Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2015 OF 2025

Dennis Fernandes … Applicant
V/s.
The State of Maharashtra … Respondent

Mr. Rajiv Chavan, Senior Advocate a/w Mr. Pranav Badheka, Mr. Sundeep Karnik, Ms. Asmi Desai, Ms. Rashmi Tiwari, Ms. Sonam Pandey i/b Mr. Abhijeet Samobat i/b Mr. Vishwajeet Nimbalkar, for the Applicants.

Mr. Sagar R. Agarkar, APP for the State-Respondent.

Mr. S. S. Kedar, API, Uran Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 29, 2025

P.C.:

1. By this application, the applicant seeks pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The applicant apprehends arrest in connection with Crime Register No.124 of 2025 registered with Uran Police Station for offences punishable under Sections 420, 408, 409 read with Section 34 of the Indian Penal Code, 1860, and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999.

2. The case of the prosecution is that the informant, Shri Makarand Lakshman Darwade, Auditor of Cooperative Societies at

Pen, lodged a First Information Report on 9 May 2025. He stated that he had conducted the audit of St. Mary Convent School Employees Housing Co-operative Society from its registration on 13 October 2014 till 3 March 2021. During the audit, it was noticed that the management of the society, along with an employee, Smt. Arshala Lalkate, and her relatives, withdrew cash from the society's bank account without supporting records. The audit also revealed that an amount of Rs.13,27,900 was withdrawn in the name of Farjan Lalkate, son of Smt. Arshala Lalkate, and her relatives, namely, Mansur Vyas and Rameez Munshi.

3. It is further alleged that loans disbursed between 2019 and 2021 were not properly accounted for and that recoveries were not adequately recorded. The applicant, being chairman, failed to inform the auditor about these irregularities. The society had not maintained a list of borrowers. During the audit, it was found that the applicant, in collusion with other co-accused, misappropriated society funds to the tune of Rs.33,39,828. Based on the said FIR, offences came to be registered against the applicant and other accused.

4. Learned Senior Advocate Mr. Chavan, appearing for the applicant, submitted that the entire responsibility for misappropriation rests with Smt. Arshila Lalkate, an employee appointed by the earlier Managing Committee. Referring to the audit findings, he argued that it is she who withdrew Rs.13,27,900 in cash and misappropriated the amount. He pointed out that the applicant himself had lodged a complaint against her on 4 March

2022, reporting the misappropriation. He further submitted that other Managing Committee members have not been arraigned as accused. He emphasized that applicant's property worth Rs.38 lakh has already been attached, which is more than sufficient to secure the amount involved. He stated that the applicant is ready to cooperate with the investigation and hence his custodial interrogation is not necessary.

5. On the other hand, the learned APP opposed the application. He drew attention to the audit report which records that Rs.51,48,269 was withdrawn in cash. The earlier auditors had also observed that the entire record of the society, including the loan registers, was in the possession of the applicant. Though the withdrawals ought to have been made through cheques, the same were done in cash. For this act, both the applicant and Smt. Lalkate are held responsible. It was further reported that loans were disbursed without holding Managing Committee meetings and without proper entries, leading to misappropriation of Rs.20,11,928.36. The total misappropriation attributable to the applicant and Smt. Lalkate stands at Rs.33,39,828.36. The APP submitted that the offence is of high magnitude. Considering the serious role attributed to the applicant, custodial interrogation is necessary for recovery and investigation. He also stressed that the offence under Section 409 of IPC carries punishment up to life imprisonment. He therefore prayed for rejection of the application.

6. The application fails on the threshold. The FIR alleges offences under Sections 420, 408, 409 read with 34 IPC and Sections 3 and 4 of the MPID Act. These offences attract grave penal consequences. The charge-sheet, if filed, will engage detailed forensic and documentary inquiry.

7. The record shows a strong prima facie case. The auditor's report records cash withdrawals of Rs. 51,48,269. The auditor specifically notes that withdrawals that ought to have been by cheque were made in cash. The same report points to specific withdrawals of Rs. 13,27,900 in favour of named persons. The auditor quantifies misappropriation at Rs. 33,39,828.36. These are not vague allegations. They are specific, quantified and documentary in character.

8. The applicant occupied the post of chairman. Audit notes repeatedly record that the society's entire record, including loan registers, remained in the applicant's custody. Possession of books and records by the accused goes straight to the core of the allegation. It provides the accused the means and opportunity to erase, alter, or hide material entries.

9. The evidence on record shows irregular disbursements. Loans were disbursed between 2014 and 2021 without proper accounting entries. Meetings of the Managing Committee were not held when substantial sums were disbursed. The auditor links these acts to the applicant and the employee Smt. Arshila Lalkate. The magistrate must consider these facts when assessing the need for custody.

