Nikita

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3677 OF 2023

Shyamji S/o Vidyadhar Tiwari … Applicant
V/s.
The State of Maharashtra … Respondent

WITH
BAIL APPLICATION NO.1463 OF 2024

Vidyadhar Kaliprasad Tiwari … Applicant
V/s.
The State of Maharashtra … Respondent

Mr. Ashok M. Saraogi a/w Mr. Sushil Upadhyay and Mr. R. K. Upadhyay for the Applicant in B. A. No.3677 of 2023.

Ms. Jai Kanade a/w Mr. Pranit Kulkarni i/b Rahul Shirgavkar for Applicant in B. A. No. 1463 of 2024.

Mr. R. M. Pethe, A.P.P. for the State in both the Applications.

Mr. Kadam, PSI, Antop Hill Police Station present in the Court.

Mr. Patil, PSI, Antop Hill Police Station present in the Court.

Mr. Kambale, PSI, Pelhar Police Station present in the Court.

CORAM : MANISH PITALE, J.

DATED : 12th JULY, 2024.

P.C.:

1. Heard Mr. Ashok Saraogi, and Ms. Jai Kanade learned counsels for the Applicants and Mr. M. Pethe, learned APP for the State.

2. In these applications a father-son duo is before this Court seeking bail in connection with offences registered against the applicants in separate FIRs. One FIR was registered at the Antop Hill Police Station, Mumbai, while the other was registered at Pelhar Police Station, Nallasopara. The FIR registered at Pelhar Police Station was subsequently transferred to be clubbed with the FIR registered at Antop Hill Police Station, as a consequence of which, both these applications have came up for consideration before this Bench, which is assigned to hear bail applications arising out of Mumbai. The FIR was registered against the applicants and other accused persons on the basis of information given by the individuals who stated that they invested their hard earned money with the Vishwapriya Co-operative Credit Society Limited (hereinafter referred to as "the Cooperative Society") and that the Cooperative Society siphoned of their money. It is alleged that the applicant in Bail Application No.3677 of 2023 was arrested although he was not a formal office bearer of the Cooperative Society. The applicant in Bail Application No.1463 of 2024 was the Vice-chairman/Treasurer of the Cooperative Society.

3. On the basis of the information given by the informant, offences were registered under Sections 409, 420, and 506 read with 34 of the IPC and Sections 3 and 5 of the Maharashtra

Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as "the MPID Act"), in so far as the applicant Shyamji Vidyadhar Tiwari in Bail Application No.3677 of 2023 is concerned. As against his father i.e. Vidyadhar Kaliprasad Tiwari, in Bail Application No.1463 of 2024, offences were registered under Sections 406, 409, 420, 120-B of the IPC and also Section 3 of the MPID Act. The applicant Shyamji Vidyadhar Tiwiri was arrested on 28th December 2022 and he has remained behind the bars for 19 months. The applicant Vidyadhar Kaliprasad Tiwari was arrested on 6th July 2023 and he is behind the bars for more than one year.

4. Learned counsel appearing for the applicant Shyamji Vidyadhar Tiwari submitted as follows.

i) A perusal of the statement leading to registration of the FIR itself would show that there is no allegation against the said applicant of having induced the informant or any other person to deposit amounts with the Cooperative Society.

ii) The applicant is not even named as an office bearer of the Cooperative Society and as a matter of fact, he was never an office bearer thereof. Therefore, the said applicant cannot be covered under the definition of "financial establishment" under the MPID Act. Therefore, the offences punishable under the MPID Act could not have been registered against the applicant.

iii) The allegations do not indicate any of the ingredients of the offences under Section 409 and 420 of the IPC, and therefore, *prima facie* case is made out of by the applicant in his favour. It is further submitted that none of the statements recorded during the course of investigation indicate any incriminating material against the applicant and hence, the bail application deserves to be allowed. It is emphasized that even the Secretary of the Cooperative Society, Ashok Ramashray Tiwari was granted bail by order dated 26th October 2023 (Coram: M.S. Karnik, J.) in Bail Application No.1423 of 2023 and the applicant, not being an office bearer of the Cooperative Society, certainly deserves to be granted relief.

iv) It is emphasized that the applicant has already suffered incarceration for about 19 months and on this ground his bail application ought to be allowed.

