

ORDER BELOW EXH. 174 IN SPECIAL (MPID) CASE NO. 135/2024
(CNR No. - MHST21000439-2024)

(Nitin Shantilal Kothari Vs. The State of Maharashtra)

Prosecution case in short :-

A] The applicant-accused was Director of '1008 Chintamani Parshvnath Gramin Bigar Sheti Sahakari Pathsanstha Maryadit' (hereinafter 'the said Pathsanstha' for short). The investors had deposited / invested their amounts the said Pathsanstha. They intended to withdraw their amounts but they were issued cheques. However, the cheques issued by the said Pathsanstha were dishonoured. An enquiry was initiated u/s. 88 of the Maharashtra Co-operative Societies Act (hereinafter referred as 'the MCS Act'). As per the report of enquiry u/s. 88 of the MCS Act there are allegations of defalcation of huge amount of about / more than Rs. Eleven Crores by the Directors of the said Pathsanstha. The Investigating officer collected evidence that the accused have caused economic loss to the said Pathsanstha to the extent of Rs.24,01,60,761/- by sanctioning loan to themselves, their relatives and well wishers and also gave rebate in the interest on loan amount.

B] This offence bearing C.R.No. 48/2019 is registered on the report of investor Smt. Bhagyashri Kamlakar Bhat. Since the invested amount was not return to the investors on their demands including the complainant, she filed application on which the offence was registered. She alleged that total amount of Rs.9,09,209/- was in fixed deposit in the name of her family

members. In spite of the financial status of the said Pathsanstha was weak and the investors have deposited their amounts, the applicant-accused and the other Directors misappropriated their amounts and they have committed criminal breach of trust and also cheated the complainant and the investors.

2] Grounds for bail :

A] The applicant-accused claimed bail on the grounds that he is innocent. There are no allegations of the complainant against the applicant-accused.

B] Applicant-accused is founder, Director of the said Pathsantha. He is reputed citizen of the India and having business of the betterment of the the said Pathsanstha. He and his family have kept huge amount in the said Pathsanstha in fixed deposits. They never liquidated their fixed deposits which speaks volumes about the conduct.

C] It is part of record that said credit the said Pathsanstha has distributed the loans as per the rules and guidelines under the MCS Act. However, the NPA loans and the capital adequacy ration in hand were mismatched which leaded to deficit in the said Pathsanstha.

D] The said Pathsanstha has already initiated proceedings u/s.138 of the N.I.Act against the defaulters in payment of their loan. The applicant and the Directors were hopes to recover the

outstanding loan amount along with interest. However, due to seizure of the entire record, the applicant and the other Directors could not proceed to recover the outstanding amount.

E] In the year 2019, the applicant had approached to this Court and the Hon'ble High Court and he was granted interim protection with directions to attend the Police Station. Accordingly, he has attended the Police Station and co-operated the Investigation.

F] The District Deputy Registrar, Satara (hereinafter referred as 'DDR') had initiated the enquiry u/s. 83 and 88 of the MCS Act. The enquiry report of the DDR speaks that no criminal offence is committed in the said Pathsanstha. The alleged fraud is completely baseless and manipulated.

G] The police have had over three years to investigate the alleged crime and to keep the applicant behind bars, which serves no purpose. Admittedly, entire case is rests upon documentary evidence which is already in the custody of the police. Investigation is already completed and charge-sheet is filed. Therefore, further custody of the applicant-accused is not necessary.

H] He is ready to furnish solvent surety up to the satisfaction of the Court. He is permanent resident at the address given in the application. Hence, having deep roots in the said Pathsanstha and will not abscond.

3] Resistance to application by Prosecution vide Exh.180 :-

A] The said Pathsanstha has avoided and finally refused to pay Rs.9,09,209/- of the complainant and her family members. Besides this some other members are also found to have lost their money in the cheating transactions of the said Pathsanstha. Many more depositors gave information of dealing of the said Pathsanstha and non-payment of matured value.

B] The applicant-accused was absconding since registration of the crime. He was arrested on 23.11.2022. There is possibility that again he will abscond and will pressurize the witnesses. Investigation requires in search of the bank accounts and lockers and investments made by the applicant-accused. It is likely that the information relates to the lockers and the investment must be with the applicant-accused. Therefore, his detention is necessary and it is prayed to be rejected.

4] Resistance to the application by original complainant at Exh.181 :-

The original complainant reiterated all the grounds for rejection of the application as are submitted by the Ld. Special Public Prosecutor. There was audit of the said Pathsanstha and the auditor has reported that there is defalcation of amount Rs.24,01,60,761/-. The applicant-accused and other Directors of the said Pathsanstha are personally and severally liable to defalcation of the said amount.

5] The Hon'ble High Court has released some accused on bail by directing them to deposit the amount to the extent of liability as per report of the enquiry u/s. 88 of the MCS Act. Therefore, the report comes to the conclusion to release the applicant-accused on bail, the amount as per his liability may be directed to be deposited in the Court and the complainant prayed for withdrawal of the same.

6] I have heard Ld. Advocate for applicant-accused and Ld. Spl. Public Prosecutor. Perused documents and record produced by them.

