

Special Case No.139/2023

The State of Maharashtra
Vs.
Devram Tulshiram Mane and others.

:ORDER BELOW EXHIBIT 09:

1. Applicants, namely, accused No.4 Bhausahab Haribhau Bhor, accused No.8 Asha Prabhakar Jasud and accused No.13 Nirmala Vikas 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 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 falsely implicated them without having any basis for same.

4. The learned Advocate for applicants further submitted that, during investigation of crime, applicants-accused have been enquired with and interrogated by IO. Even notice under Section 41-A of Code of Criminal Procedure was issued to them. Instead of arresting applicants, they were instructed to straightway remain present before the Court at the time of filing of the charge-sheet. Therefore, applicants-accused remained present before the Court and seeking for bail under Section 439 of Cr.P.C.

5. The learned Advocate for applicants further submitted that, applicants have extended full co-operation to the IO, who, after considering all the facts and circumstances, felt it not necessary to arrest them. Therefore, IO opted to issue notice u/s 41A of Cr.P.C. Therefore, learned Advocate for applicants submits that the bail application is maintainable and applicants are entitled for bail.

6. The learned Advocate for applicants further submitted that, the applicants are required to be dealt with in accordance with the provisions of Sections 41 and 41A of Cr.P.C. In view of law laid down by Hon'ble Supreme Court in the case of *Amanprit Singh Vs. CBI, 2021 SCR Criminal 2018*, *Siddharth Vs. State of U.P. 2021 ALL SCR Criminal 2014* and *Satendar Kumar Antil Vs. CBI, 2022 Live Law (SC) 577* the present bail application is maintainable and applicants are entitled for bail.

7. Learned Advocate for applicants further submitted that, according to the guidelines framed by Hon'ble Supreme Court in above cited cases, in this case as Section 41A of Cr.P.C. is resorted to, the case of applicants would govern by category B/ D of said Guidelines. As such, detention of applicants is absolutely unwarranted in view of subjective satisfaction of IO.

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

9. 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.

10. 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 and same is not taken into account.

11. 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.

12. 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.

13. 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.

14. 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. Even applicants are entitled for bail on the ground of parity as co-accused Devram Mane is already released on regular bail vide B.A.No.3020/2021.

15. The learned Advocate for applicants further submitted that, the applicants are not habitual offenders. Two of applicants are women and one is old-aged person suffering from various ailments. Therefore, they are entitled for bail.

16. The learned Advocate for applicants further submitted that, applicants will not hamper or tamper with the prosecution evidence. Investigation is over and charge-sheet is also filed. 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.

17. Learned Advocate for applicants placed his reliance upon following authorities.

(i) Order in Bail Application No.1372/2023, Baban Bansi Bhor Vs. State of Maharashtra, dated 20/09/2023 by Hon'ble High Court.

(ii) Siddharth Vs. The State of Uttar Pradesh & Anr. 2021 ALL SCR (Cri) 2014.

(iii) Aman Preet Singh Vs. C.B.I., 2021 ALL SCR (Cri) 2018.

(iv) Satender Kumar Antil Vs. Central Bureau of Investigation & Anr. 2021 ALL SCR (Cri) 2026.

(v) Satender Kumal Antil Vs. Central Bureau of Investigation & Anr. 2022 LiveLaw (SC) 577.

18. The learned APP strongly opposed the application by say Exh.10 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 No.4 Bhausahab Bhor and accused No.8 Asha

Jasud are directly responsible for defalcation of amount of Rs.13,58,879.98 ps. each and accused No.13 Nirmala Bhor is responsible for defalcation of Rs.9,37,970.90 ps. Necessary correspondence is being made with the concerned Government authorities to get information regarding the movable and immovable properties of applicants-accused.

19. Learned APP further submitted that, this is the second bail application filed by applicants-accused. 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.

20. Heard the learned Advocate S.S.Gugle for applicants and Mr. Kolekar, learned APP for the State at length and also perused the documents filed on record.

21. The applicants have preferred this regular bail application even though they were not arrested in this matter. They contended that only because the notice u/s 41A of Cr.P.C. was given by the IO, they have preferred this application for regular bail instead of anticipatory bail. They further contended that the scope of Section 41-A of Cr.P.C. is liberal and not restricted one. When the IO thought fit that there is no need for the arrest of the accused, then he may proceed u/s 41 of Cr.P.C. The Section 41-A of Cr.P.C. was inserted only because there are some offences in which custodial interrogation is unwarranted and when there is no need to arrest the accused. But the scope of Section

41-A is restricted one.

22. Having regard to the facets of this application, it appears that Section 41-A of Cr.P.C. was misunderstood and misconstrued.

23. In case of *Satendra Kumar Antil* cited supra, at para. No.22, the Hon'ble Apex Court specifically observed as under:

“ Similarly, the police officer shall record the reasons when he/ she choses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than 7 years, among the other reasons.”