5. Learned counsel for the applicant Vidyadhar Kaliprasad Tiwari submitted as follows:

i) the Credit Cooperative Society came into existence as far back in the year 1999-2000. It is not as if, from the inception, the Credit Cooperative Society was established with the intention to dupe innocent investors.

ii) It is submitted that the statements of witnesses recorded during the course of investigation itself show that the Cooperative Society had indeed returned amounts to such investors and that during the Covid-19 period, after lock-down was imposed, the affairs of the Cooperative Society faced rough weather and the society had to be closed.

iii) Attention of this Court was invited to the audit report placed on record along with the charge-sheet to emphasize that the aforesaid applicants were in arrears of about Rs.10,00,000/- towards interest amount for loan taken from the Cooperative Society and even if the amounts due from the son of the said applicant i.e. Shyamji Vidyadhar Tiwari were to be taken into consideration, there were a further amount of arrears of about Rs.15,00,000/-. In that context, attention of this Court is invited to that portion of the charge-sheet which records that immovable property of the Cooperative Society as well as the Secretary and the Chairman thereof, attached by the Investigating Authority is worth about Rs.3.60 crores.

iv) It is further submitted that the audit report shows the total amount allegedly siphoned off as about Rs.1.77 crores and that the attachment of the said immovable properties, sufficiently secures the said amount.

v) It is further submitted that the ingredients of the offence under Section 409 of the IPC are not made out at all, in the facts of the present case. Similarly, the ingredients of the offence under Section 420 of the IPC are also not made out because the sudden failure of the Cooperative Society due to Covid-19 pandemic cannot indicate an intention on the part of the said applicants from the inception to dupe investors, when the amounts were taken from investors, which was their hard earned money. Mismanagement of the affairs of the Cooperative Society led to registration of offences in this manner, and therefore, the applicants have made out a strong prima facie case in their favour.

6. On the other hand, learned APP submitted as follows:

i) It is submitted that from the act of disbursal of the loan to office bearers of the Cooperative Society and their relatives shows that the relevant rules were violated and that the applicants in the present case acted in a manner so as to defraud about 2000 innocent investors/debtors.

ii) The promise of handsome returns was given to the innocent investors/depositors. Hence, ingredients of the offences under MPID Act are clearly made out. Reliance was placed on the audit report and the statements of witnesses recorded during the course of investigation, which demonstrate that the ingredients of offences under the MPID Act are made out and that the applicants cannot escape liability by making an excuse about the situation created by the Covid-19 pandemic.

iii) It is submitted that the applicant Shyamji Vidyadhar Tiwari cannot escape liability by claiming that he was never an office bearer of the Cooperative Society, for the reason that the statements of witnesses available on record sufficiently indicate his involvement in receiving amounts from such innocent investors. Learned APP submitted that the details regarding attachment of the immovable properties are a matter of record.

7. This Court has considered the rival submissions in the backdrop of the material placed on record along with the two applications. It is the matter of record that applicant Shyamji Vidyadhar Tiwari has suffered incarceration for about 19 months and the applicant Vidyadhar Kaliprasad Tiwari has remained behind bars since 6th July 2023.

8. The record also shows that co-accused Ashok Ramashray Tiwari, who was Secretary of the Cooperative Society, was granted bail by this Court by order dated 26th October 2023, *inter alia* recording that the flat belonging to the accused was already under attachment.

9. As regards the applicant Shyamji Vidyadhar Tiwari, this Court finds that even if the entire material available on record is to be taken into consideration, he cannot said to be an office bearer of the Credit Cooperative Society, although the statements of witnesses indicates his involvement with the affairs of the Society. Therefore, there is a prima facie case made out in so far as the said applicant is concerned to the effect that invoking provisions of the MPID Act will have to be proved to the hilt by the Investigating Agency as it would be difficult to cover the said applicant under the definition of "financial establishment" as per the provisions of the MPID Act. There has to be sufficient material to indicate about the involvement of the said applicant with the affairs of the Society as some of the witnesses have stated that they had handed over the amount to the said applicant and when they reached out to him for return of the amount, he said that they ought to forget about it.

