IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 2120 OF 2024

Bhausaheb Damodhar Kute
Age 67 years, Occu. Agriculture,
R/o. Niwara, Nagar Road,
Ganpati Mala, Sukewadi,
Taluka Sangamner,
District Ahmednagar. … Applicant

Versus

The State of Maharashtra
Through Police Station Officer,
Sangamner City Police Station,
Sangamner, District Ahmednagar. … Respondent

WITH
CRIMINAL APPLICATION NO. 4851 OF 2024
[seeking permission to assist APP]
IN
BAIL APPLICATION NO. 2120 OF 2024

1. Prabhakar s/o Pandurang Rahane,
Age : 65 years, Occ: Army Retired,
R/o: 1881, Pandurang Krupa,
Near Dere English Medium School,
Gunjalwadi, Golden City, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

2. Chandrabhan s/o Raosaheb Landge,
Age : 55 years, Occ: Agril,
R/o: Shinde Mala, Wadgaon-Landge,
Tq. Sangamner, Dist. Ahmednagar.

3. Nalini w/o Chandrabhan Landge,
Age : 49 years, Occ: Agril,
R/o: Shinde Mala, Wadgaon-Landge,
Tq. Sangamner, Dist. Ahmednagar.

4. Sambhaji s/o Trimbakrao Deshmukh,
Age : 63 years, Occ: Retired,
R/o: Anand Nagar, Maldad Road,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

5. Vivek s/o Machindranath Sonavane,
Age: 59 years, Occ: Business,
R/o: Chaitanyanagar Galli No.1,
Sangamner, Tq. Sangamner,
Dist. Ahmednagar. … Applicants
[Depositors]

Versus

1. The State of Maharashtra,
Through Police Station Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

2. Bhausaheb Damodhar Kute,
Age : 67 years, Occ : Agril,
R/o Niwara, Nagar Road,
Ganpati Mala Sukewadi,
Tq. Sangamner, Dist. Ahmednagar. … Respondents
[R.No.2 Orig. Accused]

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Mr. Sachin S. Deshmukh h/f Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the Applicant in Bail Application/2120/2024 and respondent no.2 in Criminal Application/4851/2024.

Mr. S. B. Narwade, APP for Respondent-State in both Applications.

Mr. Yogesh D. Kale, Advocate for the Applicants in Criminal Application/4851/2024.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 07.02.2025
Pronounced on : 12.02.2025

ORDER :

1. The applicants in Criminal Application No. 4851 of 2024, claiming to be the depositors, are seeking permission to assist learned

APP in prosecuting the Bail Application. For the reasons mentioned in Criminal Application No. 4851 of 2024, the same is allowed in terms of prayer clause "B" and disposed of accordingly.

2. Applicant is seeking regular bail as a result of his arrest in Crime No. 0740 of 2023 registered at Sangamner City Police Station, District Ahmednagar for offences punishable under Sections 420, 408, 409, 465, 467, 471, 477-A of IPC and Sections 3, 4 and 5 of the M.P.I.D. Act.

3. Learned counsel at the outset pointed out that, applicant is undisputedly a Chairman of the Society, namely Doodhganga Nagari Sahakari Patsanstha Maryadit, Sangamner (for short, 'Society'). In FIR registered on 19.08.2023, he came to be arrested on 23.05.2024 and is behind bars since then. According to learned counsel, going by the entire FIR which is at the instance of Special Auditor, primary allegations are directed against the Manager namely, Gunjal, and he was instrumental in even keeping present applicant in dark and misusing the trust reposed upon him, in committing alleged irregularities and illegalities in the funds of the Society for his personal benefit. It is pointed out that though on above report of Special Auditor, initially crime was registered for offence under

Sections 420, 408, 409, 465, 471, 477-A of IPC, on in-depth investigation, very Investigating Officer brought down the offences and charges against present applicant to Sections 420, 408, 409 r/w 34, 120-B of IPC and under sections 3, 4, 5 of M.P.I.D. Act, and thereby he has been absolved from other offences like Sections 465, 467, 471, 477-B of IPC. Consequently it is his submission that the severity of the crime which was initially projected, is now diluted as against present applicant and the only allegation against him that survives is of dereliction of duty.

