family business the limit is upto Rs.75,00,000/-. Applicant Nos.1 and 2 are house wives and they do not do any business, however, unsecured loan of Rs.1,00,00,000/- each was sanctioned to them. After sanctioning of loan, immediately amounts are withdrawn. All family members i.e. applicants have availed unsecured loans contrary to the by-laws. Promissory notes signed by applicants are seized during investigation, which show that applicants have availed loans sanctioned to them and withdrawn the loan amounts in cash.

9. Though on paper properties are shown to be mortgaged towards security of loan amounts, no charge is recorded in the revenue record of the said properties. Some of the properties shown to have been mortgaged are sold by accused persons/applicants. Only on paper entries are taken to show that the loan is repaid, but in fact, loans are not repaid. Though loan amounts were outstanding against applicants, new loans were sanctioned to them and forged documents and entries were created to show that earlier loans are repaid. Illegal rebate is given by the Patasanstha and applicants in collusion with co-accused have misappropriated amount of Rs.1,58,67,975/-.

10. Investigation papers *prima facie* reveal misappropriation

of huge funds of poor depositors by accused persons, which could not have been done without connivance of applicants. Since provisions of M.P.I.D. Act are invoked, properties of applicants are required to be ascertained.

11. Investigation is necessary to find out as to where applicants have spent misappropriated amounts and whether they have invested the same in properties, etc.

12. Considering the complicity of applicants, extent of misappropriation and serious accusations against applicants, they do not deserve discretionary relief of anticipatory bail. Their custodial interrogation is necessary for effective investigation. Hence, the application is rejected.

(NITIN B. SURYAWANSHI, J.)