2025:BHC-AUG:1578

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

ANTICIPATORY BAIL APPLICATION NO. 1929 OF 2024

SUBHASH MANAKCHAND ZAMBAD
VERSUS
THE STATE OF MAHARASHTRA..
...

Mr. S.G. Ladda alongwith Mr. A.P. Lohade, Advocate for applicant
Mr. V.S. Tanwade for applicant in cri. Application 4507 of 2024
Mr. D.K. Dagadkhair, Advocate for applicant in Cr. Application No. 115 of 2025.
Mr. V.S. Badakh, APP for respondent.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 10TH JANUARY, 2025.
PRONOUNCED ON : 20TH JANUARY, 2025.

O R D E R :-

1. The applicant seeks pre-arrest bail in Crime No.354 of 2023 dated 18.10.2023, registered with City Chowk Police Station, District Aurangabad for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 477-A, 120-B r/w. 34 of IPC and Sections 3 and 4 of the M.P.I.D. Act.

2. Mr. Suresh Panditrao Kakade, District Special Auditor – Class I, Cooperative Societies, Aurangabad, set in motion the investigation alleging that while he was working as Special Auditor in Department of Cooperative Societies, he has been appointed as Administrator of Ajantha Urban Cooperative Bank Ltd., Aurangabad vide order dated 31.8.2023

issued by the Additional Registrar (Administration) Cooperative Societies, Maharashtra State, Pune. Accordingly, he took over charge of Administrator w.e.f. 31st August, 2023. The Reserve Bank of India had instructed Commissioner and Registrar of Cooperative Societies, Maharashtra State vide order dated 28.8.2023, to take legal action into the irregularities and illegalities in conduct of business of Ajantha Urban Cooperative Bank Ltd., Aurangabad. The communication dated 28.8.2023 issued by R.B.I. states that there is huge disparity in the net worth and CRA of the bank. The net worth was Rs. (-) 70.14 Crores and CRA was Rs. (-) 38.30 Crores. Fictitious Fixed Deposits (FDs) worth Rs. 64.60 Crores have been shown in the name of fake depositors. Against such deposits, 36 unsecured loans have been disbursed. In the communication dated 23.12.2022 addressed to the R.B.I., the bank has accepted the aforesaid facts. Similarly, an Ex-employee of the bank brought to the notice of RBI that false and fabricated certificate dated 31.3.2023 has been submitted to auditor showing capital deposits of Rs. 32.81 Crores with the SBI, Axis Bank and MSC Bank, Aurangabad.

3. The informant has accordingly complained that Chief Executive Officer of the Bank, namely, Mr. Pradip Eknath Kulkarni and Chairman of the Bank – Subhash Zambad (applicant) in connivance with the Board of Directors and responsible Bank officers conspired during the period from 1.3.2006 to 30.8.2023 and disbursed huge loans without security in the name of 36 persons named in the report. The Auditor - Mr. Satish Mohare although noticed aforesaid illegalities, failed to report to same. As such, the Chairman, Board of Director, CEO and other employees showed false and fabricated entries in the Bank Ledger Book and Fixed Deposits worth Rs. 61.60 Crores during period from 1.3.2006

to 30.8.2023 so also created forged certificates depicting deposits worth Rs. 32.81 Crores with S.B.I., Axis Bank and MSC Bank at Aurangabad and misappropriated the amount of Rs. 97.41 Crores.

4. In pursuance of aforesaid report, Crime No. 354 of 2023 came to be registered with City Chowk Police Station for aforesaid offences against Chairman, CEO , Auditor, Directors and employees of the bank. The investigation progressed in pursuance to registration of aforesaid crime. Charge sheet has been filed against arrested accused. However, applicant is not yet arrested hence his name does not appear in the charge sheet in the array of accused.

5. The applicant filed Criminal Bail Application No. 1718 of 2024 seeking pre-arrest bail. However, the learned Sessions Judge rejected same, vide order dated 8.10.2024.

