

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 6542
of 2024**

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HITESH PRAGJIBHAI KATHROTIYA
Versus
STATE OF GUJARAT

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Appearance:

MR BM MANGUKIYA(437) for the Applicant(s) No. 1
MS BELA A PRAJAPATI(1946) for the Applicant(s) No. 1
MR KARAN HARWANI for MR JAYDEVSINH CHUDASAMA(13128) for the
Respondent(s) No. 1
MR SOHAM JOSHI, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

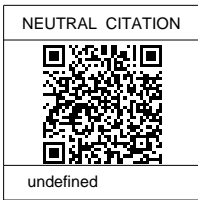
Date : 08/05/2024

CAV ORDER

1. By way of the present anticipatory bail application filed under Section 438 of the Code of Criminal Procedure, 1973, the petitioner has prayed to release him on anticipatory bail in case of his arrest in connection with the FIR registered as Part A C.R.No.11210065240140 registered with Utaran Police Station.

2. Brief facts of the case are as under:-

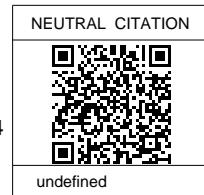
2.1 That Sahayog Urban Cooperative Credit and Consumer Society Limited (hereinafter referred to as "the Society" for short) is a registered cooperative society registered under the provisions of the Gujarat Cooperative Societies Act, 1961 (Act No.10 of 1962) (hereinafter referred to as "the Act" for short). The said society is working in Surat city and the office of the said society



is situated at 405, 4th Floor, ABC/w, Sudama Chowk, Mota Varachha, Surat. The Auditor has classified the said society in audit classification as Class-B. The said Society is a credit cooperative society. Said society obtains deposits from its members and gives loans to its members. The allegations made against the office bearers of the said society are that the society obtains the deposits at higher rate of interest and gives loans to its members and thereby commits losses. The audit of the said society is being carried out by the Auditor appointed by the District Registrar, Cooperative Societies. The audit of the books and accounts of the said society was carried out by the Auditor on January 25, 2019, for the commencement of the work of the said society till March, 2018. The Special report was made by the Auditor. Alongwith the audit report, the balance-sheet was also placed and was examined by the Auditor.

3. The audit of the said society was carried out by the Auditor appointed by the District Registrar, Cooperative Societies, for the period commencing from April 01, 2019 to March 31, 2023. The Auditor has classified the said society in audit classification as Class-B. Copy of the Auditor's report for the period April 01, 2019 to March 31, 2023.

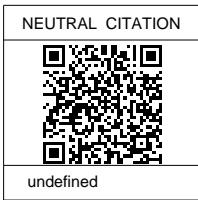
4. The said report has been made by Mr. H.V. Danecha, the Circle Auditor, District Registrar, Cooperative Societies, Surat, on September 02, 2023. Various defects have been pointed out in the said report. No specific allegation has been made that any of the persons named by the Auditor in his special report has committed any offence of defalcated any fund. However, on the



basis of the said special report dated September 02, 2023, the FIR has been lodged.

5. Heard learned advocate Mr. BM Mangukiya for the petitioner, learned advocate Mr.Karan Harwani for learned advocate Mr.Jaydevsinh Chudasama for the complainant and learned APP Mr. Soham Joshi for the State.

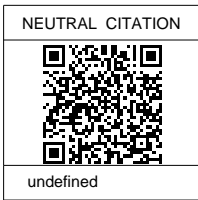
6. Learned advocate Mr. BM Mangukiya for the petitioner would submit that the FIR is politically motivated. He would further submit that the petitioner has not siphoned any amount of the Society nor the petitioner has obtained any financial gain. He would further submit that at nowhere, in the audit report it is stated that the petitioner, who is a part of the Managing Body has defrauded the Society. Learned advocate for the petitioner has taken this Court through the audit report produced on record to submit that the audit reports are silent about the default and defraud of the amount, but once the complainant comes into Managing Body, in order to settle the personal score and took revenge against the present petitioner, he has filed false complaint. Learned advocate for the petitioner would further submit that this is a unique case where the allegations are made to the effect that the present petitioner, who is a part of the Managing Body of the Society has paid more amount of interest to the depositors and as such, has caused loss to the Society. He would further submit that this has been considered as defraud to the Society. He would further submit that decision regarding how much interest to be paid to the depositors had been taken by the Board of Directors, which was followed to



