

Order below Exh.1 in Cri. Bail Application No. 264/2022

Dipen Jaydev Joshi .. 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 **438 of Cr.P.C.** for releasing him on **anticipatory bail** in the event of his arrest 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. When the work of auditing was in progress, he came to know that there was fraud, forgery and misappropriation of an amount 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 including the applicant who audited the financial statement of the said Sanstha for the period 2012-2013. The crime bearing CR No. 158/2021 was registered against the applicant and others. Hence he is apprehending his arrest at the hands of the Police.

3. The learned counsel Mr. M.D.Bhanose appearing for the applicant/accused has argued that applicant has not committed any offence. He is not concerned with the crime. His name is falsely implicated in the offence. He is neither the beneficiary nor the borrower. The applicant had an experience of 14 years in the field of auditing. He has conducted audit of various nationalized Banks as well as Co-operative Societies and not a single offence has been registered against him. Thus he does not have any previous criminal antecedents. He further says that he has been appointed by the Commissioner, Co-operative Department, Pune and as per his direction, he has conducted the audit of the said Sanstha for the period 01.04.2012 to 31.03.2013 and submitted his report before the Board of Directors of the said Sanstha and pointed out irregularities and illegalities in day to day functioning of the Sanstha. Considering the allegations it would be at the most would amount to dereliction of duties. For this, his custodial interrogation is not required. It is the Board of Directors to take action against those who had committed such irregularities and illegalities. Since entire case is based on

documentary evidence and documents are already with the investigating machinery, his custody is not required. Considering the nature of the offence, he prayed for grant of anticipatory bail to him.

4. The Investigating Officer has filed his reply at **Exh.7** and strongly opposed the application stating that the offence is serious in nature and that applicant has conducted the audit of the said Sanstha for the aforesaid period and without pointing out any irregularities, misappropriation, had given grade "A" to the Sanstha. He has specifically mentioned in his audit report that the list of F.D tallies with the balance sheet which in fact is not the case. There are multiple variance in the receipts, vouchers etc. Prima facie his collusion with the employees are appearing. Thus, detailed investigation is necessary and as such custodial interrogation of the applicant is necessary to extract credible information relating to the offence. If custody is not given, it would hamper the investigation. On these grounds, IO prays for rejection of the application. The Ld. APP Smt. Reshma Jadhav has strongly submitted her arguments in line with the say filed by the investigating officer vide Exh.8.

5. Heard both the sides. Admittedly, the applicant has conducted the auditing of the financial statements of the Sanstha for the period from 01.04.2012 to 31.03.2013. The investigation reveals that there was misappropriation of huge funds to the tune of Rs.2,76,01,040/- since 2008. The applicant while conducting the auditing, had reason to believe that the offence of fraud was committed by the employees, Manager and Directors of the said Sanstha as lot of documents were forged and surprisingly, he didn't

notice any forgery. He did not mention the actual facts in his audit report. A perusal of the audit report under the head “गैरव्यवहार व गंभीर स्वरूपाचे दोष”, he has mentioned about the loan transaction and its outstanding amount. It appears that he has casually and nominally mentioned about some irregularities in the financial statements instead of pointing specific faults, irregularities and misappropriation of funds, in the audit report. Under the head “अफरातफर” he has mentioned that there is no misappropriation in the financial statements. He has not reported the alleged misappropriation to the competent Authority which was certainly part of his duty. Thus, he has not appropriately responded to the suspected fraud. This amounts to dereliction of his duty. Despite all financial irregularities, he has graded the Sanstha as “A” which prima facie shows his collusion with Manager and other Directors. The investigation is still in progress and so, his custody is required to find how he has extended help to other co-accused. At this stage, the application deserves to be rejected. Hence, following order.

Order

Application is rejected.

(Smt. S.S. Nair)

Date : 14.03.2022.

Addl. Sessions Judge-4, Nashik.