6. Mr. S.G. Ladda, learned advocate appearing for applicant submits that applicant is the founder member and Chairman of the Ajantha Urban Cooperative Bank Ltd. Aurangabad. Since inception, bank has smooth functioning. There were no audit objections in respect business of the bank at any point of time. However, in pursuance to the RBI communication dated 28.8.2023, some irregularities in the conduct of the banking business have been demonstrated, consequently, working of the bank has been stalled w.e.f. 29th August, 2023 by issuing direction under Section 35A read with Section 56 of the Banking Regulation Act, 1949 (as applicable to Cooperative Societies).

7. Mr. Ladda would submit that the allegations in the FIR

pertains to the fictitious FDRs worth Rs. 64.60 Crores and 36 unsured loans disbursed against those FDRs. Similarly, there is allegation that certificate regarding bank balance of Rs. 32.80 Crores has been fabricated and shown in the audit. Mr. Ladda would submit that the communication made by CEO Mr. Pratik Kulkarni, clearly depicts that applicant, as Chairman of the Bank is unconcern with that certificate of deposit or even disbursement of unsecured loans against those FDRs; since such powers vest with the employees of the bank and does not require sanction or ratification from the Board of Directors. He would further submit that applicant, being founder member has deposited huge amount of Rs. 29 Crores 30 Lakhs in the S.B.I. Account from his own funds and as many as 28 loan accounts out of 36 loans against FDs have been cleared and at the most, balance of Rs. 6 Crore 53 Lakhs is pending recovery against FDs. He would further point out that amount of more than Rs. 8 Crores has been invested in the bank in the name of family members of the applicant, that can take care of the balance of the amount, if so required.

8. Mr. Ladda would further submit that there is nothing on record to depict that applicant has derived personal benefit from the objectionable transactions. On the other other hand, being the founder member, he took best possible steps to save the bank and ready to assure that every depositor would get refund of deposited amount with aggreed interest. Mr. Ladda endeavours to point out that from the audit report dated 18.3.2023 prepared by Raman Loya, Chartered Accountant, it can be gathered that there is no embezzlement of 32.81 Crores at all but inflation of the accounts occurred due to non-updation of the entries in the re-conciliation. As such, the applicant is not in any manner

concerned with any sort of embezzlement. According to Mr. Ladda, contents of FIR and charge sheet nowhere depict the role of applicant in commission of offence. If any wrong is committed, that is by the officers without notice to the Chairman or Board of Directors. No offecne either under IPC or MPID Act can be made out against the applicant. As such, the custodial interrogation of the applicant would not be necessary and he would abide by any such condition that will facilitate further investigation. In support his submission, Mr. Ladda relies upon the judgment of the Apex Court in the matter of ***Guru Baksha Singh Vs. State of Punjab reported in (1980) 2 SCC 565.***

9. Per contra, Mr. V.S. Badakh learned APP, and Mr. V.s. Tanwade learned advocate appearing for depositors, vehemently oppose prayer in the application. They would submit that applicant being the Chairman is responsible for the illegalities depicted in the communication of the R.B.I. dated 28.8.2023. Apparently, loan amount of Rs. 64.60 Crore has been disbursed in the name of 36 persons against the Fixed deposits. Learned APP points out that there were no receipts on record for Rs. 65,25,69,822/-. A fabricated certificate depicting fixed deposits of 32.80 Crores with three banks was submitted to auditor to make up deficit in capital. Applicant is absconding from date of registration of offence. The applicant and his family members are only beneficiaries of fraud.

10. Having considered submissions advanced by learned Advocates for respective parties, it is admitted fact that applicant is the Chairman of Ajantha Urban Cooperative Bank Ltd and in-charge of the business. There is no dispute that unsecured loans against FDRs worth 64.60 Crores were disbursed in the name of 36 borrowers, the FDRs in

respect thereof are not on record. Although a certificate as to deposit of 32.81 Crores with S.B.I., Axis and M.Sc. Bank Aurangabad was produced before the Auditor, it was a fake document and there were no corresponding FDRs in the name of Ajantha Bank. In the wake of aforesaid undisputed facts, whether applicant can claim himself to be innocent and if his custodial interrogation is necessary for investigation into allegations, is the question germane for this application.

