

HIGH COURT OF BOMBAY**Bench: Justice Abhay S. Waghwase****Date of Decision: 10th May 2024****Case No.:**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1657 OF 2024

CRIMINAL APPLICATION NO. 1979 OF 2024

CRIMINAL APPLICATION NO. 1709 OF 2024

CRIMINAL APPLICATION NO. 1978 OF 2024

CRIMINAL APPLICATION NO. 1729 OF 2024

CRIMINAL APPLICATION NO. 1980 OF 2024

CRIMINAL APPLICATION NO. 1731 OF 2024

CRIMINAL APPLICATION NO. 1976 OF 2024

CRIMINAL APPLICATION NO. 1752 OF 2024

CRIMINAL APPLICATION NO. 1866 OF 2024

CRIMINAL APPLICATION NO. 1841 OF 2024

CRIMINAL APPLICATION NO. 1942 OF 2024

APPLICANTS:**Mahesh Baban Zaware (Accused No.25)****Anup Pravin Parekh (Accused No.17)****Lahu Sayaji Ghangale (Accused No.10)****Sudhakar Gopinath Sumbe (Accused No.23)****Gopinath Shankar Sumbe (Accused No.24)****Hasan Amir Raje (Accused No.8)****Sudhakar Parshuram Thorat (Accused No.3)****Bhausahab Kushaba Zaware (Accused No.4)****Baban Deoram Zaware (Accused No.9)****VERSUS****RESPONDENT: State of Maharashtra**

Legislation:

Indian Penal Code (IPC) – Sections 177, 406, 409, 420, 465, 467, 468, 471, 120-B

Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act) – Section 3

Code of Criminal Procedure (Cr.P.C.) – Section 389

Subject: Criminal applications under Section 389 Cr.P.C. for suspension of substantive sentence and grant of bail pending appeal, following convictions for serious economic offences involving misappropriation of funds by the board of directors, managing committee members, and administrative staff of Sampada Nagari Sahakari Pat Sanstha Limited.

Headnotes:

Criminal Law – Suspension of Sentence – Economic Offences – Applications for suspension of sentence and grant of bail by convicts found guilty of serious economic offences including fraud and misappropriation of funds from a cooperative financial institution – Offences committed by individuals in positions of trust, resulting in significant financial losses to depositors – Court denies relief based on the gravity of offences and societal impact [Paras 1-50].

Section 389 Cr.P.C. – Judicial Discretion – Legal Precedents – Legal principles governing suspension of sentence under Section 389 Cr.P.C. require consideration of factors such as the nature of accusations, severity of punishment, evidence supporting charges, and societal impact – Courts must exercise discretion judiciously, particularly in cases involving serious economic offences – Reliance on legal precedents emphasizing the need for stringent scrutiny in granting relief in such cases [Paras 41-45].

Economic Impact and Public Trust – Fraudulent activities by the cooperative society's board and committee members undermined public trust and caused significant financial harm – Court emphasizes the necessity of maintaining

legal discipline and accountability in financial institutions – Relief denied to prevent further erosion of public confidence [Paras 46-48].

Decision: All applications for suspension of sentence and grant of bail are rejected – Court finds that the magnitude and seriousness of the offences, involving the misappropriation of substantial amounts of public money, warrant denial of relief under Section 389 Cr.P.C. [Paras 49-50].

Referred Cases:

- Anwari Begum v. Sher Mohammad and Another (2005) 7 SCC 326
- Shivani Tyagi v. State of U.P. 2024 LiveLaw (SC) 333
- Rama Narang v. Ramesh Narang and Others (1995) 2 SCC 513
- Rajesh Rajan Yadav alias Pappu Yadav v. CBI (2007) 1 SCC 70
- Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) (2008) 5 SCC 230
- Omprakash Sahni v. Jai Shankar Chaudhary and Another (2023) LiveLaw SC 389
- Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and Another (2012) 9 SCC 446
- Bhagwan Rama Shinde Gosai and Others v. State of Gujarat (1999) 4 SCC 421

Representing Advocates:

Mr. Abhijit S. More for Applicant in Cri. Appln. No. 1657 of 2024

Mrs. Chaitali Choudhari Kutti, APP for the Respondent State

Mr. V. H. Dighe for Applicants in Cri. Appln. Nos. 1979, 1978, 1980, and 1976 of 2024

