

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2898 OF 2024

Ganesh Dattatraya Thorat

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Sumit V. Khaire, for Applicant.
- Mr. Mayur S. Sonavane, APP for Respondent.
- Mr. Vijay Kolhe, PSI, Yawat Police Station.

CORAM : MANISH PITALE, J.

DATE : 25th OCTOBER, 2024.

P. C. :

1. Heard, Mr. Khaire, learned counsel for the applicant and Mr. Sonavane, learned APP for the respondent – State.

2. The applicant has approached this Court, as he is apprehending arrest in connection with First Information Report No.0940 of 2021, dated 22.10.2021, registered at Police Station Yawat, District Pune, for offences under Sections 403, 406, 409, 420, 426 and 467 of the Indian Penal Code, 1860 (IPC).

3. Although the FIR was registered as far back as on 22.10.2021, in the peculiar facts and circumstances of the present case, the applicant is apprehending arrest and hence, he has approached the Court.

4. The FIR in the present case was registered at the behest of an

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Auditor, who undertook audit of a Cooperative Society i.e. Daund Taluka Sahakari Kharedi Vikri Sangh, Kedgaon, wherein the applicant is employed as in-charge of one of the depots. As per the audit report prepared by the auditor (first informant), there was misappropriation of amounts and 12 accused persons, including the applicant, were found to be responsible for the misappropriation.

5. It is to be noted that the said audit report dated 08.03.2021, which forms the basis of the FIR dated 22.10.2021, was challenged. The society directed a re-audit to be conducted and with passage of time a second audit report was submitted on 27.02.2023, which was received by the society on 28.02.2023. In this second audit report, only 2 persons amongst the accused were found to be responsible for the alleged misappropriation. The applicant is not one of the 2 persons, who were found responsible. The second audit report was accepted by the society in a resolution passed on 14.03.2023.

6. The learned counsel for the applicant, at the outset, relies upon order dated 25.09.2024, passed by this Court in Anticipatory Bail Application No.2573 of 2024 (Sandeep Baban Ladkat Vs. The State of Maharashtra), concerned co-accused person. It is submitted that the reasons recorded by this Court, while granting relief of anticipatory bail to the said co-accused person

apply equally in favour of the applicant herein. Hence, relief is claimed on the principle of parity.

7. The learned APP submits that the name of the applicant has been featured as an accused in the FIR itself and since the allegations are serious, this Court may not grant relief to the applicant.

8. While, allowing the anticipatory bail application of co-accused Sandeep Baban Ladkat, this Court observed as follows :

“10. The basis of registration of the FIR is the first audit report dated 08.03.2021. It is a matter of record that a re-audit being conducted led to the subsequent audit report dated 27.02.2023. It is not as if the second audit report dated 27.02.2023, accepted by the aforesaid society, by resolution dated 14.03.2023, has given a clean chit to the persons responsible for misappropriation. Instead, the second audit report restricts the responsibility only to 2 persons and it is an admitted position that the applicant is not one of the 2 persons.

11. Since the proceedings initiated under the provisions of the Maharashtra Cooperative Societies Act, 1960, are yet to attain finality, it could be said that eventually the responsibility may either be restricted only to 2 persons, as identified in the second audit report dated 27.02.2023 or all the persons would be responsible as identified in the first audit report dated 08.03.2021, which is the basis for

registration of the subject FIR dated 22.10.2021.

12. *It is also to be noted that the question of recovery from individuals would arise depending on the persons purportedly responsible for misappropriation being identified by the auditor. The existence of two reports on record, is a factor that ought to inure in favour of the applicant, as the subsequent report does not identify him as a person responsible for misappropriation.*

13. *When the situation is in a flux, specifically noticed by the Sessions Court itself, this Court is of the opinion that putting the applicant behind bars would not serve any purpose, so long as he is ready to cooperate with the investigation. The very nature of the allegations leveled in the present case concerns documentary material. The applicant would certainly cooperate with the investigation and the Investigating Authority would be free to collect such documents as it desires from the office of the said society. Therefore, this Court is of the opinion that the present application can be allowed.”*

9. It is an admitted position that even the applicant is not one of the two persons identified, while fixing responsibility in the subsequent audit report dated 27.02.2023. Therefore, the learned counsel for the applicant is justified in claiming relief in the present application on the principle of parity with co-accused Sandeep Baban Ladkat.

10. The applicant has undertaken to cooperate with the investigation and therefore, the present application also deserves to be allowed.

11. In view of the above, the application is allowed in the following terms :

- (A) In the event the applicant is arrested in connection with FIR No.0940 of 2021, dated 22.10.2021, registered at Police Station Yawat, District Pune, he shall be released on bail on furnishing PR Bond of ₹ 50,000/- with one or two sureties in the like amount, to the satisfaction of the Trial Court.
- (B) The applicant shall remain present before the Investigating Officer on 28th October, 2024 between 10:00 a.m. and 12:00 noon and thereafter as and when called by the Investigating Officer.
- (C) The applicant shall cooperate with the investigation.
- (D) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

12. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory

bail.

13. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the Trial Court shall proceed further, without being influenced by the observations made in this order.

14. The application is disposed of.

(MANISH PITALE, J.)