

**Cri. Bail Application No.1231/2020**

1. *Yakubbaig Jahirbaig Mirza*
  2. *Mrs.Saira Yakubbaig Mirza* .. **Applicants.**
- Versus**  
*The State of Maharashtra,*  
*(Sarkarwada Police Stn.)* .. **Respondent**

**Order below Exh.1**

1. The applicants have filed this application under Section 438 of Cr.P.C. apprehending their arrest by Sarkarwada Police Station in C.R. No.I-260/2018 for the offences punishable u/s. 406, 420 r/w 34 of IPC and u/s. 3 & 4 of MPID Act. The earlier bail application was rejected vide order dated 07.06.2019.

2. It is the case of the prosecution that :

The informant Pragnya Rajesh Shah invested certain amount in the name of her daughter and mother to the extent of Rs.2,99,317/- in Vardhaman Nagri Sahakari Patsanstha Maryadit, Nashik (Hereinafter referred to as '**Patsanstha**'). However, when the informant tried to withdraw the invested amount she was not paid the same. The patsanstha issued certain cheques towards repayment of the invested amount and even the said cheque got dishonoured. Thereafter, on the report of the informant the aforesaid offence is registered against Patsanstha and its Directors.

3. The Ld. Advocate Shri.J.S.Vaishampayan appearing for the applicants submitted that name of the applicants is not there in the FIR. The Ld. Advocate further submitted that when repayment

was defaulted by the Patsanstha, at that time, the present applicants were not the office bearer of the Patsanstha.

4. The Ld. Advocate further submitted that the present applicants became the Director of the said patsanstha in the year 2018, and thereafter administrator was appointed. The Ld. Advocate further submitted that in the audit report for the period of 01.04.2017 to 31.03.2018, which was completed on 10.07.2018, the auditor has observed that there were loans disbursed to the extent of 335.46 lacs. It was further observed that since no concrete steps was taken to recover the said loan amount the patsanstha was facing financial problem. The Ld. Advocate further submitted that in the said audit report it was further observed that no irregularity in the transactions have been noticed and there was no misuse of the funds of patsanstha. The Ld. Advocate further submitted that in the audit report it was further observed that there was no irregularity of the accounts of patsanstha.

5. The Ld. Advocate accordingly submitted that as per the audit report there was no fraudulent transaction or misuse of the funds. The Ld. Advocate further submitted that only because concrete steps were not taken up for recovery of the loan amount does not mean that the directors of the patsanstha have committed fraud. The Ld. Advocate further submitted that as per the audit report as on 31.03.2018 action was initiated against 63 borrowers for recovery of the loan. In support of his contention, the Ld. Advocate relied on the copy of the audit report.

6. The Ld. Advocate further submitted that administrator has already been appointed in the year 2018 in respect of the said patsanstha and administrator Shri.S.T.Shinde has been looking after the administration of the said patsanstha and is in possession of all the documents. The Ld. Advocate further submitted that the original complainant Sau.Pragnya Rajesh Shah has already been paid the invested amount alongwith the interest thereon by the administrator.

7. The Ld. Advocate further submitted that the present applicants are more than 70 years of age. The Ld. Advocate further submitted that even the present applicants at no point of time have taken any loan from the said patsanstha and have not received any amount in any manner whatsoever from the patsanstha. The Ld. Advocate accordingly submitted that no case for custodial interrogation is made out. Accordingly, Ld. Advocate submitted that the applicants be released on pre-arrest bail.

8. Learned APP Sau.Bhide submitted that the offence is serious in nature. The Ld. APP submitted that around Rs.3,35,00,000/- is to be recovered from the borrowers and for the same no concrete step has been taken by the Patsanstha. The Ld. APP further submitted that around 944 members of the patsanstha have made deposit of more than Rs.95,00,000/- and they have not been returned the said amount. The Ld. APP further submitted that loan has been disbursed even without taking any security from the borrowers. The Ld. APP further submitted that the earlier bail application of the present applicants was rejected vide order dated 07.06.2019. Thereafter, no new grounds have been made out for grant

of the present application. The Ld. APP accordingly submitted that application be rejected.

9. In view of the facts mentioned in the application, following points arise for my determination and I have recorded my findings thereon for the reasons stated below :

<u>POINTS</u>	<u>FINDINGS</u>
(1) Whether the applicants are entitled for pre-arrest bail ?	.. Yes
(2) What order ?	.. As per final order.