Mr. Rajendra S. Deshmukh, Senior Advocate for Applicant in Cri. Appln. No. 1709 of 2024

Mr. V. D. Hon, Senior Advocate for Applicants in Cri. Appln. Nos. 1729, 1731, and 1752 of 2024

Mr. Ajeet B. Kale for Applicant in Cri. Appln. No. 1866 of 2024

Ms. Madhaveswari S. Mhase for Applicant in Cri. Appln. No. 1841 of 2024

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1. Heard learned Advocate Shri V. H. Dighe for the applicants in Criminal Application Nos. 1979 of 2024, 1978 of 2024, 1980 of 2024 and 1976 of 2024 seeking permission to assist learned APP. For the reasons mentioned in the applications, permission to assist APP is granted and the applications are disposed of.

2. Relief under Section 389 of the Criminal Procedure Code [Cr.P.C.] praying for suspension of substantive sentence and grant of bail, is pressed into service by all above applicants, who faced trial at the hands of learned Additional Sessions Judge, Ahmednagar vide Sessions (MPID) Case No. 323 of 2011 and finally were held guilty for offence under Sections 177, 409, 417, 420, 465, 467, 468, 471, 120-B CriAppIn-1657-2024+ of the Indian Penal Code [IPC] r/w Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 [MPID Act]. It is during pendency of appeals, instant applications are taken for consideration.

It needs to be noted that all above application are offshoots of common judgment and order of conviction and reliefs sought being of identical in nature, are by consent, dealt and decided by way of common judgment.

SUBMISSIONS

3. Sum and substance of submissions of each of the learned counsel appearing for each of the applicants are summarized as under, followed by submissions made by learned APP, thereby opposing the relief.

1. Cri. Appln. No. 1729/2024, Cri. Appln. No. 1731/2024:

4. Learned Senior counsel Shri V. D. Hon, pointed out that applicant Lahu Ghangalein Criminal Application No. 1729 of 2024 is a teacher by profession. That, he did not contest elections of Society to become member of the Sampada Nagari Sahakari Pat Sanstha Limited (for short,

"Society"). Rather, merely because he was CriAppIn-1657-2024+ belonging to reserved category and there being mandatory rule to compulsorily induct candidate from reserved category, he was forced to accept the membership. He further submitted that he was made a managing committee member also. He pointed out that such applicant is arraigned as accused no.10.

5. As regards to applicants in Criminal Application No. 1731 of 2024, he pointed out that they were not members of managing committee. They were arraigned as accused nos. 23 and 24. However, he emphasized that as regards both these applicants are concerned, only allegations against them are that they stood beneficiaries by virtue of being relatives of an ex-chairman who already expired. He pointed out that they have not borrowed any loan.

6. As regards to allegations against accused no.10, learned senior counsel pointed out that he being member of committee, was only concerned with policy matters and he never participated in the administrative functions wherein decisions for sanction of loan were taken. That, in fact scrutinizing loan applications and granting the same was the job of managerial staff.

7. Learned senior counsel would strenuously submit that so far as allegations against applicant accused no. 10 are concerned, certain irregularities are claimed to be noticed during audit and he is also chargesheeted. There are allegations of non-compliance of procedural formalities and not obtaining security while sanctioning loan. However, he submitted that there is no distinct oral or documentary evidence in support of above accusations. He pointed out that, there is no record suggesting approval of loan to any borrower, however, still guilt has been fastened.

8. Learned senior counsel invited attention of this Court to the charge as well as observations and findings of the trial court. He invited attention of the Court to the observations recorded as against accused no. 10 in para 1035 of the judgment and would submit that he purchased house way back in 1991 and as such, he has nothing to do with the loan transaction subsequent to that. He also pointed out that in fact observations of trial court, more particularly in para 1034 are in his favour. That, in fact no dues certificate is also issued by the Society.

9. He next submitted that at no point of time there was any notice, recovery, dues or any default attributed by Society. According CriAppln-1657-2024+ to him, there is apparently improper appreciation of oral as well as documentary evidence. All above applicants have a good case on merits and hence they have consequently challenged the judgment and order of conviction. He pointed out that during trial, this Court had granted benefit of anticipatory bail. That, as much more time would be required to hear and decide the appeal and as applicant is old aged and suffering from various ailments, he seeks relief of suspension of substantive sentence as well as grant of bail.