10. The applicant seeks sympathy by pointing to a complaint filed by him on 4 March 2022 against the employee. That step does not negate the contemporaneous audit findings. The filing of a complaint after detection of irregularities may indicate internal effort to shift blame. The audit record remains the primary material for investigation.

11. Custodial interrogation of the applicant is necessary for a fair and effective investigation. The audit reports clearly state that the entire record of the society, including loan registers and other important documents, was in the custody of the applicant in his capacity as chairman. When such records are missing, incomplete, or altered, the responsibility for explaining their whereabouts naturally falls on the person who had custody.

12. The investigating agency has pointed out that large sums of money were withdrawn in cash, in violation of the rules that required payments through cheques. These withdrawals, amounting to more than Rs. 51 lakh, could not have taken place without the knowledge or authority of the person controlling the financial records. The auditor has specifically noted that the applicant and the employee, Smt. Arshila Lalkate, acted together in effecting such irregular withdrawals and disbursements.

13. For the purpose of tracing the misappropriated funds, the investigating officers need to confront the applicant with the original vouchers, passbooks, and loan registers. The officers also need to trace electronic evidence, such as digital records, banking transactions, and audit trails. Such confrontation cannot be effective unless the applicant is in custody, because answers regarding missing or altered records cannot be obtained through indirect means.

14. Further, many of the society's borrowers and beneficiaries of loans are linked to the period when the applicant was chairman. Their examination requires clarification from the applicant about the sanction and disbursement of loans without approval of the Managing Committee. Unless the applicant is interrogated in custody, there is a real risk of influencing these witnesses, as he held a position of authority in the society.

15. The seriousness of the offence is reflected not only in the amount of Rs. 33,39,828 misappropriated, as noted in the audit report, but also in the breach of trust reposed in the applicant by the members of the society. The offence under Section 409 IPC is punishable with life imprisonment. In such cases, the Supreme Court has consistently held that custodial interrogation is justified where the accused has had control over financial records and where recovery and tracing of funds is yet to be achieved.

16. Therefore, looking to the specific documentary findings in the audit, the role attributed to the applicant, and the need for recovery of public money, custodial interrogation of the applicant is not only justified but necessary for a complete and truthful investigation.

17. There is a real risk of tampering with evidence if the applicant receives bail. The audit points to missing or altered loan registers. The applicant remains in a position to influence the audit trail. Short of custody, it is difficult for the prosecution to secure the original documentary and testimonial material.

18. The offences affect a cooperative society and depositors. The MPID Act provisions protect depositor interest. The public interest dimension is manifest. The court must weigh individual liberty against the larger interest of safeguarding depositor funds.

19. The scale and pattern of withdrawals show a planned course of conduct. Large cash withdrawals over time and disbursements without committee approval are not the product of single, innocuous error. The auditor's aggregation of amounts shows continuity and systematization.

20. The contention that other Managing Committee members are not arraigned does not exonerate the applicant. The audit links specific acts and records to the applicant. Investigation may yet disclose the role of others. The present material requires further probe into the applicant's role before release on bail.

21. Attachment of the applicant's property is relevant. It does not substitute for custodial interrogation of the person alleged to have controlled records and authorised disbursements. Attachment secures some asset. It does not ensure discovery of documentary evidence or truth of the transactions.

22. The prospect of recovery and restitution depends on a full investigation. Custodial interrogation will assist in tracing funds, exposing the flow of transactions, and identifying assets if any remain. The court must consider this pragmatic facet while deciding bail.

23. The nature of punishment for Section 409 IPC is severe. The penal consequence underscores the need for a careful probe.

Where the offence is of high magnitude and involves trust and large sums, courts must show restraint in granting pre-arrest bail.

24. Conditions short of custody will not meet the investigative needs. Electronic device seizures and production of records can be arranged. However, the accused's physical presence in custody will expedite interrogation and stop obstruction.

25. Balancing liberty and investigation, the scales tip in favour of continued probe in custody. The accused's liberty claims do not outweigh the need for custodial interrogation given the specific documentary material, the applicant's control over records, the quantified misappropriation, and the public interest in protecting depositors.

26. In the matter of bail, the Court is required to balance the right of personal liberty of the applicant against the larger public interest. Liberty of the individual is important, but it cannot be absolute when weighed against serious allegations of misappropriation of public funds and breach of trust. The present case involves misappropriation of more than Rs. 33 lakh from a co-operative housing society, as specifically recorded in the audit reports. The offence is of high magnitude and punishable with life imprisonment under Section 409 IPC. When such allegations are supported by documentary findings, the need for effective investigation and recovery outweighs the claim for anticipatory bail. Granting protection from arrest at this stage would hamper the investigation and create the possibility of tampering with crucial evidence. In view of these circumstances, the interest of justice and protection of depositors' money require rejection of the application.

27. The application for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, stands rejected.

28. Nothing stated in this order shall be construed as an expression on the merits of the case at trial.

(AMIT BORKAR, J.)