On perusal of this aspect, it is crystal clear that specific and substantial reason must be mentioned by IO while invoking Section 41-A of Cr.P.C. It is the mandate of the section that specific reasons must be mentioned for not arresting the accused.

24. The crux of this matter in the Regular Bail Application is that, the applicants are not arrested, still they filed the regular bail application u/s 439 of Cr.P.C.

25. On the perusal of the section 41-A of Cr.P.C., which clearly speaks that if the IO thinks that there is no need to arrest the accused, then he must jot down the specific and special reasons for not arresting the accused. We are dealing with the case of MPID Act which is a Special Act along with the Indian Penal Code. *The Section 409 of IPC provides the punishment of imprisonment for life or imprisonment for 10 years and fine. It means the offence under IPC is also of serious in nature.* Not only this, but other sections are also make a person to think regarding the facts and circumstances prevailing in this situation.

26. On the bare perusal of Section 439 of Cr.P.C., it appears that the application of said section comes in picture only after arrest of the accused. The facts and circumstances appearing in the present Bail application are of different one. Accused persons are not arrested by the police and only by giving notice, protected them. It is not explained how this Section would apply in this case. Moreover, there was no special circumstances because of which the Section 41-A of Cr.P.C. comes in picture. On the perusal of entire charge-sheet, nothing was jot down by the IO which are the specific and special circumstances when he provided the shelter of Section 41-A to certain accused and not to the other similarly situated accused even though they are on the same footing.

27. Previously, the said accused persons applied for the anticipatory bail application before the Hon'ble High Court. The Hon'ble High Court rejected the anticipatory bail application of the accused ***Shivaji Dinkar Bhor and others Vs. State of Maharashtra, 920 ABA No.928/2020, dated 18/2/2021***, in which the present applicant Bhausahab Haribhau Bhor was at Sr. No.2, Asha Prabhakar Jasud was at Sr. No.4 and Nirmal Vikas Bhor was at Sr. No.9.

28. The Hon'ble High Court specifically observed as under :

“ It needs to be emphasized that it is a matter of misappropriation of public money, which was deposited by poor depositors in the Credit Society with the hope of earning some interest. There is no dispute about the fact that there has been a huge misappropriation to the tune of about rupees four crores. The applicants are directors of the Society. Though, there is a record to demonstrate that they had also made an attempt to lodge complaint with the Police regarding the misappropriation and though, there is an affidavit of deceased secretary Balasaheb Bhor regarding taking upon himself the entire blame for the misappropriation along with co-accused Nitin Bhor, it is indeed a suspicious circumstance, which needs to be probed by the investigating

officer. Admittedly, after swearing such affidavit, Balasaheb Bhor committed suicide. It would be a matter of investigation to ascertain under what circumstances, he could have sworn in such an affidavit. A doubt is being expressed regarding even regarding its genuineness. Considering the complexity of the situation, it is highly imperative that the investigating officer is extended an opportunity to resort to custodial interrogation of the applicants.

29. It appears from record that, even after rejection of anticipatory Bail application of the applicants-accused by the Hon'ble High Court, the police authorities did not pay any heed to arrest them. On the perusal of charge-sheet, it appears that only particular accused persons were arrested and others were not, even though the roles of arrested accused persons and above said applicants/ accused persons are similar in nature. It means, IO used chose and pick theory. It *prima facie* appears that there are certain mysterious circumstances under which the investigation is carried out by the police machinery. *Prima facie* there appears foul smell in the investigation. The investigation is not carried out in a proper direction.

30. Previously, applicants-accused had applied for the anticipatory bail, but now they have applied for the regular bail. It means, only because anticipatory bail application of applicants was rejected by Hon'ble High Court, they chose to file application for regular bail, which is not tenable.

31. The learned Advocate for the applicants placed his reliance upon the authorities cited supra. But the said authorities were not on the similar point. The facts of this case and the authorities cited supra are on different footing. The ratio cited by applicants in the above said cases with greatest respect is not applicable in the present scenario for the reasons specifically mentioned in the above paras.

32. M.P.I.D. Act is a Special Act and hence, while considering the Bail application on the ground of Section 41-A of Cr.P.C. certain aspects must be looked into and the crux of this is that, what was the reason mentioned by the IO while discharging his function and applying Section 41-A of Cr.P.C. It appears that IO casually invoked this section.

33. The facts and circumstances coupled with documents on record show that, the applicants are not entitled for the bail on the ground of parity also. Considering the above peculiar facts and circumstances, I pass the following order.

: ORDER :

Application is rejected.

Sd/xxx

(Prashant R. Sitre)

Special Judge (MPID Act)

Ahmednagar.

Date : 05/10/2023.