10. As regards to applicants accused nos. 23, 24 are concerned, it is his submission that they are not members of the managing committee. Merely being relatives of main accused, they are impleaded and further held guilty. They had never applied for loan. Even to them, there is no notice or recovery proceedings against them at any point of time. According to him, even there is no documentary evidence to show disbursement of loan to them. That, directly allegations are leveled about forgery without sufficient material. According to him, even both above applicants were also on bail during trial and hence, he prays for both, suspension of sentence as well as grant of bail even to such both applicants.

CriAppln-1657-2024+ In support of above submissions, learned senior counsel seeks reliance on Kiran Kumar v. State of M.P. (2001) 9 SCC 211/2001 AIR SCW 5130.

11. Learned Senior counsel Shri R. S. Deshmukh, who appeared on behalf of original accused no. 17 also pointed out that his client was not a member of managing committee. It is pointed out there are allegations of he being a borrower. According to him, unfounded allegations of obtaining gold loan are also attributed to him.

According to him, his client had never applied for any loan. He invited attention of the court to his submissions advanced in trial court which are reflected in para 1183 of the judgment. According to him, there was no evidence in support of charge of criminal conspiracy as there was no material showing prior meeting of minds or hatching conspiracy with other accused. That, even findings of trial court go to show that there is no

concrete evidence to that extent. But still, according to him, learned trial court has held his client guilty for charge of criminal conspiracy and other charges. He invited attention of this court to the cross of complainant PW20 and the answers given CriAppln-1657-2024+ by said witness and submits that case and allegations are not been proved beyond reasonable doubt.

12. He next submitted that documentary evidence before the court itself shows that whatever amount was borrowed is already deposited in this Court and amount is as such secured by virtue of order of this Court i.e. to the extent of the amount of which fraud is allegedly committed by him. He further added that even fine amount has been paid. That, his client has already given an undertaking as directed by this very Court.

13. While summing up, he pointed out that there is apparently false implication for being mere brother of absconding accused. That, in trial court, complicity of accused has not been proved beyond reasonable doubt. Still conviction being recorded, exception to the same has been taken by filing appeal. However, according to him, as appeal would take long time to be heard and decided and in view of same ruling of the Hon'ble Apex Court in the case of Kiran Kumar (supra), sentence being for short term, he seeks relief of suspension of sentence and grant of bail. He pointed out that, in that case before the Hon'ble Apex Court, sentence imposed was of 7 years, but still Hon'ble Apex Court has granted relief of suspension as well as bail.

CriAppln-1657-2024+ According him, in the case in hand, his client is sentenced only for 5 years and it being a short term sentence, he seeks above relief.

14. Learned Advocate Mr. A. B. Kale would submit that his client accused no. 3 is an unfortunate person. Even when there was nothing concrete against him, he has been held guilty. He emphasized that learned trial court seems to have got itself confused, as there are two accused of similar name, i.e. present applicant accused no.3 as well as accused no.23. According to him, evidence against such accused no.23 seems to have been wrongly attributed and applied against his client. It is pointed out that he has become Director only in 2006, whereas proceedings in question

were prior to that and therefore, it is his submission that it was even improper to implead him and even make him face trial. He took exception to the findings reached at by learned trial court by questioning as to what role prosecution could succeed in establishing against him. He pointed out that main allegations are against the Directors who were officiating during the period in question. He pointed out that even grant of gold loan is by persons holding managerial post. Present applicant was never Manager. Rather, though he became Director in 2006, he had already CriAppln-1657-2024+ resigned on 15.12.2009. Thus, he submits that, for deeds of others, he ought not to have been held liable and further held guilty.

Learned counsel invited attention of the Court to the observations in para 590 and 1032 of the judgment of the trial court and he resultantly submits that it is apparent case of mistaken identity. Learned trial court has erred in applying allegations against accused no. 23 to this accused. He also further pointed out that even the said audit, on the strength of which crime is registered, has been questioned by the authority of the rank of Joint Registrar. That, even otherwise, only outstanding amount shown against him is Rs.28,371/-.

Therefore, according to him, as there is improper appreciation at the hands of learned trial court, appeal has been preferred. However, according to him, the same would take sufficiently long time to be heard and decided. That, applicant is suffering from various heart and kidney related deceases. For all above reasons, he also prays to grant relief of suspension of sentence as well as bail. He further submits that his client was on bail during trial.