11. Mr. Ladda firstly contends that applicant is unconcerned with the aforesaid illegalities and such activities have taken place behind back of applicant since loans against FDRs or Gold, does not require ratification from the Board of Directors or particularly, Chairman. However, no document in support of such contention is pressed into service. On the other hand, bye-laws of the bank as referred by learned Sessions Judge in his order stipulates that Chairman and Board of Directors has domain over approval of borrowing limits, and also approve annual Balance Sheet and statement of Profit and Loss Accounts. In the wake of the language of bye-laws, it is difficult to countenance with the submission that Chairman of the Bank is unconcerned with fraudulent disbursement as alleged in the FIR.

12. Mr. Ladda, secondly contends that as many as 28 loans against 36 FDRs have been cleared by now and the applicant himself deposited an amount of Rs. 24 Crores with intention to save the bank. According to Mr. Ladda. all such efforts were taken by applicant because of his fiduciary relationship with bank since day of inception.

13. Turning to the investigation papers, it can be prima facie

observed that many out of 35 borrowers are fictitious. They are either employees of establishments run by the applicant or his close relatives. The money trail from accounts demonstrates that establishments/firms under control of the applicant have been directly or indirectly benefited. The statement of the witnesses recorded during the course of investigation, particularly, employees of the bank reveals that the fictitious transactions are done at the instance of the applicant and for benefit of his firms. In this background, deposits made by the applicant, after RBI objection or registration of crime can be looked into from the flip side to infer the camouflage.

14. Account details from the MSC Bank relating to account of Ajanta Urban Cooperative Bank Ltd. Shows siphoning of huge funds through RTGS to Zambad Infrastructure Limited. Same is the case of account with IDBI Bank. Admittedly, Zambad Infrastructure is the company controlled by the applicant. Statement of Suresh Kakde/Administrator clearly stipulates that original FDRs worth Rs. 65,25,69,823/- are not available on record. The communication received from the SBI, MSC Bank as well as IDBI bank confirm that the certificate indicating deposit of 32 Crores in the name of Ajantha Bank is false.

15. Prima facie, the role of the applicant is discernible from the investigation papers in creating fictitious loan accounts and utilizing/siphoning money for benefit of firms/company under his domain.

16. At this stage, reference can be made to the parameters of jurisdiction espoused by the Supreme Court of India for dealing with

pre-arrest bail application under Section 438 of Cr.P.C. In case of ***P. Chidambaram Vs. Director of Enforcement, reported in AIR 2019 SC 4198,*** the Supreme Court observed in para.70 as under:-

> "70. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights -safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India."

17. In case of ***Sidram Mhetre Vs. State of Maharashtra reported in (2011) 1 SCC Page 694*** general principles of grant of pre-arrest bail have been laid down, relying upon the law laid down in the case of ***Guru Baksha Singh Sibba vs. State of Pubjab, reported in (1980)2 SCC 565***.

It is expected that nature of gravity of accusations and the exact role of the accused must be properly comprehended. Impact of the grant of anticipatory bail, particularly, in cases of large magnitude affecting very large number of people is also to be borne in mind. Further care must be taken to see that no prejudice is caused to free, fair and full investigation, although personal liberty is a precious fundamental right.

18. Having regard to the aforesaid principles of law, prima facie,

the applicant cannot claim himself to be innocent being Chairman of the bank, particularly, in the light of material relied by prosecution depicting his direct and indirect involvement in creation of false entries and making fictitious transactions to his own benefit. Although applicant has deposited huge amount during the period from 15.9.2023 to 17.11.2023 to the credit of Ajantha Cooperative Bank, the fact remains that huge money has been siphoned through false and fabricated FDRs and disbursement of loan against such FDRS in name of fictitious persons. The applicant's attempt to repair the unprecedented illegalities in the conduct of business cannot be suppressed by such deposit. The Forensic Audit is still in progress. In that view of the matter, applicant's custodial interrogation would be necessary to unearth the illegalities in conduct of business, which resulted in huge embezzlement of amount. The applicant could not be arrested for more than 15 months of registration of offence. Resultantly, no case is made out to grant pre-arrest bail.

19. The application stands rejected.

[S.G. CHAPALGAONKAR, J]

grt/-