

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3402 OF 2024

1. Yogesh Kisan Choudhari		
2. Nana Baban Kokre	...	Applicants
Vs.		
State of Maharashtra	...	Respondent

Mr. Sumit Khaire (through VC) for Applicants.
Mr. Mayur S. Sonavane, APP for Respondent-State.

CORAM : MANISH PITALE, J.
DATE : DECEMBER 14, 2024

P.C. :

1. Heard Mr. Khaire, learned counsel for the applicants and Mr. Sonavane, learned APP for the respondent-State.

2. When this application was called out, the learned APP, at the outset, submitted that since the application seeking anticipatory bail has been filed directly before this Court by the applicants, without first approaching the Sessions Court, the very maintainability of the application is in doubt. Reliance is placed on judgement of this Court in the case of *Mohanlal Vs. State of Maharashtra, 2007 (4) Mh.L.J. 9*.

3. The learned counsel for the applicants clarifies that the applicants have directly moved this Court, for the reason that although the FIR in the present case was registered as far back as on 22.10.2021, in peculiar facts and circumstances of the present case, this Court has allowed anticipatory bail applications of co-accused persons, who are identically situated like the applicants. It is submitted that in such circumstances, according to the applicants, instead of approaching the Sessions Court, the present application has been filed directly before this Court. It is

submitted that even in the case of **Mohanlal Vs. State of Maharashtra** (*supra*), it was held that for exceptional reasons, this Court can entertain an application for anticipatory bail directly. It is submitted that the circumstances highlighted in the application and reliance placed on orders passed by this Court in favour of identically situated co-accused persons may be treated as exceptional reasons for entertaining the present application.

4. Thereupon, submissions were made on merits on behalf of the applicants to demonstrate why the prayer for anticipatory bail may be granted as the applicants undertake to co-operate with the investigation.

5. This Court has perused the orders passed in favour of co-accused persons, who in the facts and circumstances of the present case, can be said to be identically situated.

6. In the case of *Ganesh Dattatraya Thorat Vs. State of Maharashtra* (Anticipatory Bail Application No.2908 of 2024), the said co-accused was granted anticipatory bail by order dated 25.10.2024, wherein this Court made the following observations:-

“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 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."

7. It is to be noted that subsequently, this Court granted similar relief to two other co-accused persons by order dated 11.11.2024 by relying upon the aforesaid earlier order.

8. It is undisputed that the applicants before this Court are not the two persons identified in the subsequent audit report dated 27.02.2023 as being responsible for the misappropriation of the amounts. This Court is of the opinion that the peculiar circumstances brought to the notice of this Court do constitute exceptional reasons for the applicants to directly approach this Court by filing the present anticipatory bail application. The law laid down in **Mohanlal Vs. State of Maharashtra** (*supra*)

would apply in favour of the applicants. Therefore, the application is not only held to be maintainable but this Court is inclined to allow the same on conditions similar to those imposed on identically situated co-accused persons.

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

- A. In the event the applicants are arrested in connection with FIR No.0940 of 2021 dated 22.10.2021 registered with Yawat Police Station, Pune, he shall be released on bail on furnishing PR Bond of Rs.50,000/- each with one or two sureties in the like amount;
- B. The applicants shall remain present before the investigating officer on 16.12.2024 between 10:00 a.m. and 12 noon and thereafter, as and when called by the investigating officer. They shall co-operate with the investigation;
- C. The applicants shall not influence the informant, witnesses or any person concerned with the case and they shall not tamper with the evidence.

10. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicants in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

11. The anticipatory bail application is disposed of.

(MANISH PITALE, J.)