

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

CRIMINAL APPLICATION NO.1994 OF 2024
IN
CRIMINAL APPEAL NO.458 OF 2024

Sahebrao Ramchandra @ Balasaheb Bhalekar .. Applicant

Versus

The State of Maharashtra .. Respondent

.....

Shri. R. K. Temkar, Advocate for the Applicant

Shri. S. V. Hange, APP for the Respondent / State.

Shri. V. H. Dighe a/w. Shri. R. N. Patil, Advocates for Assist to PP.

.....

CORAM : R. G. AVACHAT AND
NEERAJ P DHOTE, JJ.

RESERVED ON : 15.10.2024

PRONOUNCED ON : 22.10.2024

FINAL ORDER (*Per* NEERAJ P. DHOTE, J.)

. This is the Application under Section 389 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for Suspension of Sentence awarded by the learned Additional Sessions Judge, Ahmednagar in Sessions (MPID) Case No.323/2011 by the Judgment and Order dated 10.04.2024 convicting the Applicant and Co-convicts for the offences punishable under Sections 177, 406, 409, 420, 465, 467, 471 r/w. Section 34 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and Section 120B of the I.P.C. and for the offence punishable under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (in short, 'MPID Act'). The Applicant is Sentenced to suffer Imprisonment for Life for the offence

punishable under Sections 465, 467, 471 and 120B of the I.P.C. and term Sentences with fine for the other offences.

2. Heard the learned Advocate for the Applicant and the learned A.P.P for the Respondent / State assisted by learned Advocate for Liquidator / Patsanstha. Perused the papers available on record.

3. It is the Prosecution's case, as can be seen from the Impugned Judgment that, the Patsanstha was registered as the financial institution on 23.02.2001. As on 31.03.2010, there were total 1047 members having shares valued at Rs.19,30,700/-. There were around 25008 depositors and deposits worth Rs.15 Crore and Odd. In addition to the said deposits, the Patsanstha was having deposits around Rs.39 Crore and Odd. The founder Chairman, Proprietors and Manager were the trustees. The Head Office of the Patsanstha was at Chitale road, Ahmednagar and having branches at different places. The Applicant was appointed as an Accountant at Chitale road Branch of the said Patsanstha in the year 2001. He worked there till April – 2006, and from June – 2006, he was working at Bhalawani Branch. There were other office holders and employees of the said Patsanstha. The Patsanstha, by resolution passed on 22.05.2011, appointed the Prosecution Witness No.20 – Devram Maruti Baraskar for conducting the statutory audit of the Patsanstha for the financial year 2009-2010.

4. The said Auditor conducted the audit of the Patsanstha

from 16.06.2011 to 08.07.2011. During the audit, he examined the documents of the Patsanstha at the head office and the branches. He prepared the Audit Report at Exh.994 stating that the Directors, Managers and certain Borrowers in collusion with each other committed misappropriation of funds of Patsanstha to the tune of Rs.13,38,55,667/- (Rs. Thirteen Crore Thirty Eight Lakh Fifty Five Thousand Six Hundred Sixty Seven). The Audit Report was submitted to the concerned authority under the Maharashtra Co-operative Societies Act (hereinafter referred to as the 'Societies Act'). On the basis of the said Audit Report, the Crime bearing CR No.266/2011 came to be registered with the Kotwali Police Station, Ahmednagar on 01.08.2011 for the offence punishable under Sections 177, 409, 417, 420, 465, 467, 468, 471, 120B of the I.P.C. and for the offence punishable under Section 3 of the MPID Act, alleging that many irregularities were done in the Patsanstha while distributing loans which were sanctioned to the relatives and friends without security and irregularities in distribution of loans against gold and there was misappropriation of funds of Depositors and there was violation of rules and regulations in distributing the loans to the Borrowers.

5. On completion of the investigation, Charge-sheet came to be submitted which came to be registered as the above referred Sessions Case. The concerned authority under the Maharashtra Co-Operative

Societies Act (hereinafter referred to as the 'Societies Act') suspended the Managing Committee of the Patsanstha and appointed Administrator by Order dated 06.09.2011 and directed the enquiry under Section 88 of Societies Act and appointed the Enquiry Officer. On completion of the Trial, the Applicant along with the Charge-sheeted Accused came to be convicted and Sentenced by the impugned Judgment and Order.

6. It is submitted by the learned Advocate for the Applicant that it was the Applicant, who brought to the notice of the higher authority the misappropriation. The Applicant was not the Manager of any branch and it is nowhere the case of Prosecution that the Applicant borrowed loan from the Patsanstha. The evidence of the Auditor that the Applicant was Manager of the gold department, was perverse. The files seized from Bhalwani Branch, where the Applicant was working, were not related to the gold loan. The observation of the learned Trial Court that the Applicant was instrumental, was perverse. There are major discrepancies in the Report upon which the crime came to be registered. Despite no evidence against the Applicant, he has been convicted and Sentenced by the learned Trial Court. The Applicant has excellent case on merits and fair chances of acquittal and hence, the Application be allowed.

7. It is submitted by the learned APP assisted by the learned Advocate for the Liquidator / Patsanstha that, the Applicant failed to

demonstrate as to what was his role in the Patsanstha. The Applicant inspected the branch and was entrusted the work of inspection of the branch. The learned Trial Court has rightly convicted the Applicant and the Application be rejected.

8. Undisputedly, the Applicant was the employee of the Patsanstha. He is Accused No.13. The case of the Prosecution entirely rests on the evidence of PW20 – Devram Maruti Baraskar, who conducted the Audit. The impugned Order shows that the learned Trial Court also considered the Enquiry Report under Section 88 of the Societies Act prepared by the Enquiry Officer, wherein it was mentioned that the present Applicant was not concerned with keeping of gold loan bags and the responsibility was that of Manager. It is observed by the learned Trial Court that, by bringing the evidence in the nature of the said Enquiry Report under Section 88, the Applicant in fact helped the Court to come to the judicious conclusion, however, observed that, the Applicant was deeply involved with the Co-convicts. The learned Trial Court came to the conclusion that the Applicants i.e. Board of Directors, ultimately, did not accord sanction to the loan so as to put blame on Accused Nos.12 and 13, who were the Managers. Admittedly, the audit of the Patsanstha, having twelve (12) branches was conducted in a very short period i.e. from 16.06.2011 to 08.07.2011. Admittedly, the Government directed the reaudit of the said Patsanstha. The Order of

reaudit has been challenged by some of the Depositors and the litigation is pending. *Prima facie*, the punishment appears disproportionate. The Appeal will take its own time and there is no possibility that it would be heard in near future. In the facts and circumstances as against the Applicant and the above aspects, we proceed to pass the following order.

ORDER

- (i) The Criminal Application is allowed.
- (ii) The substantive Sentence imposed by the learned Additional Sessions Judge, Ahmednagar in Sessions (MPID) Case No.323/2011 by the Judgment and Order dated 10.04.2024 on the Applicant namely Sahebrao Ramchandra @ Balasaheb Balekar, is suspended during the pendency of the present Appeal.
- (iii) Applicant namely Sahebrao Ramchandra @ Balasaheb Balekar be released on bail on furnishing P.R. Bond of Rs.30000/- [Rupees Thirty Thousand Only], with one or more surety/ sureties in the like amount.
- (iv) Bail before the Trial Court.
- (v) The Criminal Application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)