IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 112 OF 2025

Vijay s/o Ganpatrao Channe Vs State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order
Mr. J.M. Gandhi, counsel for applicant. Mr. N.B. Jawade, APP for non-applicant/State.	

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/07/2025.

1. Apprehending the arrest at the hands of police in connection with Crime No.36/2024 registered with Police Station, Nandanvan, Nagpur for the offence punishable under Sections 420, 409 read with Section 34 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. The informant, Smt. Jyotsna Manoj Dorlikar, is the President of Chandrabhaga Urban Credit Co-operative Society, constituted under the Maharashtra Cooperative Societies Act, who lodged the report on 24/01/2024 with an allegation that the applicant, who was appointed as a Manager of the said Society, has duped the various investors as well as committed misappropriation and also committed the criminal breach of trust. As per the allegation, the applicant was appointed as a Manager of the said Society and had opened the account and disbursed the loans to the members of the Society without following the

provisions of the bylaws to that effect and thereby misappropriated the huge amount to the said Society during the period from 01/10/2018 to 24/10/2023. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned counsel for the applicant, who invited my attention towards the bylaws of the Society and submitted that entire responsibility was of the Board of Directors and not of the present applicant. The present applicant has acted as per the directions of the said Directors. Thereafter, he invited my attention towards the first audit report also and submitted that first audit report nowhere accuses the present applicant of any illegality or any irregularity. He further submitted that in the second audit report, which was conducted only on the say of the directors to implicate the present applicant even accepting the said, there are only irregularities and not illegalities. He further submitted that the FIR is to be registered, in view of Section 81 of the Maharashtra Cooperative Societies Act, 1960, either by the auditor or by the persons authorized by the Sub-Registrar Cooperative Societies. He submitted that considering the entire material collected during the investigation, it shows that it was the Board of Directors, the President, and the Secretary who committed the illegalities, and the present applicant was a scapegoat in the said transactions, and a false FIR was lodged against him.

4. In support of his contention, he placed reliance in the cases of;

(1) **Mahadeorao Uttamrao Rajurkar and another Vs State of Maharashtra and others reported 2020 ALL MR (Cri) 4325;**

(2) **The State of Maharashtra Vs Naresh Rajeshwarrao Patil 2016 ALL MR (Cri) 2888;**

(3) **Pravin Sakharam Bagade Vs State of Maharashtra and another reported 2017 SCC Online Bom 3335.**

5. Per contra, the learned APP strongly opposed the said application and submitted that during inquiry, the involvement of the present applicant was revealed in illegalities committed by him, and therefore, the Special Audit was conducted. In the said special audit, the involvement of the present applicant was not only revealed in the forging of the documents, but also revealed that the present applicant has signed in the place of the Chairman of the said Society. He has also prepared the duplicate passbook. The passbook, which is issued by the *Chandrabaha Mahila Urban Credit Cooperative Society*, was in the compilation of the yellow or brown color, whereas the present applicant has prepared another passbook, and he used to hand over the said passbook to the investors.

6. He invited my attention towards one sale-deed and submitted that on perusal of the sale deed, which reveals that the present applicant unauthorizedly sanctioned a loan of Rs. 10,00,000/- and another Rs. 10,00,000/- to one Sandeep Ramkrushna Bhagat, exceeding the limits of sanctioning loans, which were only up to Rs. 50,000/- to Rs. 1,00,000/-. Subsequently, after disbursement of the loan, the said Sandeep Ramkrushna Bhagat and the present applicant purchased a property for a consideration of Rs. 9,00,000/-. Similarly, he has disbursed the loan to various persons shown to be disbursed a loan to the various persons, including Dharmesh Gupata, Archana Perkar, Piyush Borat, Narhari Vinayakrao Chikate, Prabhakar Perkar, and Sandeep Gujarkar, whose statements are recorded by the Investigating Officer, and these persons denied the disbursement of the loan. Thus, it reveals during the investigation that present applicants have collected the money from various investors and not deposited the same and committed the misappropriation. Therefore, the custodial interrogation is required.

