

Special Case No.139/2023

The State of Maharashtra

Vs.

Devram Tulshiram Mane and others.

:ORDER BELOW EXHIBIT 08:

1. Applicants, namely, accused No.2 Shivaji Dinkar Bhor, accused No.3 Arun Dinkar Bhor, accused No.11 Vitthal Deoram Jasud and accused No.12 Vikas Ramchandra Bhor have filed this Regular Bail Application for the offence punishable under Sections 420, 409, 468, 471 r/w Section 34 of the Indian Penal Code and under Sections 3 and 4 of MPID Act registered by Ahmednagar Taluka Police Station, District Ahmednagar, vide C.R. No.0284/2020.

2. Bhaurao Vitthal Dhaware, Special Auditor, Co-operative Societies, Ahmednagar, lodged complaint with concerned police station on 08/06/2020 contending that during relevant period the accused persons were the members of Board of Directors and employees and servants of *Padmavati Gramin Bigar Sheti Sahakari Pat Sanstha, Bhorwadi*, Taluka and District Ahmednagar. Accused persons misused their authority and power as members of Board of Directors and servants of said Society and defalcated huge amount of Rs.3,91,31,973.62 ps. during the period from 2008 to 2018. This fraud and defalcation came to light during the Special Audit of the Society. Thus, accused persons have cheated various investors and borrowers of the Society of their hard-earned money. Accordingly, the Crime was registered.

3. The learned Advocate Sanket Thange for the applicants submitted that, the applicants-accused are innocent persons and falsely

implicated in this crime. The applicants have not committed any offence. Police authorities have apprehended them without having any basis for same.

4. The learned Advocate for applicants further submitted that, Sections levelled including Sections under MPID Act do not attract, still mala fide invoked. The mandatory provisions of law have not been following during conduction of investigation, which vitiates the very investigation of the crime.

5. The learned Advocate for applicants further submitted that, the said Society functions as per the provisions of the Maharashtra Co-operative Societies Act and therefore, provisions of MPID Act cannot have application in this case. Alleged Sections under the Indian Penal Code are triable by the Court of Judicial Magistrate, F.C.

6. The learned Advocate for applicants further submitted that, already the complaint is filed against co-accused and Secretary of the Society for alleged misappropriation and defalcation of amount vide C.R.No.517/2018, dated 05/12/2018. FIR lodged by applicants reveals that the funds of Society were diverted, misappropriated by means of fake and forged documents and by opening fictitious accounts. The outcome of investigation carried out in that crime which shows innocence of applicants is not taken into account.

7. The learned Advocate for applicants further submitted that, Section 409 of IPC has no application as ingredients therein are not fulfilled. Applicants are just the whistle blowers and alleged misappropriation is committed by other co-accused, who were looking

after the actual transactions and affairs of the Society.

8. The learned Advocate for applicants further submitted that, one of the main accused Balasaheb Bhor has committed suicide, who had admitted in writing that he and co-accused Nitin Bhor had committed misappropriation and defalcation of the funds of Society.

9. The learned Advocate for applicants further submitted that, on noticing glaring and suspicious defects in the investigation, applicants had demanded re-audit of the Society. Applicants ventilated their grievances with concerned Government authorities, but in vain.

10. The learned Advocate for applicants further submitted that, the limited liability is fastened against the Directors- accused persons including applicants during an enquiry under Section 88 of the Maharashtra Co-operative Societies Act by Special Auditor. In that enquiry, it has been found that alleged liability in respect of earlier amount of misappropriation in the FIR does not exist, rather the same is found to be doubtful. Enquiry under Section 88 of MCS Act shows no direct involvement of applicants, but merely by invoking doctrine of “vicarious liability” they are entangled in this matter.

11. The learned Advocate for applicants further submitted that, investigation does not reveal any benefit or favours to the applicants-accused by way of alleged misappropriation. The applicants have taken due care and initiated necessary steps for recovery of alleged amount from concerned borrowers.

12. The learned Advocate for applicants further submitted that, the matter is based upon documentary evidence, which is entirely with the investigating agency. Nothing is to be recovered or discovered from the applicants-accused. Co-accused Devram Mane has been granted regular bail in Criminal B.A. No.3020/2021. Likewise, co-accused Baban Bansi Bhor is released on regular bail by Hon'ble High Court vide order dated 20/09/2023 in Bail Application No.1372/2023. The alleged role of said accused and present applicants-accused is similar. Hence, applicants are entitled to get bail on the ground of parity.

13. The learned Advocate for applicants further submitted that, the applicants are not habitual offenders. They are old-aged persons suffering from various ailments. There is longstanding incarceration.

14. The learned Advocate for applicants further submitted that, applicants will not hamper or tamper with the prosecution evidence. The applicants have been arrested on 28/04/2023 and since then they are behind bars. Investigation is over and charge-sheet is also filed. Their further presence behind bars is not necessary. The applicants are permanent residents of village Bhorwadi, Taluka and District Ahmednagar. They will not abscond. Applicants are ready to abide by each and every condition imposed by this Court and hence prayed to release them on bail.

15. The learned Advocate for applicants-accused relied upon following authorities.

(i) Copy of order in Bail Application No.1372/2023, Baban Bansi Bhor Vs. The State of Maharashtra and another, dated 20/09/2023, (Hon'ble Bombay H.C.)

