IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2906 OF 2024

Abhijit Hanmant Devkar ...Applicant
Vs
The State of Maharashtra ...Respondent

Mr. R.B. Raghuvanshi, i/b Ratnesh Dube, for the Applicant
Mr. H.J. Dedhia, APP, for the Respondent/State.
Mr. S.G. Gengaje, PI, EOW, Satara, present.

CORAM : N. J. JAMADAR, J.
DATE : 2nd JANUARY 2025.

ORDER:

1. The Applicant (A3), who has been arraigned in C.R. No. 69 of 2022 registered with Malhar Peth, Police Station, Satara, along with 13 other persons including the office bearers and directors of Shivanjali Rural Non-Agriculture Credit Cooperative Society ("the Society") for the offences punishable under Sections 406, 409, 420, 465, 468 and 471 read with Section 34 of the Indian Penal Code 1860 ("the Penal Code") and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act 1999, has preferred this Application for enlarging on bail.

2. The first informant is a Chartered Accountant. He was appointed as a Statutory Auditor of the Society for the financial year 2020-2021. The audit of the accounts of the said Society reveled that the Chairman, office

bearers and the Applicant, who was then the Manager of the said Society had committed fraud to the tune of Rs.13,41,27,924/-. In the said audit, various acts of malfeasance and misfeasance; falsification of record and accounts and wrongful conversion of the property were noticed. It was found, i*nter alia,* that interest on overdraft balance was credited to the savings bank account No. 777 of the Applicant. Individual as well as the collective liability of the Applicant and other co-accused was also fixed in the said audit.

3. Apprehending arrest the Applicant had moved this Court for pre-arrest bail. By an order dated 27th September 2022, this Court had granted interim protection. By a subsequent order dated 7th December 2023, this Court was persuaded to reject the Application for pre-arrest bail and vacate the interim order dated 27th September 2022. The Applicant preferred Special Leave Petition (Cri) Diary Nos. 51775 of 2023; which was dismissed as withdrawn by an order dated 15th December 2023. Thereupon, the Applicant came to be arrested on 16th January 2024. The learned Sessions Judge declined to exercise the discretion in favour of the Applicant. Thus this Application for regular bail.

4. Mr. Raghuvanshi, learned Counsel for the Applicant, submitted that the Applicant has been made a scape-gate. The Applicant was initially appointed as a Peon with the said Society. Mr. Jayant Narayan Devkar

(A1), the Chairman of the Society, who happened to be a relative of the Applicant, and other directors of the Society were instrumental in advancing the loans, and indulged in financial irregularities. The Applicant was asked to perform the duties of the office of the Manager, though the Applicant was not qualified to act as a Manager. Jayant Devkar (A1), the Chairman of the Society is still at large. Investigation is complete. Charge-sheet has been lodged. As the Chairman of the Society is absconding, it is unlikely that trial can commence, much less conclude, in near future. Therefore, the Applicant deserves to be enlarged on bail.

5. Mr. Dedhia, learned APP, strongly resisted the prayer for bail. It was submitted that the Applicant was the principal character in the fraud. There is material to show that the Applicant had indulged in fraudulent activities and amassed huge wealth. Crores of rupees were transferred to the personal account of the Applicant instead of the accounts of the Society. It was submitted that the quantum of fraud is to the tune of Rs.17 Crores. Innocent members and depositors of the Society have been defrauded of their hard-earned money.

6. Mr. Dedhia took the Court through the relevant record to bolster up the case that the Applicant was party to the fraud. The Applicant has also forged the letters purportedly issued by the District Deputy Registrar, Cooperative Societies, Satara, authorizing utilization of reserve deposit of

Rs.25 lakhs. Therefore, the Applicant does not deserve to be enlarged on bail.

7. I have given careful consideration to the submissions canvassed across the Bar and the material on record. Indeed, there is *prima facie* material to show that the Applicant and the co-accused were at the helm of the affairs of the Society and the audit revealed various acts of commission and omission resulting in siphoning of the funds of the Society. There were transactions running into Crores of rupees in the personal accounts of the Applicant.