grant interest, but it could not be said to be defraud. He would further submit that the present petitioner has nowhere individually involved with the alleged offence of paying more amount towards interest to the known depositors.

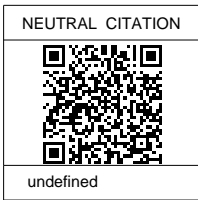
7. Learned advocate Mr. BM Mangukiya for the petitioner would further submit that bald allegations are levelled against the petitioner in the FIR. He would further submit that the allegation of wrongful expenses caused by the petitioner are also levelled, but those are bald and baseless allegations. He would further submit that the petitioner has not taken any single penny from the Society. He would further submit that in fact, if we take the entire FIR as it is, the major part of the alleged loss caused to the Society was happened during the President-ship of the complainant. Therefore, it is submitted that the petitioner has not committed any offence. He would further submit that causing loss to the Society and defrauding the Society are two different and distinct aspect. In the present case, at the most, what could be said that the loss has been caused to the Society and not anything more than it. There is no allegation of defrauding the Society, which could constitute alleged offence.

8. Apart from the above submission, learned advocate Mr. BM Mangukiya for the petitioner would submit that the petitioner is permanent residents of Surat and has deep root in the Society and he is readily available in the investigation and ready and willing to cooperate with the investigation. He would further submit that the petitioner has no antecedent.



9. Upon above submissions, learned advocate Mr. BM Mangukiya requests to allow this petition and grant anticipatory bail to the petitioner.

10. On the other hand, strenuously opposing grant of bail application, learned advocate Mr.Karan Harwani for learned advocate Mr.Jaydevsinh Chudasama for the complainant would submit that specific allegations are levelled against the petitioner for embezzlement of the funds of the Society. He would further submit that it is not a simple case that the petitioner has followed the resolution of Board of Directors to pay more interest to the depositors. He would further submit that in fact, the depositors are known persons of the petitioner accused, it was specifically resolved to give more interest to the depositors and as such, by unique way, the Society has been defrauded. He would further submit that audit, which was taken earlier, clearly indicates that the financial conditions of the Society was weak and yet, ignoring such aspect, the petitioner being part of the Board of Directors and Managing Body, has paid higher interest to the depositors, who are known to them and as such, has embezzled the amount of the Society. He would further submit that the FIR was filed subsequent to the report and direction issued by the Registrar, Cooperative Societies u/s 93 of the Gujarat Cooperative Societies Act, 1961 (in short "the Act"). In view of above submission, he would submit that prima facie case is made out against the petitioner, as the petitioner is involved in commission of the offence and has fabricated the documents, used them as genuine one and therefore, the petitioner may not be granted anticipatory bail. He would further submit that few

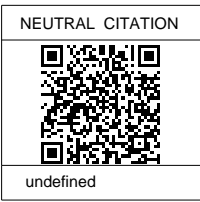


of the accused are granted either regular or anticipatory bail by the Court on the consideration that they were ready and willing to deposit the amount, for which the allegations are levelled against them and in fact, they had already deposited the amount more than the allegation levelled against them and therefore, that consideration cannot be taken as assistance to the case of the petitioner.

11. Upon above submission, learned advocate Mr.Karan Harwani for learned advocate Mr.Jaydevsinh Chudasama for the complainant requests to dismiss this petition.