7] The main argument of the Ld. Advocate for the applicant-accused is that the enquiry under Section 88 of the Co-operative Societies Act, has been set aside and therefore, now there is no liability on the application to pay any amount or dues. As against this, Ld. Special Public Prosecutor submitted that the Hon'ble High Court has thoroughly considered the enquiry under Section 88 of the Co-operative Societies Act while granting bail in some of the accused persons and that too by imposing him necessary conditions. That the concerned accused shall deposit the amount as per the liability fixed in the said report. The applicant-accused has not disputed fixation of liability in the enquiry report. Admittedly, the accused was Director of the said Pathsanstha. As per enquiry u/s. 88 of MCS Act, the applicant-accused is held liable for the loss caused to the said Pathsanstha to the tune of Rs.93,54,095/-.

8] Ld. Advocate for the applicant-accused has produced documents along with list of documents Exh. 202. The documents are of depositing the amount in the saving accounts and the reports to show that huge amounts to the tune of Rs.10128235/- in saving account and Rs.21,54,620/- in fixed deposits in his name and in the name of his family members. Therefore, he submitted that as the said amount is in the said Pathsanstha, whatever liability shown in the enquiry report u/s. 88 of the MCS Act is lesser than the amount in his credit.

9] Admittedly, the enquiry report has been set aside but fresh enquiry is in progress as per the order of the Competent Authority. However, he further submitted that if in the enquiry any liability is fixed upon him, the applicant-accused is ready to pay the same. He also submitted that the accused shall deposit an amount of Rs.10,00,000/- within conclusion of the enquiry if he is held liable.

10] Ld. Special Public Prosecutor relied on the judgments of the Hon'ble Bombay High Court in ***Santosh Kadam Vs. State of Maharashtra, Bail application no. 571 /2022 decided on 22.07.2022***. In this judgment the Hon'ble High Court observed that exonerating the Directors from an enquiry under Section 88 of the Act, altogether a different issue. That would not relieve on applicant from criminal action, if the prosecution has the evidence of fraud, forgery and misappropriation of public money.

11] At present fresh enquiry u/s. 88 of the MCS Act is pending

and if the enquiry will conclude with the same liability as per the earlier enquiry report, he shall have to compensate the said Pathsanstha to that extent. Prima facie there appears that the applicant-accused is liable to the loss to the said Pathsanstha. Thus, on the above circumstances, the necessary conditions can be imposed. The applicant-accused is old aged person. However, his Ld. Advocate had undertaken to deposit the above said amount immediately. However, certainly to the extent of half of the amount out of the liability fixed as per earlier report u/s.88 of the MCS Act can be directed the applicant-accused to deposit in the Court in both the cases in Spl. Case No. 135/2024 and Spl. Case no. 136/2024.

12] The judgment of the Hon'ble Bombay High Court in the case of ***Parag Vijayrao Bobhate Vs.State of Maharashtra, 2021 (5) Mh.L.J. (Crl)70*** is also relevant which is relied upon by the Ld. Advocate for the applicant-accused. Facts of the case in hand are identical in the case of *Parag* cited above. The investigation is completed, no purpose would be served in keeping the applicant in jail for indefinite period. The entire evidence depends upon the documents. All the documents have been seized and they are in custody of the Investigating Officer. Trial will take its own time for disposal in accordance with law. The arrested accused Ajay Shaha, Dhanesh Shah, Bhushan Doshi and Harshad Shaha were released on bail by the Hon'ble High Court and the accused Deepak Najare was released on bail by my Ld. Predecessor. Accordingly and in

over all consideration of the above said facts, material on record and above cited judgment.

13] It appears that presence of the applicant behind bars seems not necessary but as the Ld. Special Public Prosecutor submitted that the investigation is still going on, the Ld. Advocate for the applicant-accused undertake to co-operate the investigation and necessary conditions to that effect can be imposed. Accordingly, the application deserves to be allowed. Hence, I pass the following order.

ORDER

- 1] The application Exh. 174 is allowed.
- 2] The accused **Nitin Shantilal Kothari** be released on bail on executing Personal Bond of Rs.1,00,000/- (Rs. One Lac Only) with one or two surties in like amount, subject to following conditions :
 - [a] That he shall deposit Rs.10,00,000/- (Rs. Ten Lac only) immediately within 10 days and an amount of Rs.15,00,000/- (Rs. Fifteen Lac only) within two months from the date of this order failing which the bail stands cancelled.
 - [b] He shall attend the Investigating Officer of Phaltan City Police Station once in a month every first Wednesday of the month between 11:00 AM and 1:00 PM till the trial concludes.

- [c] He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- [d] On being released on bail, the applicant shall furnish his contact number and residential address to the Investigation officer and shall keep him undated, in case there is any change.
- [e] He shall attend the trial regularly. The applicant shall co-operate in the trial and shall not seek unnecessary adjournments.
- [f] He shall surrender his passport, if any, to the Investigating Officer.
- [g] He shall co-operate with the Investigating officer for ascertaining and identifying the properties belong to the said Pathsanstha.
- [h] The affidavit to be filed by the applicant in terms of what is noted hereinabove within a period of two weeks from the enlargement of the applicant on bail. The applicant to abide by the statement made in the affidavit and the undertaking recorded hereinbefore.

- [i] He shall not create any third party right in respect of the immovable properties of his ownership without the leave of the MPID Court.
- [j] He shall not leave the Country without prior permission of the trial Court.
- [k] The copy of the report filed by the prosecution relating to the attachments of the properties belonging to the Pathsanstha, the Chairman and Directors be furnished to the applicant.

Phaltan.

(P. V. Chatur)

Date : 08.04.2024

Additional Sessions Judge and
Special Judge (Under MPID Act), Phaltan.

Dictated On	08.04.2024
Transcribed On	08.04.2024
Checked On	08.04.2024
Signed On	08.04.2024