MHCC020158932023

IN THE COURT OF SESSIONS FOR GREATER MUMBAI AT MUMBAI

ANTICIPATORY BAIL APPLICATION NO. 2255 OF 2023

Shabana Safdarali Khan]
@ Shabana Ravi Pandayan]
Age : 24 years, Occ.: Service,]
R/at : Room No. 06, Peer Mohammed Chawl,]
Quresh Nagar Kurla, Mumbai- 400 070.]...Applicant/accused

Vs.

The State of Maharashtra]
(At the instance of R. C. F. Police Station,]
Mumbai Vide C.R.No. 600/2023)]...Respondent

Appearances :-
Ms. R. K. Agarwal Ld. Advocate for the Applicant/accused.
Mr. O. S. Maraskolhe, Ld. APP for the Respondent/State.

CORAM : H. H. THE ADDL. SESSIONS JUDGE,
SHRI A.S. SALGAR (C.R. NO.24)
DATED : 01TH November, 2023.

(O R A L O R D E R)
(Dictated and pronounced in the open Court)

This is an application filed by the applicant for grant of anticipatory bail in the event of her arrest in connection of C.R. No. 600/2023 registered at R.C.F. police station for offences punishable under Sections 406, 409, 420, 120(B) r/w 34 of I. P .C.

2. According to the applicant/accused, she is the wife of arrested accused Ravi Pandayan. The name of the applicant/accused is added as chairman in the Managing Committee by Ravi Pandayan.

Applicant/accused has been falsely implicated in the alleged offence. Not a single penny has been transferred in the account of applicant/accused. Nothing is to be recovered or discovered at the instance of accused. Custodial interrogation of the applicant/accused is not required. Complaint against applicant is vague. Applicant/accused is ready to abide the terms and conditions imposed by the Court. Hence, applicant/accused prayed that anticipatory bail application be allowed and she be released on bail in the event of her arrest in connection with C. R. No. 600/2023 of the offence punishable under Sections 406, 409, 420, 120(B) r/w 34 of I. P .C. registered with R.C.F. police station.

3. The investigating officer submitted say at Exh.02 and resisted the application on the ground that name of applicant/accused is mentioned in FIR. The accused has committed serious offence and it is not necessary to make deep investigation in the matter. The applicant is President/Chairwomen of the Blue Peoples Co-operative Credit Society. It is necessary to investigate as to whether the accused has purchased movable and immovable property out of the misappropriated amount. Lastly, I.O. prayed for rejection of anticipatory bail application.

4. Heard Ld. Advocate R. K. Agarwal for applicant/accused and Ld. APP Mr. Rakesh Tiwari for State and also heard P. I Mahendra Shinde attached to R.C.F. police station at length.

5. On the basis of the report lodged by the informant namely Vivek Jadhav, R.C.F. police station registered the offence punishable under Sections 406, 409, 420, 120(B) r/w 34 of I. P .C. vide C. R. No. 600/2023 against the accused. It is alleged that informant resides at Chinchwad, Tal. Mulshi, Dist- Pune alongwith his family members. From

01.07.2010 he is working as a special Auditor Class II in co-operative society (Home), Mumbai. The informant was authorized by Co-operative Commissioner and Registrar of Co-operative Society, Pune to conduct re-audit of the Blue Peoples Co-operative Credit Society for the year 2012-2013 to 2016-2017. During the re-audit of the accounts of the society it was revealed that the directors and office bearers of credit society have transferred the funds of credit society in their personal account by cheque or in the account of various companies during the period from 2012-2013 to 2016-2017. During the period from 2012-2016 the managing committee had distributed the loan illegally. It was revealed that while disbursing the loan, they have not taken any surety against the said loan nor passed any resolution to that effect and disbursed the fake loan. In the year 2016, the loan was sanctioned to borrower of Rs. 2,70,00,000/-. At the time of sanctioning the loan, no documents were obtained. There was no resolution, no property was mortgaged and bogus loan was sanctioned. The funds of credit society which is the funds of depositors of bank has been misappropriated by the managing committee of credit society. It was found that then office bearers of the credit society have misappropriated the amount of Rs. 13,57,54,588/-. Hence, informant lodged the report against the accused persons at R.C.F. police station.