4. It is his next submission that, present applicant being Chairman, had himself sensed and realized certain irregularities committed in the Society by the said Manager and on receipts of complaints to that extent from some of the depositors, present applicant himself got internal audit done and then lodged report with police authorities seeking investigation and as such, according to learned counsel, applicant himself has become a whistle blower and his such conduct deserves consideration. He pointed out that, had applicant carried any ill intentions to commit fraud or to commit misappropriation, he would not have bothered to approach police authorities on his own.

5. Learned counsel further submitted that admittedly, in the capacity of Chairman his signatures are appearing, but he further submitted that, this has happened merely because he trusted the Manager who used to obtain his signature in routine manner. He pointed out that, applicant's family members are shown to be themselves investors in the Society and they have contributed over Rupees four crores and the same are still intact. He pointed out that, even charge over the properties worth crores of rupees owned by applicant and his family members has already been created. Therefore, amount of so called investors is secured from applicant's side. He pointed out that, family members of the applicant are beneficiaries of bail at the hands of the Hon'ble Apex Court. Resultantly, learned counsel submits that, even present applicant deserves relief as prayed.

6. Learned counsel very strongly and staunchly put forth that the very validity of special audit, which is made the basis of registration of crime, is itself rendered doubtful by higher authorities of very Co-operative Department. On this count, he took this Court through the papers, more particularly review orders passed by Divisional Joint Registrar dated 25.06.2024. Resultantly, he submits that the very foundation of registration of crime has come under shadow of doubt.

At this point, he also submitted that initial figures about total amount of misappropriation reported in the FIR has now been substantially reduced. To this extent, he relies on the consolidated balance sheet of the Society for the period from 01.04.2024 to 28.01.2025. He pointed out that recovery is still going on and moreover applicant's both, movable and immovable properties, are duly attached or charge has been created over the same. He submits that he has instructions that applicant's own worth is not less than Rupees fifteen crores and even going by the figures of which depositors and investors are said to be defrauded, the share that would come to his extent is already secured.

7. Learned counsel pointed out that, applicant has surrendered himself on 23.05.2024. He is over 67 years of age and is already gripped with serious health ailments. That, charge sheet is already filed and no further recovery is shown to be made at his instance. That, even otherwise, entire investigation depends of documentary evidence and investigating machinery is already seized with the same and therefore he questions his continued custody thereby curtailing his valuable right of liberty.

8. Learned counsel would emphasize that considering recent filing of charge sheet and the list of witnesses running into over 150, there

are no chances of trial commencing soon or getting concluded in coming year also. Therefore, applicant being behind bars since May 2024 and in view of no immediate prospects of matter going for trial, according to him, long pre trial incarceration being deprecated by the Hon'ble Apex Court, more particularly in the case of ***Javed Gulam Nabi Shaikh v. The State of Maharashtra and others*** [Cri. Appeal No. 2787/2024 decided on 03.07.2024], he urges for grant of bail on any condition deemed fit by this Court.

9. Learned APP strongly opposed grant of bail on the ground that applicant is main accused along with Manager, i.e. being very Chairman of the Society. According to learned APP, submissions put forth that applicant himself was kept in dark by the Manager and that his trust has been misused, cannot be accepted because according to learned APP, all day to day activities were under his administration and governance. According to learned APP, huge deposits accumulated from hundreds and thousands of investors' hard earned money have been misappropriated by committing gross irregularities, illegalities and crores of rupees are siphoned for amassing personal wealth and property. Learned APP submitted that, above findings are a product of re-audit and special audit on receipt of several complaints. He pointed out that total fraud is found to be running in

Rupees eighty crores and above. Present applicant was Chairman and he colluded with Manager and other office bearers in committing economic fraud. That, it is a serious economic offence committed in the co-operative sector which had distinct objectives. That, fraud has been played on the investors by siphoning their hard earned earnings. That, considering applicant's position and political links, learned APP expresses serious concern about grant of relief of bail and finally prays to reject the application. Learned APP seeks reliance on the following rulings :

1. ***Tarun Kumar v. Assistant Director, Directorate of Enforcement*** AIR 2024 SC (Criminal) 217.

2. ***Dattatraya Mahadev Ugale v. State of Maharashtra and others*** 2024 DGLS (Bom.) 1738.

3. ***Sayajirao Narayan Takwane v. Divisional Joint Registrar*** 2025 DGLS (Bom.) 336.