12. Learned APP joined the arguments canvassed by learned advocate Mr.Karan Harwani for learned advocate Mr.Jaydevsinh Chudasama for the complainant and would submit that huge fraud of Rs.54,22,620/- has been taken place and the present petitioner has played active role in commission of the offence as he was part of Managing Body of the Society. He would further submit that specific allegations are levelled against the petitioner, for which custodial interrogation is required and in view of such position, he requests this Court to dismiss the petition.

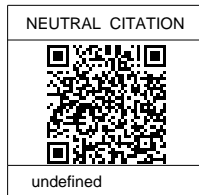
13. Learned advocate Mr. BM Mangukiya while replying to the arguments, would submit that if the FIR is filed pursuant to the audit report by the Registrar, Cooperative Societies, it could be considered as misfeasance and it could never be considered as criminal act. He would further submit that in the present case, the FIR is filed pursuant to the direction made u/s 93 of the Act.



Therefore, it could lead that the action of the petitioner is unintentional and it could not be treated as malfeasance. Therefore, it is submitted that the petitioner may be granted anticipatory bail.

14. Having heard learned advocates appearing for the parties, at the outset, let us record following aspects emerging during investigation:-

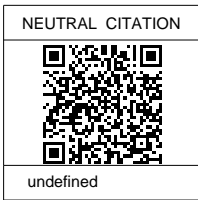
*“That from dated 01/04/2019 to 31/03/2023, for the offence u/s 406, 408, 409, 465, 467, 468, 471, 477(c), 114, 34 of the Indian Penal Code and under Section 148 of the Gujarat Co-operative Societies Act-1961, namely (1) Secretary- **Hiteshbhai Paragjibhai Katharotiya** of Rs. 08,03,757.57/- (2) Managing Director- **Vijaybhai Ranchodbhai Kanani** of Rs.4,68,538.12/- (3) Director- **Vandanaben Veljibhai Kathiriya** of Rs.3,00,436.79/- (4) Director- **Amitkumar Rasikbhai Jiyan** of Rs.2,90,541.61/- (5) Director-**Jalakben Mansukhbhai Vaghasiya** of Rs.3,00,436.79/- (6) Director- **Komalben Deepakbhai Punjabi** of Rs. 27,368.05/- (7) Director- **Krutika Kevinkumar Sachpara** of Rs. 3,58,975.73/- (8) Chairman- **Chiragbhai Rameshbhai Dholariya** of Rs. 2,53,336.94/- (9) Chairman- **Dineshbhai Vallabhbhai Gorasiya** of Rs.2,63,016.95/- (10) Vice Chairman-**Maheshbhai Babubhai Mangukiya** of Rs.1,91,701.13/- (11) Director-**Arvindbhai Laxmanbhai Mangukiya** of Rs.1,68,074.13/- (12) Director- **Veljibhai Rajabhai Kathiriya** of Rs. 1,96,716.51/- (13) Director- **Ashwinbhai Vinubhai Lakhani** of Rs.1,98,174.13/- (14) Director- **Ashwinbhai Labhubhai Bharodiya** of Rs. 1,15,258.19/- (15) Chairman- **Dipakbhai Kalubhai Gabani** of Rs. 2,07,954.94/- (16) Managing Secretary -**Ashokbhai Rajendrabhai Lunagariya** of Rs. 84,165.94/- (17) Director- **Rakeshbhai Tulsibhai Vaghasiya** of Rs. 68,790.94/- (18) Director- **Arvindbhai Jivarajbhai Goti** of Rs. 80,165.94/- (19) Director- **Vishalkumar Sureshbhai Pansuriya** of Rs. 80,165.94/- (20) Director- **SandeepKumar Kantibhai Vaghasiya** of Rs. 68,790.94/- (21) Manager- **Manishaben Veljibhai Kathiriya** of Rs. 8,96,243.33/- (22) **Ashwinbhai Premjibhai Maniya** as fake employee of Rs. 75,000/- (23) though Monthly salary of **Ruchitaben Nileshbhai Kikani** is*



Rs. 7,000/-, by debiting Rs. 32,000/- in her name and regarding helping each other, falsely helping to embezzle the responsible officers of the organization, working against the policy rules and bye-laws of the organization, breaching the trust of the members of the organization, illegally managing the money of the organization, forging signatures of the members embezzled of Rs. 54,22,620.82/- as per the audit report etc.

