2025:BHC-AUG:27996

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

ANTICIPATORY BAIL APPLICATION NO.1158 OF 2025

Vijay Shantilal Chopada … Applicant
Versus
The State of Maharashtra and Another … Respondents

…..

Shri. Sanjeev Deshpande, Senior Advocate h/f.
Shri. Shailesh S. Chapalgaonkar, Advocate for the Applicant
Shri. N. D. Batule, APP for the Respondent – State.
Shri. Shubham S. Kote, Advocate h/f. Shri. Ashwin V. Hon,
Advocate for Assist to P.P.

…..

AND

ANTICIPATORY BAIL APPLICATION NO.1267 OF 2025

Jyoti Somnath Gadekar …..Applicant
VERSUS
The State of Maharashtra and Another …..Respondents

…..

Shri. Amol Subhash Gandhi, Advocate for the Applicant
Shri. N. D. Batule, APP for the Respondent – State.
Shri. Shubham S. Kote i/by Shri. Ashwin V. Hon,
Advocate for Assist to P.P.

…..

AND

ANTICIPATORY BAIL APPLICATION NO.1281 OF 2025

Somnath Dattatraya Gadekar …..Applicant
VERSUS
The State of Maharashtra And Another …..Respondents

…..

Shri. Amol Subhash Gandhi, Advocate for the Applicant
Shri. N. D. Batule, APP for the State.
Shri. Shubham S. Kote h/f. Shri. Ashwin V. Hon,
Advocate for the Assist to P.P.

…..

AND

ANTICIPATORY BAIL APPLICATION NO.1265 OF 2025

Raosaheb Karbhari Katore …..Applicant
VERSUS
The State of Maharashtra …..Respondent

Shri. Prakash Bhaushaeb Shirsath, Advocate for the Applicant
Shri. N. D. Batule, APP for the Respondent – State.
Shri. Shubham S. Kote i/by Shri. Ashwin V. Hon,
Advocate for Assist to P.P.

.....

AND

ANTICIPATORY BAIL APPLICATION NO.1350 OF 2025

Sagar Kailas Gosawi … Applicant

VERSUS

The State of Maharashtra … Respondent

.....

Shri. Datta A. Madake, Advocate for the Applicant
Shri. N. D. Batule, APP for the Respondent – State.

.....

AND

ANTICIPATORY BAIL APPLICATION NO.1223 OF 2025

Balasaheb Sampatrao Barse .....Applicant

VERSUS

The State of Maharashtra and Another .....Respondents

.....

Shri. Satej S. Jadhav, Advocate for the Applicant
Shri. N. D. Batule, APP for the Respondent – State.
Shri. Shubham S. Kote i/by Shri. Ashwin V. Hon,
Advocate for Assist to P.P.

.....

AND

ANTICIPATORY BAIL APPLICATION NO.1260 OF 2025

Bhausaheb Bhimrao Chavan … Applicant

VERSUS

The State of the Maharashtra … Respondent

.....

Shri. Prakash Bhaushaeb Shirsath, Advocate for the Applicant
Shri. Shubham Sanjay Kote i/by Shri. Ashwin V. Hon,
Advocate for Assist to P.P.
Shri. N. D. Batule, APP for the Respondent – State.

.....

AND

ANTICIPATORY BAIL APPLICATION NO.1339 OF 2025

Mathura Balu Alias Balasaheb Jayram Gadekar

VERSUS

The State of Maharashtra

.....

Shri. Prakash Bhaushaeb Shirsath, Advocate for the Applicant
Shri. N. D. Batule, APP for the Respondent – State.
Shri. Shubham S. Kote h/f. Shri. Ashwin V. Hon,
Advocate for Assist to P.P.

.....

AND

ANTICIPATORY BAIL APPLICATION NO.1341 OF 2025

Balu Alias Balasaheb Jayram Gadekar .....Applicant

VERSUS

The State of Maharashtra .....Respondent

.....

Shri. Prakash Bhaushaeb Shirsath, Advocate for the Applicant
Shri. N. D. Batule, APP for the Respondent – State.
Shri. Shubham S. Kote h/f. Shri. Ashwin V. Hon,
Advocate for Assist to P.P.

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CORAM : NEERAJ P. DHOTE, J.

Reserved on : 26.09.2025
Pronounced on : 07.10.2025

COMMON ORDER :-

. As these Applications are under one Crime and common submissions are advanced, they are decided by this common order.

2. These are the Applications under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') as the Applicants are apprehending arrest in Crime No.0533/2025 registered with Shirdi

Police Station, Dist. Ahilyanagar on 15.05.2025 for the offences punishable under Sections 420, 406, 419, 465, 468, 464, 471, 120B r/w. Sec. 34 of the Indian Penal Code, 1860 (for short, 'I.P.C.') and Section 3 of the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as the 'MPID Act').