15. Learned counsel Mr. N. V. Gaware, who appeared through video conference on behalf of accused no.8, pointed out that accused no.8 is a managing committee member. Appraising this Court regarding the accusations and charges, he would submit that there is no direct evidence about his involvement in either sanctioning or disbursing loan. That, he has not borrowed any loan. There is no evidence that he had ever applied for loan and same to be granted.

Some anonymous persons are shown to be the beneficiaries and managerial staff has sanctioned loan.

16. He next submitted that his client has been held guilty for offence like 120-B IPC, even when admittedly before the trial court prosecution failed to show distinctly as to how, when and where conspiracy was hatched. According to him, there was no material before the trial court in support of said charge. He also invited attention of this Court to the cross faced by PW20 complainant. According to him, general and omnibus allegations are levelled against all accused collectively, including his client, and even according to him, learned trial court has not meticulously appreciated the evidence to ascertain role of each of the accused. He pointed out CriAppln-1657-2024+ that when audit for the period of 2001 to 2006 was to be carried out, he would question how and on what authority PW20 conducted audit beyond said period. That, said audit was rejected by higher authorities. He also questioned the observations of the trial Judge as regards the findings reached against him. Lastly, he submitted that his client was on bail. He also pointed out that his client is suffering from heart ailment and therefore, on medical grounds also, applicant is entitled for relief of suspension of sentence and grant of bail. He seeks reliance on *Ravindranatha Bajpe v. Mangalore Special Economic Zone Limited and others* (2022) 15 SC 430.

17. Mr. Abhijit More, learned Advocate for accused nos. 9 and 25 also reiterated the above submissions regarding prosecution case and would submit that his client is not a office bearer. That, there are simplicitor allegations of borrowing loan. However, according to him, said loan is already repaid. He also invited attention of the Court to the judgment passed by this Court in Criminal Writ Petition No. 1322 of 2015 [*Maruti s/o Khandu Rohakale and others v. The State of Maharashtra*]. He pointed to the observations of the learned trial court in para 1025 and 1034 and would submit that when learned CriAppln-1657-2024+ trial court itself observed that there is no oral and documentary evidence, contrary views are given holding guilt as proved. Even according to him, as such, there is improper appreciation at the hands of learned trial court and therefore, there is good case in appeal. However, as much more time would be required to hear and decide the appeal, he too prays for above relief.

18. Praying for relief as regards accused no.4 is concerned, learned counsel Ms. Mhase pointed out that her client was shown as member of Board of Directors. However, he has already resigned in 2005. She pointed to the accusations raised by prosecution as regards her client and the findings of the trial court, more particularly in para 420 to

423. According to her, from the very observations, in fact her client has been given a clean chit. However, finally, he is held to be guilty.

According to her, allegations are about raising gold loan. However, there was no distinct or legally acceptable evidence in support of accusations raised against her client. She questions as to how learned trial court could apply answers given by co-accused under Section 313 Cr.P.C. to implead her client. Even she submits that her client was a beneficiary of anticipatory bail during pendency of the appeal, and CriAppln-1657-2024+ moreover, recently he being infected by pneumonia, she prays for both, suspension of sentence as well as bail.

Arguments advanced by learned APP, with assistance of Learned Advocate Mr. V. H. Dighe, on all above applications :

19. While opposing above applications, learned APP submitted that it is a serious economic offence. According to her, such offences are viewed to be more serious than charge of murder. She pointed out that there is apparently huge fraud and misappropriation of depositors' hard earned earnings.

20. While answering Criminal Application Nos. 1729 and 1731 of 2024, learned APP pointed out that Investigating machinery has gathered sufficient and cogent evidence regarding involvement of accused applicants. On thorough investigation, guilt has been recorded. Vehemently opposing relief, learned APP pointed out that as regards to present accused no. 10 is concerned, he is beneficiary of an unsecured loan. There is also disregard to the procedure of grant of loan. There was no proper verification of entitlement, but huge loans are granted. She pointed out that after fraud came to light, office bearers, managing directors and persons holding managerial posts are trying to shift blame on each other. According to her, in fact, CriAppln-1657-2024+ they are all

found to be involved and their roles have been distinctly crystallized during investigation and only on due satisfaction and only on gathering sufficient evidence, they are chargesheeted.