8. Though Mr. Raghuvanshi made an endeavor to persuade the court to held that the Applicant's family deals in multiple businesses and therefore there is nothing incriminating regarding the deposit of the huge amount in the personal accounts of the Applicant yet the material on record *prima facie* shows to be contrary. Nor the submission of Mr. Raghuvanshi that the Applicant, who was initially appointed as a Peon, was not qualified to work as the Chief Manager of the Society, dilutes the gravity of the accusation against the Applicant.

9. There is ample material on record to show that the Applicant acted as the Manager of the Society and induced persons to part with money and also received money in his personal accounts instead of the accounts of the Society. Suffice to note that there are statement of witnesses who

have categorically stated that the Applicant induced them to handover the money and/or to deposit the amount payable to the Society in the personal accounts of the Applicant.

10. I find substance in the submission of the learned APP that a strong *prima facie* case is made out against the Applicant. However, at this stage, the crucial issue is of the necessity of continued detention of the Applicant as an under trial prisoner. Evidently, the Applicant was initially granted interim protection by this Court and it was in operation for almost one and half year. Subsequently, upon rejection of the prayer for pre-arrest bail, the Applicant came to be arrested on 16th January 2024. Since then the Applicant has been in custody. In the meanwhile, the investigation is complete and charge-sheet came to be lodged on 12th April 2024.

11. Incontrovertibly the offence primarily revolves around documents. The auditor has conducted the audit and the relevant record appears to be in the custody of the concerned authorities and the investigating agency. Moreover, in accordance with the provisions contained in Section 88 of the Maharashtra Cooperative Societies Act 1960, an inquiry has been conducted by Inquiry Officer and liability of the Applicant for the loss caused to the Society has also been fixed. The Inquiry Report dated 1st April 2024 was tendered for the perusal of the Court by learned APP. It appears that the Applicant has been held liable for the loss for the sum in

excess of Rs. 4 Crores.

12. In this context, Mr. Raghuwanshi, learned Counsel for the Applicant, sought to rely upon the observations of the Auditor in the Report that the Applicant has rendered the necessary co-operation during the process of audit and produced all the records. It was thus submitted that the Applicant has rendered the necessary cooperation and did not attempt to thwart or scuttle the investigating. Mr. Dedhia, learned APP, countered by canvassing a submission that the said statement of the Auditor is in the nature of an extra judicial confession made by the Applicant and does not advance the cause of the Applicant for the purpose of bail.

13. At this stage a definite opinion on the import of aforesaid observation of the Auditor is not warranted. However, the material on record *prima facie* indicates that though the Applicant was on pre-arrest bail, for about one and half year, the Applicant did not abuse the liberty. On the contrary, there is material to show that the Applicant rendered the necessary cooperation and produced the documents. Thus, the Court may have the assurance that the Applicant may not flee away from justice and tamper with evidence and threaten the witnesses.

14. The Court also cannot lose sight of the fact that Mr. Jayant Devkar (A1), the Chairman of the Society, is reportedly still absconding. In this

backdrop, it is extremely unlikely that the trial can be commenced and completed within a reasonable period. The Applicant has been in custody for almost one year. Further detention of the Applicant, as an under-trial prisoner, therefore, appears unwarranted. I am, therefore, inclined to exercise the discretion in favour of the Applicant.

15. Hence the following order:

:O R D E R :

(i) The Applicant be released on bail in C.R. No. 69 of 2022 registered with Malharpeth Police Station, Satara, on furnishing a P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount to the satisfaction of the learned trial court.

(ii) The applicant shall mark his presence at the Economic Offences Wing ("EOW"), Satara, on the first Monday of every month between 10.00 am to 12.00 noon for a period of three years or till the conclusion of the trial, whichever is earlier.

(iii) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(iv) On being released on bail, the applicant shall furnish his contact number(s) and residential address to the investigating officer and shall keep him updated, in case there is any change.

(v) The Applicant shall regularly attend the proceedings before the trial court.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed

(N. J. JAMADAR, J.)