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

CRIMINAL APPLICATION NO. 4631 OF 2024
IN
CRIMINAL APPEAL NO. 1018 OF 2024

Ravindra Vishwanath Shinde ...**Applicant**

Versus

The State of Maharashtra ...**Respondent**

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Shri. Shekhar Jagtap, Advocate [through V.C.] h/f Shri. A. A. Nimbalkar – Advocate for the Applicant
Shri. Vitthal H. Dighe – Advocate for assisting the Public Prosecutor
Mrs. Dr. Kalpalata Patil Bharaswadkar – Addl. P.P. for the State

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CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.

DATE OF RESERVING THE ORDER : 14th JANUARY, 2025
DATE OF PRONOUNCING THE ORDER : 16th JANUARY, 2025

FINAL ORDER [*Per* : Neeraj P. Dhote, J.] : -

1. This is the Application under Section 389 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for Suspension of Sentence awarded by the learned Additional Sessions Judge, Ahmednagar in Sessions (MPID) Case No.323/2011 by the Judgment and Order dated 10.04.2024 convicting the Applicant and Co-convicts for the offences punishable under Sections 177, 406, 409, 420, 465, 467, 471 r/w. Section 34 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and Section 120B of the I.P.C. and for the offence punishable

under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (in short, 'MPID Act'). The Applicant is Sentenced to suffer Imprisonment for Life for the offence punishable under Sections 465, 467, 471 and 120B of the I.P.C. and term Sentences with fine for the other offences.

2. Heard learned Advocate for the Applicant, the learned Additional Public Prosecutor for the Respondent / State and the learned Advocate for the Liquidator / Sampada Nagari Sahakari Patsanstha Maryadit, Ahmednagar (hereinafter referred to as 'Patsanstha' for the sake of brevity). Perused the papers available on record.

3. It is the Prosecution's case, as can be seen from the Impugned Judgment is that, the Patsanstha was registered as the financial institution on 23.02.2001. As on 31.03.2010, there were total 1047 members having shares valued at Rs.19,30,700/-. There were around 25008 depositors and deposits worth Rs.15 Crore and Odd. In addition to the said deposits, the Patsanstha was having deposits around Rs.39 Crore and Odd. The founder Chairman, Proprietors and Manager were the trustees. Dnyandeo Sabhaji Waphare was the Founder Member and the Chairman of the Patsanstha having Saving Account No.733. Mrs. Sujata Dnyandeo Waphare was his wife, who was the Vice Chairman of the Patsanstha having Saving Account No.2877. The Head

Office of the Patsanstha was at Chitale road, Ahmednagar and having branches at different places. There were other office holders and employees of the said Patsanstha. The Patsanstha, by resolution dtd.22.05.2011, resolved for conducting the statutory audit of the Patsanstha for the financial year 2009-2010. The Prosecution Witness No.20 – Devram Maruti Baraskar was appointed by the Competent Authority to conduct the same.

4. The said Auditor conducted the audit of the Patsanstha from 16.06.2011 to 08.07.2011. During the audit, he examined the documents of the Patsanstha at the head office and the branches. He prepared the Audit Report at Exh.994 stating that the Directors, Managers and certain Borrowers in collusion with each other committed misappropriation of funds of Patsanstha to the tune of Rs.13,38,55,667/- (Rs. Thirteen Crore Thirty Eight Lakh Fifty Five Thousand Six Hundred Sixty Seven). The Audit Report was submitted to the concerned authority under the Maharashtra Co-operative Societies Act (hereinafter referred to as the 'Societies Act'). On the basis of the said Audit Report, the Crime bearing CR No.266/2011 came to be registered with the Kotwali Police Station, Ahmednagar on 01.08.2011 for the offence punishable under Sections 177, 409, 417, 420, 465, 467, 468, 471, 120B of the I.P.C. and for the offence punishable under Section 3 of the MPID Act, alleging that many irregularities were done in the Patsanstha

while distributing loans which were sanctioned to the relatives and friends without security and irregularities in distribution of loans against gold and there was misappropriation of funds of Depositors and there was violation of rules and regulations in distributing the loans to the Borrowers.

5. On completion of the investigation, Charge-sheet came to be submitted and was registered as the above referred Sessions Case. The concerned authority under the Maharashtra Co-Operative Societies Act (hereinafter referred to as the 'Societies Act') suspended the Managing Committee of the Patsanstha and appointed Administrator by Order dated 06.09.2011 and directed the enquiry under Section 88 of the Societies Act and appointed the Enquiry Officer. On completion of the Trial, the Applicant along with the Charge-sheeted Accused came to be convicted and Sentenced by the impugned Judgment and Order.