21. She pointed out that present accused no.10 as well as accused nos. 23 and 24 are managing committee members as well as beneficiaries of loans. The fraud was detected on audit being conducted for the period of 2001 to 2006, and during 2004 to 2006 there are gold loans obtained. Learned APP invited attention of this Court to the observations of learned trial Judge in the judgment, more particularly para 552 and would submit that there is analysis of the material emerging against applicants and on only due satisfaction about availability of reliable material, they are held guilty and according to her, serious economic offence has been committed and according to her, none of the above applicants deserve relief as prayed.

22. While opposing application of accused no.17 (Criminal Application No. 1709 of 2024), learned APP would point to the observations and findings of the trial court, more particularly para 322 and 323 of the judgment. She pointed out that during investigation as many as 48 gold loan cases are detected against his CriAppIn-1657-2024+ real brother. She pointed out that accused nos. 15, 16 and 17 are all related to him and therefore, charge of Section 120-B IPC has been categorically substantiated. She pointed out that fake yellow metal was pledged to raise huge loans. Investigation revealed above acts.

She pointed out that in fact, present applicant, namely Anup, has also paid first installment of the loan and as such, according to her, he himself has admitted borrowing of loan and so, now it is not open for him to disown or deny loan or borrowings.

23. While answering Criminal Application No. 1866 of 2024 filed by accused no. 3, learned APP pointed out that he was Director since 2001. That, he has put up resignation but it is post-fraud and therefore, he cannot now claim impunity. According to her, thorough audit revealed applicant's involvement. There is no denial of loan and therefore, learned trial court also, on correct appreciation, held charges proved against him. That, he is also a party to the joint fraud and therefore, she prays to refuse relief.

24. Resisting the application of accused no.8 (Criminal Application No. 1752 of 2024), learned APP pointed out that he was also a Director. Though he resigned, it is post-fraud i.e. in 2009. She invited attention of the Court to the findings of the learned trial court, more CriAppIn-1657-2024+ particularly in para 487 and 489 of the judgment and resisted the relief.

25. While answering applications of accused nos. 9 and 25, learned APP pointed out that accused no.25 is son of accused no.9 and he is beneficiary of a loan which was sanctioned by showing utter disregard to the procedure and after committing several irregularities, and son has been apparently favoured. There is sufficient evidence about his involvement also and according to her, he is also therefore rightly held guilty, by learned trial Judge. Hence, she prays to refuse relief.

26. While resisting relief to accused no.4, learned APP pointed out that he was also a Director. The period of audit in question was of 2001 to 2006. He has put resignation in 2005. Even his involvement was unearthed during investigation. According to her, there is ample evidence about his involvement also. He is also, like other accused, responsible for commission of fraud and misappropriation of huge loans. That, he is also found guilty only on meticulous analysis of evidence. According to learned APP, he is also not entitled for any relief as prayed.

CriAppIn-1657-2024+ GIST OF THE PROSECUTION CASE IN TRIAL COURT

27. Sampada Nagari Sahakari Pat Sanstha Limited, Ahmednagar, is a financial institution which got itself registered with Government/ Co-operative Department in 2001. Record reveals that there are over 1047 members who are having shares. Around 25,820 depositors deposited amount worth Rs.15,37,79,188.17/- That apart, prosecution claims that the said Society (financial institution) had accumulated deposits worth Rs.39,34,24,441.64/-. The main business of the society was to lend loans to the needy. The functioning of the Society was under control and supervision of Board of Directors i.e. at first layer, at second layer there was control of Managing Committee and third layer comprised of managerial and other staff.

28. PW20, a Chartered Accountant, undertook audit, re-audit and noticed discrepancies in the books maintained by the Society and on his further in-depth study, he noticed various irregularities, procedures being violated while granting and sanctioning loans of both the types, i.e. money loan as well as gold loan. PW20 noticed that as many as 32 persons had committed misappropriation in the financial institution to the tune of Rs.13,28,55,667/-. Co-operative department authorized PW20 to lodge complaint and thus crime CriAppln-1657-2024+ seems to have been registered for commission of offence under Sections 177, 409, 417, 420, 465, 467, 468, 471, 120-B of IPC as well as under Section 3 of MPID Act and finally on conclusion of investigation, it seems that as many as 28 were named and chargesheeted for above offences.