7. He also invited my attention towards the second audit report and submitted that second audit report shows in what manner the loans were shown to be disbursed to the various persons without obtaining any sanction from the Board of Directors. Thus, the involvement of the present applicant is revealed.

8. In support of his contention he placed reliance on the Principal Seat in the case of ***Abhijit Vivekanand Patil Vs The State of Maharashtra (Anticipatory Bail Application No. 1760 of 2023 decided on 30/06/2023)*** and in the case of ***Manik Madhukar Sarve and others Vs Vitthal Damuji Meher and others reported in (2024) 10 SCC 753*** and submitted that, prima-facie case is made out against the present applicant, the considerations for grant of bail under Section 482 and grant of bail Section 483 of the BNS, 2023 are different.

9. Here in this case, considering the gravity of the offence that the money of the investors is involved and public money is misappropriated by the present applicant, therefore his custodial interrogation is required, in view of that, the application deserves to be rejected.

10. On hearing both sides and on perusal of the investigation papers, it reveals that the crime was registered on the basis of the report lodged by the President of the said Society, alleging that present applicant disbursed loans to various persons without obtaining the requisite sanction, whereas in fact, the said persons had not received or obtained any such loan. Furthermore, the applicant has also collected the money from various investors, prepared forged passbooks, also signed on the documents in the place of

the signature of the Chairman, and his involvement is also revealed in the forgery of the document.

11. The first submission of the learned counsel for the applicant that President is not the authorized person to lodge a report. He invited my attention towards Section 81(5-B) of the Maharashtra Cooperative Societies Act, and placed reliance on the decision of the Division Bench of this Court in the case of ***Mahadeorao Uttamrao Rajurkar and another*** *referred (supra)*, wherein it is held that as per Section 81 (5-B) of Maharashtra Cooperative Societies Act, if an auditor comes to conclusion that any person is guilty of any offence relating to accounts or any other offence, he shall file specific report to Registrar within 15 days from submission of audit report and after written permission of Registrar, file the First Information Report. It further provides that if the auditor fails to initiate action, the Registrar, upon becoming aware of such failure, shall cause an FIR to be filed by an authorized person.

12. In the light of the above provision, if the facts of the present case are taken into consideration, it reveals that auditor has not reported to the Registrar of the Maharashtra Cooperative Societies Act. Therefore, the President has approached the police station, but the concerned Police Officer has asked to obtain the permission from the Registrar, and therefore, she approached the Registrar of the Maharashtra

Cooperative Societies Act. After considering the application and after going through the entire record, the Registrar directed the President and Vice President of the said society to lodge a report. Thus, the president was authorized by the Registrar to lodge the report, and thereafter, the report was lodged by the president. Thus, in view of Section 81(5-B) of Maharashtra Cooperative Societies Act, the FIR was lodged after obtaining the sanction for permission from the Registrar, as the Registrar has authorized the President to lodge the FIR, therefore, the contention of the learned counsel for the applicant that the president is not an authorized person to initiate the criminal action against the present applicant is not sustainable.

13. The other submission of the learned counsel for the applicant that it was the board of directors who were responsible for the said irregularities and illegalities which are committed, while disbursing the loan and relied upon the bylaws of the society. On going through the bylaws of the society, it reveals that the rights and duties of the Directors, President, and Vice Presidents are mentioned in the said bylaws. As well as the rights and duties of the other employees, which are also clarified in the said bylaws.