6. It is to be noted that the name of the applicant/accused is mentioned in FIR. There are specific allegations in the FIR that the applicant/accused is President/Chairwomen of credit society and during re-audit of credit society for the period of 2012-2013 to 2016-2017,it was revealed that the President/Chairwomen and office bearers of the society have transferred the funds of credit society in their personal account and even in the account of various other companies. The

information collected by the I.O. revealed direct acts of misappropriation by way of transferring the funds in their personal accounts as well as indirect act of attracting the liability towards criminal breach of trust. The role of applicant/accused is specifically described in FIR. In this background prima facie there is strong case of commission of offence by the applicant/accused. From the FIR prima facie it is seen that the applicant has indulged in various criminal acts in collusion with other directors of the credit society.

7. It is seen that re-audit of the society was conducted by special auditor co-operative society. He is officer of the Government Department of corporative sector.. Special auditor found numerous irregularities in the process of audit. In depth scrutiny of these irregularities revealed various acts of misappropriation by directors and office bearers of credit society. All the accused taken together as if privileged for ultimately cheated the small depositors in the society by grabbing the deposit of small depositors. The alleged offence is serious in nature. Huge amount of Rs. 13,57,54,588/- is involved in the said crime. It means huge amount is involved in the crime. For recovery of the said misappropriated amount, custodial interrogation of the applicant/accused is necessary. I.O. will not be able to collect valuable information from the accused unless and until custodial interrogation is granted to the applicant/accused.

8. The Ld.APP rightly submitted the ruling of Hon'ble Bombay High Court in the case of **Mohd. Rehan Siddiqui and Ors. Vs. State of Maharashtra and Anr, the judgment reported in 2012 ALL M.R. (Cri) 1540**. Wherein it is observed that

Anticipatory bail- Bank employees- Misappropriation- Breach of trust-

Offences u/s 406, 408, 409, 467, 468, 477A, 109, 420 r/w 34 of IPC and Section 5 and 9 of Maharashtra Protection of Investor's Interest Rules. Applicants are employees of Co-operative bank withdrawn an various amounts by way of unauthorized over-drawing- Numerous irregularities were found in the process of audit- Irregularities revealed various acts of misappropriation by staff members- All accused cheated the small depositors in the bank by usurping the deposit by these small depositors- Prima facie all of them have acted in gross betrayal of faith of depositors- Gravity may have to be gauged not from the amount of misappropriation, but from the person who has defrauded and the persons who is defrauded. Offence needs to be viewed as graver when such economic offender defrauds a small man- Bail application rejected."

9. The ratio laid down in the aforesaid ruling is applicable to the present case. The facts in reported case are identical with present case. The categorization of offence for those who have gained expertise and use it for betrayal of trust has to be ranked worst in their degree. This aspect renders the act of accused persons of no lesser gravity than the offence against body and life of the person. One amongst inevitable sides of life is joy, and pecuniary resource is an important device of joy. The pains and agony when hard boiled money is defrauded should be seen as a yardstick or telescope of viewing the gravity of economic offender. Therefore, the offence needs to be viewed as graver when such economic offender defrauds a small man.

10. The classes of offence turning graver from the grave and heinous from graver are seen growing in the zone occupied by men with white collar. Economic offence 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 fund needs to be viewed seriously and considered as a grave offence affecting economy of the country as a whole.

11. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and materials which might have been concealed. Grant of anticipatory bail particularly in economic offences would definitely hamper the effective investigation. Having regard to the material set to have been collected by the police machinery and considering the stage of investigation, I am of the view that it is not a fit case to grant anticipatory bail. Prima facie there is strong case against the applicant for having withdrawal of the amount and committing the offence of misappropriation. She was working as a director in the credit society at the relevant time. In my view, prima facie there is sufficient material on record to show the involvement of applicant/accused in the crime. Custodial interrogation is necessary for collecting/recovering the misappropriated amount. Therefore, I am of the view that anticipatory bail cannot be granted to the applicant/accused. Hence, application for grant of anticipatory bail is liable to be rejected. Hence, I proceed to pass following order :

ORDER

1. Anticipatory Bail Application No. 2255 of 2023 stands rejected.
2. Order accordingly.

-S/d-

Date : 01.11.2023. **[A.S. SALGAR]**

ADDITIONAL SESSIONS JUDGE
GREATER MUMBAI
(C.R. No.24)

Dictated on : 01.11.2023
Transcribed on : 01.11.2023
Checked on : 01.11.2023
Signed on : 02.11.2023

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