29. Prosecution has categorized accused as per their designations i.e. Board of Directors, Managing Committee Members, managerial and administrative staff. On studying the chargesheet, learned trial court noted that amongst above 28 accused, accused nos. 5, 7, 18, 27 and 28 have expired and as such, proceedings stood abetted against them.

Accused no. 15, 16 and 19 were declared as absconding by the investigating machinery, whereas accused nos. 20, 21 and 22 were discharged.

30. On conducting trial, i.e. on appreciating oral and documentary evidence, and on hearing each of the accused to their satisfaction, learned trial judge, vide its judgment dated 10.04.2024, convicted accused as per details given below :

CriAppln-1657-2024+ Accused Name Convicted under Sentence No. Sections 1 Dnyandeo Sabaji Wafare 2 Sujata Dnyandeo Wafare 177 r/w 34 of IPC, RI 2 years and fine 3 Sudhakar Parshuram Thorat Rs.25,000/- each 4 Bhausahab Kushaba Zaware 406 r/w 34 of IPC, RI 3 years and fine 6 Dinkar Babaji Thube Rs.25,000/- each 409 r/w 34 of IPC RI 10 years and fine 8 Raje Hasan Amir Rs.50,000/- each 9 Baban Deoram Zaware RI 7 years and fine 420 r/w 34 of IPC 10 Lahu Sayaji Ghangale Rs.25,000/- each 11 Harishchandra Savleram Londhe 3 of MPID Act RI 6 years and fine 12 Ravindra Vishwanath Shinde Rs.1,00,000/- each 13 Sahebrao Ramchandra @Balasaheb Bhalekar 14 Sanjay Champalal Bora 420 r/w 34 of IPC

RI 7 years and fine Rs.25,000/- each 17 Anup Parekh 23 Sudhakar Gopinath Sumbe 420 r/w 34 of IPC RI 3 years and fine Rs.5,000/- each 24 Gopinath Shankar Sumbe 25 Mahesh Baban Zaware 465, 467 r/w 471 RI 5 years and fine 26 Sangeeta Harishchandra Londhe r/w 34 of IPC Rs.5,000/- each 120B of IPC RI 5 years and fine Rs.5,000/each 1 Dnyandeo Sabaji Wafare 2 Sujata Dnyandeo Wafare 465, 467 r/w 471 Life Imprisonment and r/w 34 of IPC fine Rs.1,00,000/- each 12 Ravindra Vishwanath Shinde 13 Sahebrao Ramchandra 120B of IPC Life Imprisonment and @Balasaheb Bhalekar fine Rs.1,00,000/- each 14 Sanjay Champalal Bora 3 Sudhakar Parshuram Thorat 4 Bhausahab Kushaba Zaware 465, 467 r/w 471 RI 10 years and fine 6 Dinkar Babaji Thube Rs.50,000/- each r/w 34 of IPC 8 Raje Hasan Amir 9 Baban Deoram Zaware 120B of IPC RI 10 Years and fine Rs.50,000/- each 10 Lahu Sayaji Ghangale 11 Harishchandra Savleram Londhe CriAppln-1657-2024+

31. Here, now, in the instant proceedings, convicts i.e. original accused nos. 3, 4, 8, 9, 10, 17, 23, 24,25 have approached this court for relief under Section 389 Cr.P.C.

32. Learned APP very eagerly, with the aid of Advocate on behalf of complainant, placed before this court, a chart which was also supplied to each of the learned counsel appearing before this court, enumerating therein quantum of sentence, amount of fine awarded by learned trial Judge and as such, there is no dispute to that extent. QUANTUM OF SENTENCE AND FINE AWARDED BY TRIAL COURT

33. On visiting the papers, as regards to applicant Sudhakar Parshuram Thorat is concerned, prosecution found him to be arraigned as accused no.3. He was said to be a member of Board of Directors of the Society. According to prosecution, he had committed and indulged in several illegalities, irregularities and misappropriation of huge amounts. He is held guilty for offence under Sections 177, 406, 409, 420, 465, 467, 471 r/w 34 and 120-B of IPC and as well as Section 3 of the MPID Act. The maximum sentence awarded to him is shown to be 10 years along with other sentences and also to pay fine.