15. The main objective of Cooperative society is to self help each other by using the resources gathered by the society and do not depend on anyone. The principal object of the cooperative society can be noted at its core. A Cooperative Society is driven by the fundamental goal of promoting self-help and mutual support. Its foundation rests on voluntarism and it embodies the idea that each society member willingly joins without being constrained by social, religious, or political distinctions.

16. It could be noticed that in total 23 persons were part of the Managing Body of the Society. Allegations are to the effect that they have defrauded the Society for the amount of Rs.54,22,620/-. The exact figure of defrauding the Society is also mentioned against each member of the Managing Body. The scam took place between the time period commencing from 1.4.2019 to 31.3.2023. It is alleged that during the above time period, why 23 persons were part and parcel of the Managing Body have made some excessive expenses, wrongful expenses and paid excessive interest to their known depositors and as such has weaken the financial fabric of the Society and thereby, has committed huge loss to the Society. Prima facie action of the present petitioner is alike act of termite. The act of the accused has hollowed the Society from inside. They have eschewed the

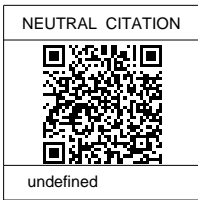


balance of the Society. This is an economic offence and done with cool mind and with clear design. The petitioner who is a part of such Managing Body and who has weakened the very financial fabric of the Society could not be given extraordinary relief of anticipatory bail.

17. In the case of **P. Chidambaram V/s Directorate of Enforcement** reported in **AIR 2019 SC 4198**, the Hon'ble Supreme Court has held as follows:

"The legislative intent behind the introduction of Section 438 CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights – safeguarding the personal liberty of an individual and the societal interest.

Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. It may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Pre-arrest bail is to strike a

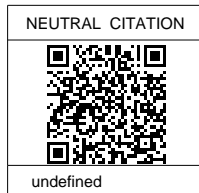


balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In this view, it cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant/applicant under Article 21 of the Constitution of India.

Consequently, power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. Anticipatory bail is to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy".

18. In case of **Nimmagadda Prasad Vs. CBI reported in 2013(7) SCC 466**, the Hon'ble Apex Court has held in para 26 to 28 as under:-

"26. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly,



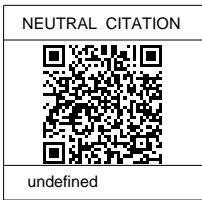
economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat V/s. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-

"5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of 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.."

27. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

28. 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."

19. Ordinarily, arrest is a part of the procedure of the investigation to secure not only the presence of the accused, but several other purposes. Power u/s 438 of the Code is an extraordinary power and the same has to be exercise sparingly in appropriate and fit case. This privilege should be extended



only in exceptional cases. It is a judicial discretion conferred upon the court, and it is to be properly exercised after application of mind as to the nature and gravity of the accusation, possibility of the applicant fleeing from justice and other factors to decide whether it is a fit case for grant of anticipatory bail.

20. Some of accused have been given anticipatory bail or regular bail by the Court on the ground that they on their volition have deposited the amount higher than the allegations of defraud are levelled against them. In this peculiar fact, grant of bail to them would not help the case of the petitioner.

21. For the foregoing reasons, this Court does not find present case fit to exercise discretion to grant extraordinary relief of anticipatory bail.

22. Resultantly, the petition fails and stands dismissed.

SHEKHAR P. BARVE

(J. C. DOSHI,J)