

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1760 OF 2023

Abhijit Vivekanand Patil	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Rahul Thakur a/w Mr. Sanket Thakur for the Applicant.

Mr. Amit A Palkar, APP for the State-Respondent.

Mr. Saurabh Butala, for Intervener.

CORAM : AMIT BORKAR, J.

DATED : JUNE 30, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.78 of 2020 registered with Panvel police station for the offences punishable under Sections 409, 417, 420, 463, 465, 467, 468, 477 r/w 120B and 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 3 of Maharashtra Protection of Interest of Depositors Act, 1999, the applicant is seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.).

2. Based on the direction of the Reserve Bank of India, the Registrar of Co-operative Societies appointed a special auditor to conduct a special audit of the co-operative bank registered under the Maharashtra Co-operative Societies Act (Karnala Nagari Bank Ltd.). The Special Auditor, Class-I, conducted a special audit. He

noticed serious financial irregularities and fraud as regards sanctioning of loans. Therefore, he recommended offence registration against the Chairman and other Managing Committee Members of society. Accordingly, the offence was registered against 24 accused persons. The applicant is accused No.8 as per the prosecution; the total amount of fraud and misappropriation is Rs.1096,93,70,353.55/- The property worth Rs.90,68,24,719.60/- of the Chairman and Managing Committee Members of the co-operative bank has been confiscated and attached under the Maharashtra Protection of Interest of Depositors Act, 1999. It is alleged that the Chairman and Managing Committee members, along with the CEO of the cooperative bank, have committed misappropriation of funds in connivance with each other with the intention to gain financially. It is alleged that accused persons have committed forgery of various documents and destroyed vital documents. They availed illegal loans by preparing 67 bogus loan transactions, thereby misappropriating huge amounts of depositors.

3. The applicant, therefore, approached learned Sessions Judge under Section 438 of Cr.P.C., which came to be rejected by an order dated 9 June 2023. Aggrieved thereby, the applicant has filed the present anticipatory bail application.

4. The applicant submitted that the statements recorded by investigating agency indicate that the entire financial scam has been done by the Chairman exclusively. No Managing Committee member was involved in the scam except for the Chairman. According to him, the applicant never signed any resolution of

sanction of the loan amount, nor was he aware of any such illegal transactions of fake loans. The applicant is unaware of the amounts credited to his account as he runs various huge businesses. The Enforcement Directorate had complained to the Chairman and other persons. However, the applicant is not made accused in the said complaint. The Enforcement Directorate had complained about Sections 44 and 45 of the Prevention of Money Laundering Act, 2002, for an offence under Section 3 r/w Sections 70 and 4 of the said Act. The applicant has attended investigating agency as and when called by them and cooperated with the investigation. There is no likelihood that the applicant will abscond. He, therefore, prays for relief under Section 438 of Cr.P.C.

5. Before considering the material on record, it is necessary to delve into the parameters of Section 438 of Cr.P.C. in the context of economic offence and, in particular, offences under Section 406, 409, 420 r/w 120B. The Supreme Court, in the case of **Narinderjit Singh Sahani & Anr. vs. Union of India and Ors** reported in (2002) (2) SCC 210, has held that an accused facing a charge under Sections 406, 409, 420 and 120-B is ordinarily not entitled to invoke the provisions of Section 438 of the Criminal Procedure Code unless it is established that such criminal accusation is not a bona fide one.

6. In the case of **Ram Narayan Popli vs Central Bureau of Investigation** reported in (2003) 3 SCC 641 in paragraph 382 has observed thus:

“382. The cause of the community deserves better treatment at the hands of the court in the discharge of

its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest, as was aptly stated in State of Gujarat v. Mohanlal Jitmalji Porwal.”

7. The Supreme Court, in the case of **Himanshu Chandravadan Desai & Ors vs State of Gujarat**, reported in (2005) 13 SCC 234 was considering a similar case where the applicant, along with other directors of a cooperative bank, siphoned off funds of the bank by bogus and fictitious documents. The Apex Court refused to grant regular bail under Section 439 of Cr.P.C. relying on Constitution Bench of the Supreme Court in the case of **Bihar Legal Support Society vs Chief Justice of India & Anr.**, reported in 1986 (4) SCC 767, observing that the crime in which petitioners are involved is very serious, involving a conspiracy to cheat and the fraud public institutions for a systematic manner and punishment is likely to be severe in the event of a conviction.

8. The Supreme Court, in the case of **Gurbaksh Singh Sibbia etc. vs State of Punjab**, reported in 1980 (2) SCC 565, delineated the parameters exercising powers under Section 438 of Cr.P.C.

holding “the larger interest of public or State” is one of the relevant factors to be kept in mind by the Court while deciding the application for anticipatory bail.