### REASONS

10. Heard the Ld. Advocates appearing for the applicants and the learned APP.

11. It is well settled principle that, various considerations for grant of anticipatory bail include :

- a) Whether accusation are made with ulterior motive and with intention to injured and humiliate the applicants.
- b) Antecedents of the applicants and his possibility to flee from justice.
- c) Nature and seriousness of the proposed charges.
- d) Reasonable apprehension that witnesses will be tampered with,
- e) The larger interest of the public or the State.
- f) No prejudice would be caused to free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.

g) Reasonable apprehension of tampering of witness or apprehension of threat to the complainant.

12. Perusal of the investigation papers show that the offence was registered on 29.08.2018, on the report of one Sau.Pragnya Rajesh Shah. Perusal of the investigation papers further shows that vide letter dated 16.11.2018, the then administrator of the patsanstha Shri.P.R.Shimpi has intimated Senior Inspector of Police, Sarkarwada Police Station that the amount deposited by the informant through her family members was paid to them alongwith the interest.

13. Perusal of the investigation papers further show that administrator has been appointed in respect of the said patsanstha in the year 2018. All the administration of the patsanstha is being looked after by the administrator and all the documents in respect of the working of the said patsanstha is in the possession of the said administrator. In fact as mentioned hereinabove some of the depositors including the informant have also been paid the invested amount alongwith the interest.

14. Perusal of the audit report copy of which has been filed by the Ld. Advocate Shri. Vaishyampan as well as by the Investigating Officer shows that though some loans have been disbursed without taking proper security and concrete step has not been taken to recover the loan amount but it has also been observed that there was no irregularity in maintenance of the account and there was no misappropriation of the funds of the patsanstha. Perusal of the audit report shows that some of the loans have been disbursed in the year

2002, 2004 and till 2011. The said loans disbursed to almost 25 persons have not been recovered. The said loans also include loans against higher purchase, hypothecation and housing loans.

15. The present applicants were directors as on 31.03.2018 as per the documents filed on record. However, as mentioned herein-above most of the loans have been sanctioned in the year 2002 to 2011 and the said borrowers have defaulted.

16. In the facts and circumstances of the case, considering the investigation papers as well as the audit report filed on record, at this stage, it appears that though there is no concrete steps taken for recovery of all the loans disbursed and also certain loans have been disbursed without taking any security, but there is nothing on record to show that the present applicants are responsible for the irregularity committed while disbursing the said loans. There is no specific allegation made against the present applicants. As mentioned herein-above the administrator of the said patsanstha has already paid the deposit made by the informant and her family members. All the documents in respect of the patsanstha are in possession of the administrator since 2018.

17. The earlier bail application was rejected on 07.06.2019. However, there is nothing on record to show that any step was taken to enforce the presence of the present applicants or to arrest them. Although the investigating officer submitted that the investigation was taken over by him somewhere in February 2020, but the fact remains that even after lapse of one year from the date of rejection of

the earlier bail application, no step was taken to arrest the present applicants or to enforce their presence before the Investigating Officer. Hence, the in the facts and circumstances and also considering the nature of the allegation against the present applicants, in my opinion, no case for custodial interrogation is made out.

18. The applicants are already granted interim bail vide order dated **18.09.2020**. Hence, the same deserves to be confirmed. Hence I pass the following order :

### **ORDER**

- 1) The application is allowed.
  
- 2) In the event of arrest of the applicants in C.R. No.I-260/2018 for the offences punishable u/s. 406, 420 r/w 34 of IPC and u/s. 3 & 4 of MPID Act, Senior Police Inspector, Sarkarwada Police Station is directed to release the applicants on executing P.R. & S.B. of **Rs.25,000/- each** with one or two surety in the like amount.
  
- 3) The applicants :
  - (i) are directed to report to the police station as and when called by the Investigating Officer.
  - (ii) 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 such facts to the Court or to any police officer.
  - (iii) shall not leave India without previous permission of the Court.

4) Inform concerned police station accordingly.

Nashik.

Date : **13-10-2020.**

(S.T. Pandey)

Dist. Judge-4 and

Addl. Sessions Judge, Nashik.