

Order below Exh.1 in Cri. Bail Application No. 313/2022

Balasaheb Rupchand Madhwai

.. Applicant
Accused.

Vs.

The State of Maharashtra
through Police Inspector,
Adgaon Police Station, Nashik.
(Cr. No.I 158/2021)

.. Prosecution

Order below Exh.1.

1. This application has been filed by the applicant/accused under section **439 of Cr.P.C.** for releasing him on **regular bail** in the aforesaid Crime registered at Adgaon Police Station, for the offence punishable under section 420, 409, 468 r/w. 34 of the IPC.

2. The FIR was lodged on 10.10.2021 by one Sanjay Shamrao Lolage who is working as a Government Auditor, alleging therein that he has conducted Audit of the Society by name Durga Nagari Sahakari Patsanstha Maryadit, Adgaon, Tal. & Dist. Nashik (here-in-after referred as "Society") for the period from 01.04.2013 to 31.03.2015. He detected various instances of financial irregularities and misappropriation to the tune of Rs. 2,76,01,040/-. Accordingly, he prepared the audit report and submitted to the Competent Authority. In pursuance of his report, the Competent Authority directed the complainant to lodge report against the perpetrators. Accordingly, he filed report against all the Directors, Branch Manager, staff members, Recovery Officer and the beneficiaries. The crime bearing CR No.

158/2021 was registered against the applicant and others. The applicant was arrested on 22.02.2022 and since then, he is in judicial custody.

3. The learned counsel Mr. V.R.Agrawal appearing for the applicant/accused has argued that applicant has not committed any offence. He is not concerned with the crime. He further submitted that he has taken loan from the said Society by mortgaging his Plot bearing No.130 admeasuring area 717.26 Sq.Mtrs. by executing registered Mortgage Deed. Thereafter, he repaid the entire loan amount and accordingly, the said Society executed Release Mortgage Deed in his favour before the Sub Registrar, Nashik on 04.01.2013. Thus, the applicant has repaid the entire amount of loan to the Society. He also got no due certificate from the said Society. He further says that if the Society wants to challenge the execution of Release Deed, it should be challenged within three years from the date of its execution. Thus, he has no concern with any kind of misappropriation that was discovered in the Society's accounts. His custodial interrogation is already over. The investigation is practically over. The applicant has cooperated with the investigating agency. He is ready to cooperate in future also and ready to abide each and every conditions, if any, imposed by this Court.

4. The Investigating Officer has filed his reply at **Exh.5** and strongly opposed the application stating that the offence is serious in nature. There was misappropriation of funds to the tune of Crores of Rupees. The audit report shows that loan was advanced to applicant and his relatives to the tune of Rs.15,00,000/- against the mortgaged

property. But the applicant and co-accused did not repay the entire loan amount and sold the mortgage property to third person without knowledge of the Society. Thereafter he deposited the part sale proceeds with the Society. The Manager Mr. Kolhe without receiving the entire amount issued no due certificate. So if the applicant is released on bail, he may pressurize the witnesses and tamper with evidence. On these grounds, IO prays for rejection of the application. The Ld. APP Mr. Reshma Jadhav has strongly submitted her argument at Exh.6 in the line with the say filed by the investigating officer.

5. After hearing both the sides and on going through the copy of FIR, Audit report, other relevant documents, admittedly, the applicant, his wife and one of the relatives have jointly taken loan from the Society by mortgaging the property. Though the defence counsel has submitted that the entire loan was repaid but the documents on record shows that the applicant has deposited approx. Rs. 12 lacs plus with the Society. He could not produce any document/proof to show that entire loan amount was repaid. The learned APP has pointed out the specific dates which shows that he transferred the mortgaged property to third person without releasing the same from the Society. This shows his collusion with the Manager Mr. Kolhe.

It further revealed from the investigation that till date, he has withdrawn Rs.64,10,000/- from A/c. No.207 of the Society. The concerned investigating officer is doing investigation to that effect. Under such circumstances, if the applicant is released at this stage, the apprehension of the police that he may hamper investigation,

appears to be justified.

The learned counsel has also pleaded the ground of Parity and filed bail Orders of the co-accused. Now as far as the ground of parity is concerned, some of the co-accused were granted bail as investigating Officer could not point out their specific role in the misappropriated amount. But in case of the applicant, prima facie and specific role is stated by IO and that he is one of the beneficiaries. Hence ground of parity is not applicable to him. Thus, at this stage when investigation is in progress, applicant is not entitled to be released on bail. Considering the seriousness of the offence and embezzlement of huge amount by the applicant and co-accused , I am not inclined to grant the application. Hence, following order.

Order

Application stands rejected.

21.03.2022.

(**Smt. S.S.Nair**),
Addl. Sessions Judge-4, Nashik.