(ii) Copy of Judgment of Hon'ble Supreme Court in Misc. Application No.1849 of 2021 in Special Leave Petition (Crl) No.5191 of 2021,

Satender Kuman Antil Vs. Central Bureau of Investigation & Anr.

16. The learned APP strongly opposed the application on the ground that, the offence is serious in nature. Accused persons including applicants have committed defalcation and misappropriation of huge amount of the said Society. There is clinching evidence that Accused Nos.2 and 3 are directly responsible for defalcation of amount of Rs.13,58,879. 98 ps. each and accused No.11 and 12 are responsible for defalcation of Rs.4,20,090. 08 ps. each. Necessary correspondence is being made with the concerned Government authorities to get information regarding the movable and immovable properties of applicants-accused.

17. Learned APP further submitted that, this is the third bail application filed by accused Nos.2, 3 and 11 and this is the second bail application filed by accused No.12. Previous bail applications of applicants have been rejected on merits. There is no change in the circumstances. If the applicants-accused are released on bail they will abscond. They may commit similar offence and tamper and hamper the prosecution evidence and witnesses. Considering the seriousness of the offence, learned APP prayed to reject the application.

18. Heard Mr. S.L.Thange for applicants and Mr. Kolekar for the State at length and also perused the documents filed on record.

19. In ***Baban Bansi Bhor Vs. The State of Maharashtra, Bail Application No.1372 of 2023, order dated 20/09/2023***, Hon'ble High Court observed that, *applicant is admittedly a Director of the Society. Complaint shows that the amount of Rs.2,95,94,501/- has been disbursed*

in the name of 20 borrowers through 30 loan accounts. The loans are shown to be against FDR, however, none of such receipt has been received by the Society. The allegations are based on audit report. The enquiry under Section 88 of the Maharashtra Co-operative Societies Act has been made. The audit report shows that the Manager of the Society overstepped his powers and without there being Resolution of the Board of Directors, disbursed the loan inconsistent with the bye-laws. The liability of the applicant is fixed on the basis of the responsibilities of Director defined under bye-laws. The allegation against the applicant is that he failed to discharge his obligation and prevent the losses, which could not have gone unnoticed to him as a Director. However, there is no allegation in the complaint or in the charge-sheet that the applicant has anyway misappropriated the amount or siphoned the funds for his own benefit. There is no allegation that he proposed for any loan or he derived any benefit out of disbursement of the loan. There is no document to show that the applicant could have knowledge of illegal disbursement of the loan. It is true that being a Director of the Society, he was under obligation to be vigilant and keep close watch on the transactions. On prima facie evaluation of charge-sheet the role alleged against the applicant is bereft of making out charged offence. However, it would be subject matter of trial. There is no impediment for grant of bail.

20. After going through the charge-sheet it seems that offence was allegedly committed by the accused persons. However, *prima facie* it seems that there is no bar to release the accused on bail. On going through the decisions cited supra, it becomes crystal clear that parity may be applicable in this case. The case is totally based on the documentary evidence.

21. It appears from documents on record that the applicants-accused have been arrested on 28/04/2023 and since then they are behind bars. Nothing is remained to be recovered or discovered from the applicants. The investigation is already completed and charge-sheet is filed.

22. On the perusal of the charge-sheet, the role of the present applicants being a Director is mentioned. The allegations against the said applicants that they have not verified the project file, so also financial documents and account extracts and because of which the Society sustained huge loss. If we peruse the said version, it can be gathered that, these are the negligent activities of the Directors and hence, liability is cast on the applicants regarding the same. But, that is is not the hurdle while considering the bail application on the peculiar facts and circumstances, as one of the directors was released on the bail by Hon'ble High Court after considering this situation.

23. It appears from documents on record that co-accused Baban Bansi Bhor is released on regular bail by Hon'ble High Court vide order dated 20/09/2023 in Bail Application No.1372/2023. The facts and circumstances coupled with documents on record reveal that the alleged role of said accused and present applicants-accused are similar in nature and the ground of parity can safely be invoked by this Court to release these applicants on regular bail.

24. The applicants are permanent residents of village Bhorwadi, Taluka and District Ahmednagar. There are their least chances to flee away. Already sufficient time is passed since when the applicants-accused are in jail. Considering the facts and circumstances

of the case, it seems that, now there is no propriety to keep the applicants-accused behind bars any longer.

Considering the above peculiar facts and circumstances, I pass the following order.

: ORDER :

1. Application is allowed.
2. Applicants-accused, namely, Shivaji Dinkar Bhor, Arun Dinkar Bhor, Vitthal Deoram Jasud and Vikas Ramchandra Bhor be released on bail on their furnishing P.B. and S.B. of Rs.1,00,000/- (Rs. One lakh only) each, in C.R. No.0284/2020 registered at Ahmednagar Taluka Police Station, District Ahmednagar, for the offence punishable under Sections 420, 409, 468, 471 r/w Section 34 of the Indian Penal Code and under Sections 3 and 4 of MPID Act.
3. The applicants shall not tamper the evidence of prosecution and shall not give threat to the prosecution witnesses.
4. Applicants-accused shall not commit default in attending the dates of this matter.

Sd/xxx

(Prashant R. Sitre)

Special Judge (MPID Act)
Ahmednagar.

Date : 05/10/2023.