14. On going through the investigation papers, it reveals that in the first audit report there was no mentioned as to the any illegalities or irregularities

committed in the transaction of the said society therefore, another auditor was appointed and a second audit report was prepared. In the second audit report, the auditor has specifically observed that the present applicant is responsible for the illegalities and causing the loss to the society. Thereafter, one agreement was executed by the present applicant with the said society, and he has accepted the liability by mentioning it on the stamp paper. The special auditor report shows that he has disbursed the loan to the various persons. In fact, that loan was not obtained by the said person whose names are mentioned in the special audit report, but in their name by taking assistance of their earlier loan transactions. The documents were obtained by forging their signatures, and the loan was shown to be sanctioned in the name. One of the debtors, Sandeep Ramkrushna Bhagat, to whom the loan was sanctioned out of limit i.e. of Rs. 10,00,000/- when the limit provided is upto Rs. 1,00,000/- and with him the present applicant has purchased some property. The copy of the sale deed is on record, which shows that the present applicant has sanctioned the loan without sanction of the directors on the board of directors, and along with him, he has purchased the property for the consideration of Rs. 9,00,000/-. Thus, on going through the entire investigation papers, the involvement of the present applicant is revealed.

15. As far as the considerations for grant of anticipatory bail are concerned, which have been repeatedly considered by this Court as well as by the Apex Court, the considerations are that while considering the anticipatory bail, the court has to consider the nature of the offence likelihood of the applicant fleeing away from justice and also his requirement for the purpose of custodial interrogation is necessary. Additionally, the nature of the seriousness of the accusations, the nature of the prosecution evidence, the severity of the likely punishment in the case, the prosecution succeeds and the status of the accused.

16. After considering the material on record, it is necessary to see the parameters of Section 438 [482 of the BNSS] of the Cr.P.C. in the context of economic offence and in particular offences under Sections 406, 409, 420 read with Section 120-B. The Hon'ble Apex Court in the case of ***Narinderjit Singh Sahani and another Vs Union of India and others reported in (2002)(2) SCC 210*** has held that an accused facing a charge under Sections 406, 409, 420 and 120-B is ordinarily not entitled to invoke the provisions of Section 438 of Criminal Procedure Code unless it is established that such criminal accusation is not a bonafide one.

17. In the case of ***Ram Narayan Popli vs Central Bureau of Investigation reported in (2003) 3 SCC 641*** in paragraph 382 has observed thus:

> *"382. The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the Sate are not brought to book. A murder may be committed in the heat of the 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, as was aptly stated in State of Gujrat v. Mohanlal Jitamalji Porwal."*

18. In the case of ***Nimmagadda Prasad vs C.B.I., reported in 2013 (7) SCC 466***, wherein the Hon'ble Apex Court, has observed as under:

> *"25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs 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."*

19. The Hon'ble Apex Court while considering the cancellation of bail in the case of ***Manik Madhukar Sarve and others*** referred (supra) and observed that the impugned order goes on to state that respondent no.1 was not involved in the affairs of the Society nor was he responsible for the irregularities alleged. At the present stage, where the charge-sheet stands filed, it emerges that there is some material indicative of the involvement of respondent no.1 in the withdrawal of Rs. 9,00,00,000/- (Rupees Nine Crores), based on the records and cash-book entries and other book of accounts though he had invested amounts only to the tune of about Rs. 2,38,00,000/- (Rupees Two Crores Thirty Eight Lakhs).

20. It is further observed that in cases where the allegations, coupled with the materials brought on record by the investigation, and the nature of the economic offence affecting a large number of people reveal the active role of the accused seeking anticipatory or regular bail, it would be fit for the Court granting such bail to impose appropriately strict and additional conditions. In the present case, even that has not been done, as the High Court has imposed usual conditions simpliciter.

21. Moreover, in the peculiar circumstances, and in view of the observations of the Hon'ble Apex Court in various decisions, if the facts of the present case are

taken into consideration, the involvement of the present applicant is not only revealed in the disbursing of the loans to the various persons by showing that the loan was disbursed to them, but his involvement is also revealed in a forgery, preparing the duplicate documents in the name of the society, and therefore, the custodial interrogation of the present applicant is required.

Considering the nature of the offence and the public money is involved, and prima-facie case made out against the present applicant, the application for grant of anticipatory bail deserves to be rejected. Accordingly, I proceed to pass the following order.

The criminal application is **rejected.**

[**URMILA JOSHI-PHALKE, J.]**