34. Applicant Bhausahab Kushaba Zaware arraigned as accused no.4 was also shown as member of Board of Directors and on investigation and

trial, revealed to be guilty of offence under Sections 177, 406, 409, 420, 465, 467, 471 and 120-B r/w 34 of IPC as well as Section 3 of the MPID Act and maximum sentence awarded to him is imprisonment for 10 years and to pay fine.

35. Accused no. 8 Raje Amir also was said to be member of Board of Directors and is revealed to be aparty to the illegalities, irregularities and misappropriation and is held guilt for offence under Sections 177, 406, 409, 420, 465, 467, 471 and 120-B of IPC as well as Section 3 of the MPID Act and maximum sentence awarded to him is imprisonment for 10 years and to pay fine.

36. Accused no.10 Lahuji Sayaji Ghangale was said to be member of Board of Directors and he isalso held guilt for offence under Sections 177, 406, 409, 420, 465, 467, 471 and 120-B of IPC as well as Section 3 of the MPID Act and maximum sentence awarded to him is imprisonment for 10 years and to pay fine.

37. Accused no. 17 Anup Parekh is shown to be a borrower of gold loan by pledging fake metal andhe is held guilty for offence under CriAppln-1657-2024+ Section 420, 465, 467, 471 and 120-B r/w 34 of IPC. His maximum sentence of 5 years and to pay fine.

38. Accused nos. 23 and 24, namely, Sudhakar Sumbe and Gopinath Sumbe are said to be borrowersof loan without surety, security and are said to be defaulters and both are held guilty for offence under Section 420, 465, 467, 471 and 120-B r/w 34 of IPC and maximum sentence awarded is 5 years and to pay fine.

39. Accused no. 9 Baban Zaware and accused no. 25 Mahesh Zaware, father and son were said to bebeneficiaries of loan. Accused no.25 i.e. son of accused no.9 had borrowed loan by circumventing rules and procedure. Accused no. 9 is held guilty for offence punishable under Sections 177, 406, 409, 420, 465, 467, 471 and 120-B r/w 34 of IPC as well as Section 3 of MPID Act and his maximum sentence is of 10 years. Whereas accused no.25 is held guilty for offence under Sections 420, 465, 467, 471 and 120-B r/w 34 of IPC and his maximum sentence is of 5 years and to pay fine.

40. Here, there is no dispute about designation/post held and being impleaded to be accused in the capacity of Board of Directors, managing committee members, managerial and administrative staff.

CriAppln-1657-2024+ CONCLUSION

41. On hearing both the learned senior counsel as well as other respected counsel representing each of the present applicants, the common argument on which thrust is laid is that, firstly, sentence awarded is of short term and in view of settled law, they are entitled for both, relief of suspension of sentence as well as grant of bail. Secondly, there are no immediate prospects of hearing the appeal, and thirdly, they all were on bail during trial.

42. Here, admittedly, Section 389 of Cr.P.C. being pressed into service, before ascertaining the entitlement for suspension of sentence and grant of bail, it would be profitable to deal with and discuss the settled law which appellate courts are to bear in mind while exercising said powers.

43. Above Section 389 Cr.P.C. permits suspension of sentence after conviction and even permits setting convict at liberty during pendency of appeal preferred by him. However, it is fairly settled that such powers are to be exercised only when it is palpably shown that there are fair chances of success in appeal and when appellate court is satisfied about existence of apparent and gross error on the face of record. It is equally true that, at this stage, appellate court cannot meticulously re-appreciate evidence but only on prima facie consideration and satisfaction, if the court feels that conviction may not be sustained while rejudging the case in future, only in such contingency, it is justified to suspend sentence and grant bail.

Going by such precedents, certain factors like gravity of offence, nature of crime, circumstances in which offence has taken place, its impact on individual or on society, are some of the considerations which are expected to be borne in mind while exercising powers under Section 389 of Cr.P.C.

In the case of *Anwari Begum v. Sher Mohammad and Another* (2005) 7 SCC 326, of which recently recourse was also taken by the Hon'ble Apex

Court in the case of Shivani Tyagi v. State of U.P. 2024 LiveLaw (SC) 333, wherein the court laid down certain factors to be looked into while deciding application under Section 389 Cr.P.C.

"i. The nature of the accusations and the severity of punishment in the case of conviction and the nature of supporting evidence.

ii. Reasonable apprehension of tampering witnesses or apprehension of threat to complainant.