3. It is the case of the Prosecution that, Shraddha Saburi Rural Non-Agricultural Credit Co-operative Society Ltd., Nimgaon (Ko.), Tal. Rahata, Dist. Ahilyanagar (hereinafter referred to as the 'Society') is the Society registered under the Maharashtra Co-operative Societies Act, 1960 (for short 'the said Act'). The Audit of the Society was conducted by the Authorized Auditor pursuant to the provisions of Section 81(1)(b) of the said Act. The said Audit was for the financial year 2023-2024. The Auditor submitted the Audit Report after completion of the audit of the Society. The Auditor found several illegalities in the functioning / business of the Society and defalcation of the funds to the tune of Rs.41,97,17,040/- (Rs. Forty One Crore Ninety Seven Lakh Seventeen Thousand Forty). The Auditor submitted the Audit Report to the concerned Assistant Registrar of the Co-operative Societies and the Assistant Registrar *prima facie* found substance in respect of defalcation of funds of the said Society, therefore, directed the Auditor to lodge the FIR against the Chairman, Vice-chairman, Directors, Officers and Staff of

the Society. Accordingly, the Auditor lodged the FIR against 28 (twenty eight) persons associated with the Society in different capacities during the period from 2007 to 2024.

4. The arguments were led by the learned Senior Advocate for the Applicant in Anticipatory Bail Application No.1158/2025 that, the Audit was for the Financial Year 2023-24, however the Auditor has, in his sweep, examined the functioning of the Society for the last 17 (seventeen) years, though his mandate was only for 5 (five) years. The Auditor had fixed the liabilities on the Directors of the Society under the said Act. There was no need to convert the Audit Report in criminal proceedings. The Audit Report does not show culpability against the Applicant. There is no foundation for the offences, under which, the Crime is registered. No specific role is attributed to the Applicant as the Director in the Report. No allegations of forgery are levelled against the Directors. Much time has gone and the offence being based on documents, the custodial interrogation of the Applicant is not warranted and his liberty cannot be curtailed. The Auditor was statutorily bound to follow the procedure under Section 81 of the said Act and he lodged the FIR without obtaining sanction from the Registrar. He submits that, the Applicant is ready to co-operate with the investigating machinery and the Application be allowed.

4.1. It is submitted by the learned Advocate for the Applicant in Anticipatory Bail Application No.1223 of 2025 that, the Applicant was not the active Director. The conclusion of the Auditor is that, the Directors were involved in keeping the tab on day-to-day affairs of the Society and, therefore, the Applicant cannot be held responsible for the Crime. The Applicant would be liable for civil law. Most of the amount is recovered. The Applicant was not the beneficiary of a single rupee. The case being based on the documents, the Applicant's custody was not required. The provisions of the Maharashtra Co-operative Societies Act, 1960 would come into play and the only liability will be that of civil consequences. Though the Applicant has signed the Minutes of Resolutions passed in the meeting of the Directors, the actual work was done by the Field Officers and therefore, the Directors cannot be held responsible. He submits that, the Application be allowed and the Applicant be protected.

4.2. It is submitted by the learned Advocate for the Applicants in Anticipatory Bail Application Nos.1260 of 2025, 1265 of 2025, 1339 of 2025, 1341 of 2025 that, the learned Sessions Court rejected all the Anticipatory Bail Applications by common order without application of mind. The investigating machinery has seized all the documents and Charge-sheet is filed and, therefore, the personal interrogation of the Applicants is not necessary. The Bail is the rule and jail is the exception.

It is submitted that, the Applicant in Anticipatory Bail Application No.1260 of 2025 had deposited his amount in Fixed Deposit to the tune of Rs.16,50,000/- (Rs. Sixteen Lakh Fifty Thousand) with the Society. Therefore, he cannot be held responsible for the Crime. It is submitted in Anticipatory Bail Application No.1265 of 2025 that, the Applicant has repaid the loan amount, therefore, he cannot be held responsible for the Crime. He therefore submits that, the Applications be allowed and the Applicants be protected.

4.3. It is submitted by the learned Advocate for the Applicants in Anticipatory Bail Application Nos.1267 of 2025 and 1281 of 2025 that the Chairman, Vice Chairman and the Manager of the Bank accepted the liability and their mistake and therefore, the Applicants cannot be held responsible. The FIR was lodged contrary to the provisions of Section 81 (5B) of the said Act without obtaining sanction from the Registrar. No specific role is attributed to the Applicants. The Applicants are not the beneficiary of the loan. In fact, the Applicants are one of the depositors and the victims. The main Accused are behind the bars and therefore, the Application be allowed and the Applicants be protected.

4.4. It is submitted by the learned Advocate for the Applicant in Anticipatory Bail Application No.1350 of 2025 that, the Applicant was the nominal Director and he had not taken any loan. The provisions of

Section 3 of the MPID Act are not applicable. The transactions in the matter was of civil nature and the custody of the Applicant was not required. He, therefore, submitted that, the Application be allowed and the Applicant be protected.