4. ***Dhanraj N. Asawani v. Amarjeetsingh Mohindersingh Basi and others*** 2023 SCC OnLine SC 991.

10. Learned counsel for some of the depositors/investors whose application for assisting APP is granted, also joined in strongly opposing by pointing out that applicant is the main accused. That, whatever irregularities and illegalities are committed are apparently

at his instance. He submitted that applicant and Manager have systematically siphoned crores of rupees for their personal gain. That, Special Auditor has, on meticulous audit, reached to a finding to above extent. That, facts and figures are reflected in the report. Even according to him, serious economic fraud has been committed and therefore, he too opposes grant of bail.

11. Heard each side extensively to their satisfaction.

12. Apparently, FIR seems to be lodged at Sangamner City Police Station, District Ahmednagar on 19.08.2023. As pointed out, as against present applicant, crime is registered for offences under penal sections i.e. Section 420 i.e. cheating, Section 408 criminal breach of trust, Section 409 criminal breach of trust by public servant, Section 34, Section 120-B punishment of criminal conspiracy as well as Sections 3, 4, 5 of M.P.I.D. Act.

Having heard learned counsel, it is emerging that following are the principal grounds pressed into service for bail :

Firstly, applicant is a Chairman and work of entltlement of loan, its sanction, approval, disbursement of loans and all financial aspects are dealt by Manager. ***Secondly***, validity of the special audit which is made basis of registration of crime has itself come under shadow of doubt being questioned by higher authorities of Co-operative Department. ***Thirdly***, applicant himself was a whistle blower, but police authorities took no action. ***Fourthly***, initial charge in FIR is brought down to mere cheating and dereliction of duty. ***Fifthly***, apart from his own deposits being intact, charge is already created over his immovable properties which are worth crores of rupees. ***Sixthly***, investigation to be over and charge sheet being already filed and ***lastly***, there being no immediate prospects of matter going for trial and there being hundreds of proposed witnesses, no chances whatsoever of trial coming to a conclusion for years together. Thus, according to learned counsel, for no justifiable reason there being long pre trial incarceration, applicant deserves the relief.

13. On above lines, papers are visited. It seems that present applicant is arraigned as accused no.7 in above crime. Before adverting to the entitlement of relief, it would be appropriate to give brief account of the substance of the accusations emerging on conducting special audit by the Special Auditor. The translated version is as under :

> *"During the period of the misappropriation, he was working as a banking professional on the post of Chairman of Dudhganga Urban Cooperative Credit Society from the*

period year 2016 to 2021. While working in the said responsible position, he was legally bound to return the deposit amount of the depositors and protect the interests of the depositors as per the provisions of the Maharashtra Protection of Interests of Depositors Act, 1999, but he deliberately committed the said crime for his own financial gain by hatching conspiracy and conspiring with other accused. The accused numbers 1 to 5 as well as the Chief Accountant, Late Bhausaheb Santoo Gaikwad created fake records by forging the signatures of the depositors and have also recorded false accounts in the computer system of the credit society and in the records of the credit society. While working on the position of Chairman, it was the responsibility of accused number 7 to check the accounts prepared by the above-mentioned accused who were responsible for the daily operations and to control their daily operations and ensure that there is no misappropriation and malpractice in the society, he has done negligence in his duty. Also, accused number 7 Bhausaheb Kuthe has misused his authority by illegally sanctioning loans exceeding the maximum limit to himself, his family members, as well as the Manager and Chief Accountant and others. Also, he has illegally and without taking the prior permission of the Registrar, has given rebates to his own and related loans and misappropriate the funds of the society. Also, by publishing personal advertisements in the current newspaper, he has misappropriated by claiming personal expenses as revenue expenses and has betrayed the trust of the members and *depositors of the credit society. Therefore, he is accused of committing an offense under sections 3, 4 and 5 of the Maharashtra Depositors' Interests Act, 1999, including 420, 408, 409, 34, 120 (B) of the Indian Penal Code.*

That thorough investigation of the said crime is still going on and the charge sheet/report against the other accused is yet to be filed as per the evidence available against him. Since the accused number 07 Bhausaheb Damodar Kute in column number 10 has been arrested and 60 days have passed since his arrest, we are filing the said supplementary charge sheet. We are filing the supplementary and original charge sheet against the accused mentioned in the said charge sheet and other accused in the crime based on the evidence found and available during the investigation as per section 173(8) of the Cr.PC. "