9. In the case of **Nimmagadda Prasad vs C.B.I.**, reported in **2013 (7) SCC 466**, the Apex Court, in paragraph 25, has observed as under:

“25. Economic offences 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 funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

10. In light of the position of law laid down by the Apex Court, I have carefully scrutinized the material against the applicant. Therefore, prima facie appears that the applicant has been a Managing Committee Member of a cooperative bank from 2008 onwards. The Applicant is the son of the chairman. Prima Facie, the applicant, has signed the proceeding book and resolution of meetings, including the meetings wherein bogus loans are sanctioned. The applicant is the Chairman of Karnala Infrastructure Private Limited. The forensic audit indicates that various amounts have been transferred to the current account No.2713 of Karnala Infrastructure Private Limited. The applicant explains that the amount received in the said account was not noticed by the applicant since the applicant has numerous

businesses and various bank accounts. This explanation will be of no help to the applicant at this stage. The applicant will be open to raising such contention at the appropriate stage of proceedings.

11. Transfer of Rs.4 Crore, 50 Lakhs in current account No.2713, loan account No.55 of Vedant Transport Services, is tried to be explained by the applicant. According to the applicant, said bank account was closed on 15 October 2010, and thereafter, the applicant is not concerned. At this stage, prima facie, it appears that various amounts are transferred to the applicant's account or accounts controlled by the applicant.

12. Another allegation against the applicant is the receipt of amounts from bogus C.C. Loan account No.81, which was in the name of Om Ishwari Enterprises. Prima Facie, it appears that various amounts were transferred from Om Ishwari Enterprises' loan account to Aswad Petroleum Karnala. So also amount was transferred from overdraft (OD) loan account No.12 of Apex Computer Corporation to Aswad Petroleum, controlled by the applicant. According to the applicant, the material on record does not indicate that the applicant had personally withdrawn the amount from bogus OD facilities, nor is it alleged that the applicant had deposited cash in personal accounts. The applicant does not know such transactions. At this stage, the material on record prima facie indicates receipt of the amount in the applicant's account.

13. According to the prosecution, there are 6000 investors in the bank. The total deposits are to the tune of Rs.500 Crores. The

material available with the investigating agency is in the form of a forensic audit report, which prima facie shows that funds have been transferred from bogus OD loan accounts to various bank accounts of the applicant. Prima facie, it appears the applicant signed a second resolution dated 17 June 2009 sanctioning the loan.

14. Unfortunately, in the last few years, the exponential rise in white-collar crimes has affected the country's economic structure, which has serious repercussions on the development of the country as a whole. Grant of anticipatory bail in a case of such enormous magnitude is further likely to have an adverse effect on the case's progress and the trust reposed by the society in the judicial system.

15. In so far as the contention of the applicant is that he has not been made accused by the Enforcement Directorate is concerned, on perusal of Clause 21 of the complaint filed by the Enforcement Directorate, it appears that the Enforcement Directorate has sought to crave to add other directors and office bearers of the bank as accused, as the investigation is still in progress.

16. The applicant contends that more than he has cooperated with the investigation is needed at this stage. The Apex Court has laid down the importance of custodial interrogation in the case of as has been observed by the Apex Court in the case of **State represented by CBI v. Anil Sharma** reported in (1997) 7 SCC 187, in paragraph 6 as under:

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well

ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.”

17. In the present case involving misappropriation of such enormous magnitude, elicitation-oriented interrogation is necessary as the investigating agency has the advantage of disinterring useful information and material that may have been concealed if the applicant is granted pre-arrest protection.

18. In a recent judgment in the case of **Sumitha Pradeep vs Arun Kumar**, reported in (2022) SCC OnLine SC 1529, the Apex Court was considering the validity of an order passed by the High Court releasing an accused on the ground that custodial interrogation is not necessary. The Apex Court held that custodial interrogation could be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that

the prima facie case against the accused should be ignored or overlooked, and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into, along with the severity of the punishment. Custodial interrogation can be one of the grounds for declining custodial interrogation. However, even if custodial interrogation is not required or necessitated, that by itself cannot be a ground to grant anticipatory bail.

19. Considering the facts of the case, it appears that the first information report (F.I.R.) has been based on the recommendation of a statutory auditor under Section 81 of the Maharashtra Co-operative Societies Act, 1960. The material on record, prima facie, indicates the complicity of the applicant in the alleged offence. The material on record indicates a prima facie case against the applicant. Considering the nature and gravity of the offence alleged against the applicant, custodial interrogation of the applicant is necessary. Hence, the anticipatory bail application is rejected. No costs.

(AMIT BORKAR, J.)