5. It is submitted by the learned APP for the State that, various illegalities were found during the audit of the Society. Various *modus operandi* was resorted to by the FIR named Accused resulting in defalcation of the public money. Though cash was shown in the register, the actual cash was not found, unsecured loans were sanctioned by the Directors, loans were disbursed to the persons who had not even applied for the loans, the repayment of loan was not ensured, the amounts were withdrawn by depositing the cheque showing false loan account, etc. As defalcation of crores of rupees was found, the lodging of the FIR cannot be faulted on the ground that the procedure prescribed under Section 81 of the said Act was not followed. He placed reliance on the Judgment in the case of *Dhanraj N. Asawani Vs Amarjeetsingh Mohindersingh Basi and Others, (2023) 20 SCC 13*6 wherein it is observed that, '*Section 81(5B) cannot be interpreted to mean that any other person who comes to know about the financial irregularity on the basis the Audit Report is debarred from reporting the irregularity to the Police*'. It is further observed that, '*once the criminal law is set into motion, it is the duty of the police to investigate into the*

alleged offence'. It is submitted that, the Applicants were the Directors and the Body of the Directors was responsible for the affairs of the Society. The illegal activities cannot be protected under the garb of not following the procedure. He submitted that, the Applications be rejected.

6. Perused the papers. First informant is the Chartered Accountant. The First Informant conducted the Audit of the said Society and submitted his Report. The Audit Report indicate several irregularities and illegalities in the functioning of the Society and Auditor noted the defalcation of the amount mentioned in the FIR and sought the permission to set the criminal law into the motion. The communication was made in that regard to the Assistant Registrar and the Assistant Registrar having agreed with the observations made in the Audit Report directed the Auditor to lodge the FIR and accordingly, the Auditor lodged the Report. Therefore, in such circumstances and in view of the above referred decision cited by the learned APP, the contention of the learned Senior Advocate for the Applicant that, Application be allowed on the point of not following the procedure contemplated under the said Act, is unacceptable.

7. The FIR is based on the Audit Report conducted by the Authorized Auditors. As per the Informant, during the course of audit, it was found

that, the loans were disbursed on the Fixed Deposits though the depositors had not asked for the loan, the loans were disbursed without sufficient security, the amounts were withdrawn by cheque from the amount of the Societies fund deposited with the Nationalized Bank and after withdrawal the amount was not deposited with the Society, sanctioning certain loans without obtaining the sanction of the Board of Directors, not maintaining the register for secured loans, not issuing the Fixed Deposit Receipts to the customers, not attaching receipts to the loan documents, granting exemption or concession in the interest on the loan to the ineligible customers, showing duplicate accounts and siphoning the funds, following wrong accounting system, not preparing the vouchers at the appropriate time, not depositing the amount of Fixed Deposits in the accounts of the depositors on expiry of the deposit period, not updating software from time to time, etc.

8. On lodging of the Report, the Investigating Officer recorded the Statement of Witnesses, which indicate that, some of the Witnesses though had the Fixed Deposit in the Society, never applied for any loan, however, the loan was shown against their names and amount was withdrawn. The Statement of some of the Witnesses indicate that, though they had the account in the Bank, another account was shown in their name and loan was shown in the second account and the amount was withdrawn. The documents seized by the Investigating Officer

indicate withdrawal of the amount from the Bank of India by way of cheques bearing the stamp of Chairman and Vice-chairman of the Society. The other documents collected during the course of investigation, *prima facie* corroborate the FIR.

9. Undisputely, the Applicants were the Directors of the Society. Copy of Model Bye-laws adopted by the Society provides certain powers, duties and responsibilities of the Directors in Clause No.43. In the light of the said Clause of the Bye-laws, the contention of the Applicants that, they were not concerned with the daily affairs of the Society and the entire daily transactions were carried out under the directions of the Manager of the Society, who had the Authority to disburse the loan against the Fixed Deposits, has no substance. Being the Directors of the Society, the Applicants were the part of the decision making process of the Society. The Copies of the Affidavits of the Manger and the then Chairman filed with the Application, stating that, they were only responsible for the affairs of the Society and no one else should be held responsible for the affairs of the Society, will not be of any assistance to the Applicant. The Applicants in these Applications, being the Directors, cannot shirk their liability and responsibilities as provided under the law. As the Report is based on detailed audit of the Society, the communication by the Applicants and others dated 22.04.2024 to the Police holding the Manger and the Chairman of the Society

responsible, will not be of any assistance at this stage. The manner in which the amount of Society was dealt with, and the manner in which the affairs of the Society were conducted, indicate *prima facie* case against the Applicants. In the facts and circumstances of the case, and for proper investigation of the Crime, in my view, these are not the fit cases to grant protection and hence, the following order.

ORDER

(i) The Applications are rejected.

(NEERAJ P. DHOTE, J.)

GGP