CriAppln-1657-2024+ iii. Prima facie sanctification of the court in support of the charge.

There are also series of judicial pronouncements on above propositions and the same could be listed as Rama Narang v. Ramesh Narang and others (1995) 2 SCC 513 ; Rajesh Rajan Yadav alias Pappu Yadav v. CBI (2007) 1 SCC 70 and Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) (2008) 5 SCC 230 wherein scope, object and purport of Section 389 of Cr.P.C. has been distinctly and lucidly discussed.

44. Very recently, the Hon'ble Apex Court in the case of Omprakash Sahni v. Jai Shankar Chaudhary and another (2023) LiveLaw SC 389 has elaborately dealt with the precedent on above provision and referred cases of Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and another (2012) 9 SCC 446; Bhagwan Rama Shinde Gosai and Others v. State of Gujarat (1999) 4 SCC 421; Hasmat [(2004) 6 SCC 175]; Vijay Kumar v. Narendra and Others [(2002) 9 SCC 364]; Atul Tripathi v. State of Uttar Pradesh and Others (2014) 9 SCC 177; Kishori Lal v. Rupa and Others (2004) 7 SCC 638; Ramji Prasad v. Rattan Kumar Jaiswal and Another (2002) 9 SCC 366; Vasant Tukaram Pawar v. State of Maharashtra (2005) 5 SCC 281 and Gomti v. Thakurdas and Others (2007) 11 SCC 160.

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45. Resultantly, the legal proposition that is settled is that, though appellate court has power to suspend sentence and grant bail, such powers are expected to be exercised judiciously and in only such cases in which circumstances and reasons exist to grant such relief. Ultimately, it

all depends on the facts and circumstances of each case and there is no straightjacket formula or absolute rule for grant or refusal.

46. Keeping above legal position and essentials in sight, and on anxiously considering the abovesubmissions, admittedly, here, a finance expert PW20, a Chartered Accountant appointed by Society seems to have been entrusted with the inquiry and on gathering evidence and upon authorization by higher authority of Co-operative Department, offence has been detected and registered which is further investigated and all persons involved are duly chargesheeted. It emerges that scam/fraud is detected in a financial institution registered under the Maharashtra Co-operative Societies Act. It is to be borne in mind that such financial institutions are authorized to raise shares and deposits from common people with the sole purpose of extending loans of various kinds to various needy people.

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47. Here, some applicants are, no doubt, Board of Directors, some are managing committeemembers and some are shown to be borrowers. Irregularities, misappropriations are unearthed to the tune of Rs.13,28,55,667/-. Obviously, the funds are raised from common people who have invested their hard earned money with a feeling of trust and faith. At this stage, it can be for sure observed that it is case of misappropriation and fraud by utter disregard to the rules, regulations and procedures. Huge amounts are said to be siphoned without following procedure. Deposits and shares of various people, which are said to be the backbone of such institution are detected to be misutilized by deviating, circumventing rules and procedure for either personal benefits or for benefits of near and dear ones. There are allegations of mortgaging fake metal, posing it to be real gold. Such allegations are established on thorough trial. Needless to say that the very object and purpose of co-operative movement is attempted to be frustrated by chosen few. Such financial irregularities and financial misconduct consequently brings financial strain on the very institution. It has potential to destabilized the functioning of a institution which stands on the earnings and deposits of common populace.

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48. As expected, this Court has to objectively assess the case to ascertain entitlement of relief. Section 389 Cr.P.C., further as expected, is to be exercised judiciously. As stated above, deeds of few have had reflections on the economic status of the registered co-operative financial institution. Hard earned money and investments of depositors has come in jeopardy. In a way, societal interest is at stake. Keeping such crucial aspects in mind, though some applicants are seeking benefit on the ground of short term sentence, in the considered opinion of this Court, it is not a fit case to extend such relief. Ascertaining the relief in the backdrop of above legal requirements, mere applicants to be on bail during trial is itself not a good ground to continue or grant such relief at appellate stage also.

49. On overall view of submissions of both sides, applicants as well as State, this Court, taking into account the magnanimity and enormity of the fraud, is not inclined to either suspend the sentence or grant bail as prayed. Hence the following order:

ORDER All the applications for suspension of sentence and grant of bail are hereby rejected.

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