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

CRIMINAL APPLICATION (BA) NO.496/2025
Rajesh s/o Vasantrao Chavan
..vs..
State of Maharashtra, thr.PSO PS Malkapur City, District Buldhana and anr

....

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

....

Shri Akshay Naik, Senior Counsel assisted by Shri P.R.Agrawal, Counsel for the Applicant.
Shri N.B.Jawade, Additional Public Prosecutor for the State.
Shri Ashish Chaware, Counsel assist to the Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 28/07/2025
PRONOUNCED ON : 01/08/2025

1. By this application under Section 483 of the BNSS, the applicant seeks regular bail in connection with Crime No.375/2024 registered with the non-applicant/police station for offences under Sections 120-B, 406, 409, 418, and 420 read with 34 of the IPC and 146 of the Maharashtra Cooperative Societies Act, 1960 together with Section 3 of the Maharashtra Protection of Interest of Depositors (Financial Establishment) Act,

1999 (the MPID Act).

2. The applicant came to be arrested on 1.4.2025 and since then he is in jail.

3. The crime is registered on the basis of a report lodged by Auditor Arun Manoj Vyavahare (the informant) on an allegation that the applicant was an employee serving as Manager of "Unnati Mahila Nagrik Sahakari Credit Society Limited" (the said Society). By order dated 9.1.2023, passed by the District Deputy Registrar, Cooperative Societies, Buldhana, one V.P.Rathod was appointed as Special Auditor for conducting audit by an order for the Financial Year 1.4.2021 to 31.3.2022. Accordingly, the Special Auditor has undertaken an Audit of the said Society and submitted its Audit Report dated 27.6.2023. Subsequently, the informant as a Special Accounts Auditor (Class-II), Cooperative Societies also conducted an Audit for the period of 1.4.2022 to 31.3.2023 and she found final defalcation and noted that there is no

control of the Board of Directors. Many financial irregularities and illegalities have been committed by the employees of the said Society. The applicant working as Manager, by making alterations in the computer software, has committed misappropriation of funds. On the basis of such report, the police registered the crime. During investigation, it further revealed that serious financial as well as procedural lapses were noted by the informant and the applicant including the General Manager, Accountant, and Cashiers were responsible for the financial misappropriation.

4. Heard learned Senior Counsel Shri Akshay Naik for the applicant, learned Additional Public Prosecutor Shri N.B.Jawade for the State, and learned counsel Shri Ashish Chaware assisting the prosecution.

5. Learned Senior Counsel for the applicant submitted that prior to the registration of the above said crime, one crime bearing No.368/2023 was registered

against the Chairman and other Board of Directors of the said Society on an allegation that Chairman Mrs.Anjali Pant and Accountant Ramesh Tandule of the said Society availed loan by misusing their positions and several loan proposals were sanctioned in the name of relatives of the said Chairman. Misappropriation of the amount was alleged against the Chairman and in the said crime, the Chairman was also arrested. He submitted that period of misappropriation shown in the earlier crime is from 1.4.2021 to 31.3.2022. In the present crime, period shown is 1.4.2022 to 31.3.2023. For every year, illegalities or irregularities and for alleged misappropriation, no separate FIR can be filed. At the most, it is subsequent transaction to the earlier crime registered. He submitted that test of "sameness" is to be applied and second FIR is not permissible for the same transaction. The applicant is already released on bail in Crime No.368/2023 and, therefore, the applicant cannot be arrested in the crime in question as second FIR itself is not maintainable.

Therefore, the applicant be released on bail. He further submitted that even accepting the allegations as it is, at the most, it is not illegality, but it is irregularity. Further incarceration of the applicant is not required.

6. In support of his contentions, learned Senior Counsel for the applicant placed reliance on following decisions:

> **1. Anju Chaudhary vs. State of Uttar Pradesh and anr, reported in (2013)6 SCC 384, and**
>
> **2. Amitbhai Anilchandra Shah vs. CBI and anr, reported in (2013)6 SCC 348.**

7. *Per contra*, learned Additional Public Prosecutor for the State submitted that the Audit for the period of 2021-2022 was conducted and the similar financial misappropriation was found for which Crime No.368/2023 is already registered. The report pertaining to the period 2021-2022 makes it clear that the Chairman and the Accountant of the said Society have closed the LPS Accounts of Debtors. The Audit was held and the

Chairman and the Accountant of the Society are found responsible for the loss of Rs.6,31,82,152/-. On the basis of the complaint, lodged by the Auditor, the crime was registered. Subsequently, the Special Accounts Auditor was appointed for conducting audit for the year 2022-2023. While conducting the Audit, the Auditor has not only found financial misappropriation but also alterations in the record as well as some record was found burnt. Thus, an attempt was made to screen the offender from the legal punishment. In earlier crime, there was no allegation as to the fabrication of the document or alterations in the record. In the present FIR, there is a specific allegation that the applicant by misusing his position made some alterations and thereby committed the offence. Therefore, the test of sameness is not applicable to the present case. He submitted that the ambit of two FIRs is completely different though they may arise from the same set of circumstances. The involvement of the applicant reveals in economic offence which is committed with due deliberations and with thoughtful consideration. The public money is misappropriated and considering magnitude of the amount involved, the application deserves to be rejected.

8. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on the decision in the case of **State of Rajasthan vs. Surendra Singh Rathore, reported in 2025 SCC OnLine SC 358**.

9. On hearing both the sides and perusing the investigation papers, it reveals that the applicant was serving as a Manager with the said Society. The complainant was directed as per the order passed by Deputy Registrar of the Cooperative Societies to carry out the Audit and during the Audit, certain financial defalcations were found. During the Audit for the period from 1.4.2022 to 31.3.2023, financial irregularities revealed. It further revealed that the applicant, while serving as Manager, made alterations in the computer software in order to commit misappropriation of funds.

The statements of the witnesses recorded during the investigation reveal that it was the applicant who has made alterations in the software and obtained pecuniary gain by committing the misappropriation, he has purchased the properties.

10. The Specimen Handwriting Panchanama discloses that the applicant has not only made alterations in the software but also he has made alterations in the proceeding book.

11. Thus, involvement of the applicant not only revealed in the defalcation but also in committing the forgery.

12. Statements of the employees of the said Society discloses that the proceedings' book was written by the applicant. The applicant also attempted to destroy the evidence which is incriminating in the present case. In the statement of Rupali Chimte, it is specifically stated that it was the applicant who has made alterations in

.....9/-

the proceedings book and in the software. All the documents were in his custody and involvement of the applicant was there in destroying the evidence also.

13. Thus, as far as involvement of the applicant in the alleged offence is concerned, there is sufficient material to connect him with the alleged offence.

14. Learned Senior Counsel for the applicant raised an issue of test of "sameness" and placed reliance on the case of **Anju Chaudhary** *supra* wherein it is held that it is settled principles of law that there cannot be two FIRs for the same offence. The inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the Investigating Agency has no determinative right. It is only a right to investigate in

accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the Police cannot be ruled out. It is with this intention in mind that such interpretation should be given to Section 154 of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, re-investigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts shall taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly Section 167(2) of the Code.

It is further held that the First Information Report is a very important document, besides that it sets the machinery of criminal law in motion. It is a very material document on which the entire case of the prosecution is built. Upon registration of FIR, beginning of investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 of the Code. The possibility that more than one piece of information is given to the police officer in charge of a police station, in respect of the same incident involving one or more than one cognizable offences, cannot be ruled out. Other materials and information given to or received otherwise by the investigating officer would be statements covered under Section 162 of the Code. The Court in order to examine the impact of one or more FIRs has to rationalise the facts and circumstances of each case and then apply the test of 'sameness' to find out whether both FIRs relate to the same incident and to the same occurrence, are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. If the answer falls in the first category, the second FIR may be liable to be quashed. However, in case the contrary is proved, whether the version of the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible. This is the view expressed by this Court in the case of **Babu Babubhai vs. State of Gujarat and ors, reported in . (2010)12 SCC 254**. This judgment clearly spells out the distinction between two FIRs relating to the same incident and two FIRs relating to different incident or occurrences of the same incident.

15. Thus, to apply the test of sameness, the information requires to be given regarding the same incident involving one or more than one cognizable offence.

16. For applying the test of "sameness", the observations of the Hon'ble Apex Court in the case of **State of Rajasthan vs. Surendra Singh Rathore** *supra* are relevant. By referring the judgments in the cases of **Babu Babubhai** *supra* and **Nirmal Singh Kahlon vs. State of Punjab, reported in AIR 2009 SC 984,** the Hon'ble Apex Court laid down following principles regarding permissibility of the registration of the second FIR:

> 1. When the second FIR is counter-complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stands registered;
>
> 2. When the ambit of the two FIRs is different even though they may arise from the same set of circumstances;
>
> 3. When investigation and/or other avenues

reveal the earlier FIR or set of facts to be part of a larger conspiracy;

4. When investigation and/or persons related to the incident bring to the light hitherto unknown facts or circumstances, and

5. Where the incident is separate; offences are similar or different.

17. Thus, the scope of two FIRs, if is distinct and the FIR prior in point of time refers to a particular incident and action taken therein is limited, second FIR pertains to the larger issue. It cannot be said that the test of "sameness" is applicable.

18. In the present case, in the earlier FIR, the allegations were limited to the misappropriation of the public fund. In the second FIR, the larger conspiracy was revealed and the involvement of the applicant was not only revealed in the misappropriation but also the conspiracy was revealed along with the co-accused who prepared the

forged documents. It also reveals involvement of the applicant in destroying the evidence.

19. Thus, the contention of learned Senior Counsel for the applicant as to the test of “sameness” is not sustainable.

20. In the light of above observations, as involvement of the applicant reveals and considering the fact that investigation still is in progress, his further incarceration is required considering the scope of investigation and, therefore, the application deserves to be rejected and the same is **rejected**. However, the applicant is at liberty to prefer an application on filing chargesheet before the trial court and the trial court shall decide the said application, if any, on its own merits.

Application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!