6. It is submitted by the learned Advocate for the Applicant that, the Applicant was the Manager at the Headquarter of the said Patsanstha and he was made Accused No.12. The Applicant had no role in processing and sanctioning the gold loan cases. The Applicant relied on the decision of his superiors. Though the Applicant had access to the lockers, all the bags containing gold were sealed and the seal was found intact during the course of the investigation. It is not the case of the

prosecution that the Applicant replaced the original gold with the fake gold. The Auditor completed the audit only of one year, i.e., 2009-2010, in a hasty manner. Though the outstanding loan is shown against the Applicant's name, he has been issued No-due Certificate. The disbursement of loan was made at the respective branches. The role attributed to the Applicant is identical with the role attributed to the Accused No. 13, who has been granted bail after his sentence was suspended by this Court. The Applicant cannot be blamed for what happened on the earlier occasion when the Applicant was not the Manager at the Headquarter. The sentences of co-accused Directors have been suspended by this Court. The Applicant is behind the bars for a total period of one year, one month and twenty six days and the Appeal would take its own time; therefore, the Application be allowed.

7. The Application is opposed by the learned Addl.P.P. appearing for the State. She submitted that the role of present Applicant can be ascertained from the impugned Judgment. During the investigation, the loan files were taken in custody at the instance of this Applicant. The Applicant acted in collusion with the Directors of the Patsanstha and the Valuers. There was outstanding loan amount of Rs. 2 crores and 6 lakh against the Applicant. She submitted that, considering the role played by the Applicant in the Crime, the Application be rejected.

8. The learned Advocate appearing for the Patsanstha supports the submissions made by the learned Addl.P.P. He added that, in the Enquiry held under Section 88 of the Maharashtra Cooperative Societies Act, 1960, in the year 2015, the amount of Rs. 2,06,61,240/- is shown as the liability against the Applicant. The gold loan amount is not repaid by the borrowers within one year. The Applicant and the co-accused took no steps for recovery of the outstanding loan amount. In all, six accused availed gold loan, which, as per the audit, runs into Rs.1,92,34,799/- [Rupees One Crore Ninety Two Lakh Thirty Four Thousand Seven Hundred and Ninety Nine], which is not recovered. The Applicant was posted at the Headquarter where all the gold loan files were sanctioned and amount was released. Considering these aspects, the Application be rejected.

9. Undisputedly, the Applicant was the employee of the Patsanstha working as the Manager at the Headquarter. He is arrayed as Accused No. 12. The case of the prosecution mainly rests on the Audit Report prepared by PW20 – Deoram Maruti Baraskar. The audit of the Patsanstha having 12 branches was conducted in a very short period. It has come in the evidence of PW20 – Auditor that he did not specifically mention names of the persons who sanctioned the gold loan in his audit report, and he also did not mention the said names in the

report/complaint. Being the Manager, the Applicant had supervisory role to play in the head office. Paragraph 1149 of the Judgment passed by the learned trial Court convicting the Applicant and co-accused is the summary of role of the accused, evidence and finding against them. As against the present applicant is concerned, it is mentioned that, all that is applicable to Accused No.1 is applicable to the Applicant and the findings for Accused No.1 were applicable to the present Applicant and excess cash balance was found to the tune of Rs.2,96,05,508/- [Two Crore Ninety Six Lakh Five Thousand and Five Hundred Eight]. It is nowhere the case of the prosecution that the gold from the bags which were kept in the locker of the Bank was replaced. It is not in dispute that the bags containing the gold was certified by the Gold Valuer and it formed the basis to process the gold loan cases. The learned trial Court came to the conclusion that the Board of Directors ultimately did not accord sanction to the loan so as to put blame on both the Managers i.e. the present Applicant and Accused No.13. The co-accused, who were the Directors and Manager of one of the Branch i.e. Accused No. 13, have been granted bail by this Court by suspending their sentences in Criminal Application No. 1835 of 2024 in Criminal Appeal No. 426 of 2024 and in Criminal Application No. 1994 of 2024 in Criminal Appeal No. 458 of 2024 by order dated 22.10.2024. *Prima facie*, the punishment appears disproportionate. The Applicant has put in one year, one month and twenty six days behind the Bars right from his first arrest and custody after conviction. In the facts and circumstances as against the Applicant and in the light of the above observations, we proceed to pass the following order : -

ORDER

[i] The Criminal Application is allowed.

[ii] The substantive Sentence imposed by the learned Additional Sessions Judge, Ahmednagar in Sessions (MPID) Case No.323/2011 by the Judgment and Order dated 10.04.2024 on the Applicant namely Ravindra Vishwanath Shinde, is suspended during the pendency of the present Appeal.

[iii] Applicant namely Ravindra Vishwanath Shinde be released on bail on his furnishing P.R. Bond of Rs.30000/- [Rupees Thirty Thousand Only], with one or more surety/sureties in the like amount.

[iv] Bail before the Trial Court.

[v] The Criminal Application stands disposed of accordingly.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

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