14. Admittedly, and even papers show that present applicant was Chairman of the above named Society. Total fraud by way of irregularities, violations, digression, misappropriation is allegedly running to over rupees eighty crores. The fundamental and foremost ground put forth by learned counsel is that entire so called fraud is at the instance of Manager Gunjal. According to him, he was solely instrumental in committing above financial irregularities. Present applicant seems to have tendered his statement to the Investigating

Officer [IO] on 25.08.2023. His own statement to IO shows that since 1990 up to 2023 he was officiating as Founder Chairman. He has conveyed that he being preoccupied with social work, Manager Gunjal being his companion, he has elevated Gunjal from the post of Clerk to Manager. Thus, Manager Gunjal apparently has long association with present applicant since 1990 and so much was the trust that applicant gave him promotion also. Thereafter in his statement he has conveyed to the IO that for smooth functioning of the Society, he used to cause signatures on the cheque books and RTGS slips and entrust it to the Manager. Therefore, his such statement itself shows that *prima facie* he was also aware of the transactions for which his signatures were obtained. He has not denied his signatures over either cheque books or RTGS slips. Consequently, being Chairman and being signatory to documents of above nature, he cannot escape by putting forth a case that his trust has been misused, as Special Auditor on complete re-audit or special audit, has found present applicant to be also beneficiary of crores of rupees. Therefore the ground that he was Chairman, and Manager was solely dealing with the transactions, and he is victimized, has no force.

15. The second ground which is pressed into service is that the very validity of the special audit has been questioned by superior authority

and therefore the conclusion drawn by Special Auditor has itself not attained finality and therefore, it is tried to be submitted that, the very lodgement of very crime itself is premature. Even this submission holds no substance because, though there are papers showing order of Deputy Joint Registrar, it is an administrative order and present crime is at the instance of the Special Auditor who was specifically appointed to conduct re-audit and only on detection of irregularities, on authorization of very department, crime seems to have been registered. However, order of this Court at Bombay in WP 12604 of 2024 dated 13.11.2024 itself shows that the order of Deputy Joint Registrar dated 25.06.2024 questioning the report of financial auditor, to which recourse is tried to be taken, has itself been set aside and matter is remanded back. Consequently, it cannot be said that crime registered on report of Special Auditor, which is now under consideration, has itself come under shadow of doubt. Special Auditor’s report has details of all alleged irregularities. Resultantly, even above ground has no force.

16. Repeatedly learned counsel emphasized that in fact present applicant himself has lodged report, after conducting internal audit, with police on 06.07.2022, 02.08.2023 and 03.08.2023, i.e. against Manager Gunjal, and applicant has tried to project that Manager is

the epicenter and solely to be blamed for the irregularities. However, he himself seems to have managed to keep himself away from the arms of police till 23.05.2024. His such conduct of requiring himself to surrender after nine months does not reconcile with his submission that he is the whistle blower. For mere failure of the then Police Inspector of concerned police station to take prompt action on his said report, applicant cannot derive benefits. Moreover, papers placed on record show that P.I. of Sangamner City Police Station conveyed to his superior i.e. Deputy Superintendent of Police, Crime Branch on 30.01.2025 about there to be no complaint in the record of Sangamner City Police Station at the instance of present applicant dated 06.07.2022. Therefore, taking the same into consideration also, it is not open for the applicant to claim himself to be a whistle blower and therefore to consider his own conduct.

17. Learned counsel for applicant also laid much stress on the aspect that initial fraud was said to be running to over rupees eighty crores, however, now as on today, there is attrition in the quantum and amount of alleged fraud and on this point, he took this Court through the consolidated balance sheet for the period from 01.04.2024 to 28.01.2025. He also pointed out that charge over the properties of applicant and his entire family members is already

created. Thus, an attempt has been made to show that there are recoveries going on and therefore, interest of investors and depositors is projected to be protected. Again, above aspect cannot be taken into consideration once fraud and huge financial irregularities are detected and there is material suggesting involvement of Chairman, Manager as well as all other office bearers who were running the Society and whom there was entrustment of hard earned money of several investors.