10. As regards Vidyadhar Kaliprasad Tiwari, it is undisputed that he was the Vice-chairman and the Treasurer of the Cooperative Society, but there is substance in the contention raised on behalf of the said applicant that in the present case, the Cooperative Society cannot be said to be a Society established recently, only with the purpose of siphoning of amounts of innocent investors. Even as per the statements of witnesses, the Cooperative Society appears to have been established in the year 1999-2000 and the Society had been returning some amounts to the investors over a period of time. It appears that the grievance of the investors came to light during the years 2021-2022, which was during the Covid-19 pandemic and the effect of lock down on the Cooperative Society cannot be ignored.

11. At the same time, there is material on record to indicate that the Cooperative Society through its office bearers appears to have violated the rules of not advancing huge amounts towards loan to the office bearers and their relatives. There appears to be default on their part in returning the amounts to the Cooperative Society. Nevertheless, the audit report itself shows that the extent of amount involved in the present case comes about Rs.1.77 crores. The outstanding liability or arrears of the applicant Shyamji Vidyadhar Tiwari as about Rs.15,00,000/- and that of the applicant Vidyadhar Kaliprasad Tiwari is about 10,00,000/-. Record also shows that during the course of investigation and while exercising powers under the provisions of the MPID Act, the

Investigating Authority has already attached immovable properties. These include the Office of the Cooperative Society, which is in the name of the applicant, valued at about Rs.60,00,000/-, while a flat belonging to Secretary Ashok Ramashray Tiwari and two flats belonging to the Chairman, Achyutananda Rai are valued at about Rs.1,00,00,000/- each. This indicates that immovable property to the extent of about Rs.3.60 crores is already secured in the present case.

12. In this context, learned counsel for the applicants are justified in relying upon order passed by this Court in the case of *Markas Yohan Thorat Vs. State of Maharashtra* reported in **(2020) SCC OnLine Bom 11252**, wherein this Court granted bail to the accused when offences under the MPID Act were also registered against the accused persons, on the ground that the immovable properties of the accused, attached in the said case sufficiently secured the amount that was allegedly misappropriated.

13. It is also relevant to note that in addition to the aforementioned immovable properties attached by the Investigating Authority, the applicant Vidyadhar Kaliprasad Tiwari has specifically stated in paragraph No.9 of the application that further properties, located in Uttar Pradesh, have been attached as per the information available with the said applicant. These properties are valued at about Rs.50,00,000/-, indicating that there is enough security made available through the process of investigation.

14. Both these applicants have been incarcerated for significant periods with the applicant Shyamji Vidyadhar Tiwari remaining behind the bars for 19 months.

15. In view of the above, this Court is inclined to allow the bail applications.

16. Accordingly, the bail applications are allowed in the following terms:

a) The applicant Shyamji Vidyadhar Tiwari concerning the C.R.No.1096 of 2022, registered at Pehlar Police Station subsequently transferred to Antop Hill Police Station, and Vidyadhar Kaliprasad Tiwari concerning with C.R. No.84 of 2023 registered at Antop Hill Police Station shall be released on bail on furnishing PR bonds in the sum of Rs. 50,000/- (Rupees Fifty Thousand) each with one or more sureties in the like amount.

b) The applicants shall attend the proceedings before the concerned Trial Court on each and every date, unless specifically exempted by the concerned Court for reasons to be recorded in writing.

d) The applicants shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

e) The applicants shall cooperate with the investigation

17. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicants shall be liable to be cancelled. The trial Court shall proceed further uninfluenced by the observations made in this order.

18. The Trial Court shall Act upon an authenticated copy of this Court.

19. Both the bail applications are disposed of.

(MANISH PITALE, J.)