18. It is also tried to be impressed upon this Court that initially crime was registered for offences under Sections 420, 408, 409, 465, 467, 468, 471, 477-A and 120-B r/w 34 of IPC, but as regards to applicant is concerned, he has been absolved from most of the grave charges. Moreover, applicant is behind bars since more than seven months, and there being no immediate prospects of matter going for trial and further, considering the long list of prosecution witnesses, it is his submission that trial may not get concluded in a year or so. That, Hon'ble Apex Court in the recent case of ***Javed Gulam Nabi Shaikh*** (supra), has clearly observed that when there is long incarceration, when trial court cannot even proceed to frame charge, then in such cases, applicant is entitled for relief of bail and therefore, according to him, this being the command of the highest court of

land, here, applying the above legal proposition, he urges to grant bail.

No doubt, as pointed out that as regards to present applicant is concerned, some of the offences for which he was initially named along with others, on detail investigating, are shown to be dropped. However, he still stands charged for commission of offence under Section 409 which provides for imprisonment for life, coupled with Section 120-B i.e. for criminal conspiring. Considering his status and post in the Dudhganga Nagari Co-operative Credit Society, there is no manner of doubt that financial transactions must have taken place right under his nose. It cannot be readily accepted that his trust has been breached by his own Manager who appears to be in his association for more than thirty years.

19. Considering the magnanimity and nature of the economic fraud, this Court is reminded of the observations of the Hon'ble Apex Court in the case of ***Tarun Kumar v. Assistant Director*** (supra) relied by learned APP, and the same are borrowed and quoted as under :

> *"21. The apprehension of the learned counsel for the appellant that the trial is likely to take long time and the appellant would be incarcerated for indefinite period, is also not well founded in view of the observations made by*

this Court in case of Vijay Madanlal (supra). On the application of Section 436A of the Code of Criminal Procedure, 1973, it has been categorically held therein that:

> *"419. Section 436A of the 1973 Code, is a wholesome beneficial provision, which is for effectuating the right of speedy trial guaranteed by Article 21 of the Constitution and which merely specifies the outer limits within which the trial is expected to be concluded, failing which, the accused ought not to be detained further. Indeed, Section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically. It is still within the discretion of the Court, unlike the default bail under Section 167 of the 1973 Code. Under Section 436A of the 1973 Code, however, the Court is required to consider the relief on case-to-case basis. As the proviso therein itself recognises that, in a given case, the detention can be continued by the Court even longer than one-half of the period, for which, reasons are to be recorded by it in writing and also by imposing such terms and conditions so as to ensure that after release, the accused makes himself/herself available for expeditious completion of the trial."*

22. Lastly, it may be noted that as held in catena of decisions, the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Undoubtedly, economic offences have serious *repercussions on the development of the country as a whole. To cite a few judgments in this regard are Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation (2013) 7 SCC 439, Nimmagadda Prasad vs. Central Bureau of Investigation (2013) 7 SCC 466, Gautam Kundu vs. Directorate of Enforcement (supra), State of Bihar and Another vs. Amit Kumar alias Bachcha Rai (2017) 13 SCC 751. This court taking a serious note with regard to the economic offences had observed as back as in 1987 in case of State of Gujarat vs. Mohanlal Jitamalji Porwal and Another (1987) 2 SCC 364 as under:-*

> *"5… The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest…"*

20. Resultantly, bearing in mind the above observations and facts in the case in hand being almost identical, in the considered opinion of this Court, when charge sheet itself shows that investigation is still in progress and merely to meet the stipulated period of 60 days for

filing charge sheet, present charge sheet has been tendered, it cannot be said that now investigation is over and that no further recovery or discovery is to be made. Mere creation of charge over properties owned by applicant and his family members also would not entitle him to seek relief, more particularly when prosecution points out that the financial source of acquisition of properties have its trail from the above illegal transactions. Even otherwise, ground of long incarceration in view of judgment of Hon'ble Apex Court in the case of ***Javed Gulam Nabi Shaikh*** (supra) cannot be taken aid of as, in that case, incarceration was for over four years. Therefore, with due respect to the Hon'ble Apex Court, it is not open for applicant to invoke above observations.

21. Therefore, in view of above discussion, this Court is not inclined to grant relief as prayed for. Hence, following order :

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]

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