



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.4045 OF 2008

Suresh Badrinarayan Somani,
Age 55 yrs., Occu. Business,
R/o. Adva Bazar, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon.

..Applicant.

VERSUS

1. The State of Maharashtra
Through Secretary, Home
Department, Mantralaya,
Mumbai.
2. The Superintendent of Police,
Jalgaon, Tq. & Dist. Jalgaon.

..Respondents.

Shri.R.R.Mantri, Advocate for applicant.

Shri.N.H.Borade, A.P.P. for respondent No.1 & 2.

CORAM : S.S.SHINDE, J.
DATED : 4th FEBRUARY, 2009.

JUDGMENT

. Rule. Heard forthwith with the consent of parties.

2. This application is filed for anticipatory bail in connection with Crime No. 216/2008 registered at Chalisgaon Police Station for the offences punishable under sections 406, 408, 409, 420, 465, 468, 471, 120-B, 201, 34 of Indian Penal Code.

3. It is the case of the applicant that the applicant and his family members are residing at the address given in the title clause of the application. He has deep roots in the society. He has never involved in any criminal matter except the present one. He has good reputation and he has held high esteem in his area. His arrest and detention will perpetually harm his hard earned reputation and image would be lowered down.

4. That, the Chalisgaon Peoples Co-operative Bank Ltd. is a Co-operative Society, having license to do business of Banking. That, the affairs of the Bank are looked after by its Chairman and the staff including General Manager. That, the Directors are only police makers and are honorary post holders. It is the case of the applicant that the affairs of this Bank are run as per the by-laws framed and duly approved by the concerned Registrar. The by-law No. 36 under which the rights and duties of the Directors are stated, no duty is cast on Directors about the loan and more particularly about documentation etc. All this is the responsibility of the Chief Executive Officer under Rule 40. There is also loan committee

for grant of loan.

. So far as the loan on Gold and Securities are concerned, it was the exclusive province of the General Manager. The General Manager is the custodian of all documents etc.

5. The present applicant stopped attending meetings from 2004 due to his bad health. He resigned from the Directorship from 31.1.2006.

6. The Government Auditor on 19.10.2008 lodged the F.I.R. at Police Station Chalisgaon for the period from 1991-92 to 2005-06 alleging that there were financial irregularities in this Bank. The auditors issued notice to the applicant. The applicant replied to the said notice.

7. According to the applicant, under the rules, the relatives of the Directors are not precluded from taking loan. Any member is entitled to take loan. The father of the applicant was a business man. He was having cloth shop, having extensive turn over of lakhs of rupees and was paying huge income tax. He borrowed the loan. The father of the applicant had

old hypothecated account with the Bank. Similar accounts are held by almost every businessman with this Bank. The Bank concerned, grants loan on the security of stock in trade. Additional security is never taken, except at initial stage. The shop and house of father of the applicant is worth over 80 lakhs and the same is available and in charge of the Bank. The mortgage deed of the said house is placed on record. The father of the applicant has taken loan for furniture. According to the applicant, in all above accounts continuous transaction were going on. Huge amounts were and are being paid. The property is under hypothecation i.e. under charge of Bank. The amount shown as dues is mostly that of interest. Principal amount has been already paid.

8. According to the applicant, even assuming that there is wilful default by the defaulter, that cannot be ground for criminal case that too of relative of debtor. That is purely a civil dispute. The bank has already obtained certificate under section 101 of Maharashtra Co-operative Societies Act, 1960 and has attached sufficient property. There was one time settlement with the Bank and accordingly, the amount has been deposited by the applicant.

9. It is further case of the applicant that the F.I.R. does not disclose any offence at all. The applicant is ready to co-operate with the Investigating Officer, if he is released on bail. The applicant was never summoned to appear before police at any time. The applicant is not keeping good health.

10. The applicant's case is that the Sessions Court did not apply his mind to the facts of this case, therefore, the applicant has prayed in the application that in the event of arrest of the applicant, he shall be directed to be released on bail.

11. The learned counsel appearing for the applicant submits that the applicant was Director of the Chalisgaon Peoples Co-operative Society. He further submits that merely because his father and other relatives have borrowed the loan, that itself cannot be ground for refusing the bail to the applicant. The loan is borrowed by the father and another relative of the applicant with honest intention. There was no intention to defraud while

taking loan. It is further submitted that as one time settlement, amount was paid to the Bank. The Bank has also granted permission to mortgage the property and two sureties are also given. He invited my attention to page No. 144 of the compilation and states that there was offer by the Bank for one time settlement, accordingly, amount of Rs.38,000/- as one time settlement has been deposited by the present applicant. He further invited my attention to page 155 of the compilation and states that there was another offer by the Bank to pay Rs.2,21,000/- as one time settlement, the said amount was also deposited by the applicant. He further submits that the amount of loan was taken on mortgage of the property and by giving the sureties.

12. He further submits that the duty of the Directors is to take policy decisions. Under the by-laws of the Bank, the directors are not responsible for the disbursement of the loan amount. He further submits that the committee was appointed to scrutinize the proposal of the loan and for disbursement of the loan. The said committee was supposed to scrutinize the proposals for the loan and to take the decisions.

He was not the member of the said committee. He further submits that many borrowers have already deposited the loan amount which was disbursed to them. The present case is not the case in which bogus proposals for loan are sanctioned in the name of fictitious persons. All the persons, to whom loan was granted, were genuine. He further invited my attention to the by-laws of the Society and submitted that the duties of the Directors are not to see the disbursement of the loan. According to him, there is nothing in by-laws to show that the Directors are responsible for illegal disbursement of loan. The disbursement of loan or to grant the loan comes under exclusive powers of Manager of the Bank. It is the Manager's duty to complete the formalities and process the proposals for loan and grant the loan. None of the Directors are responsible, since loan committee was formed to scrutinize and to take the decision to grant the loan. It is further submitted that there was a committee appointed from 2001. The Chairman and Vice-Chairman of the Bank were the members of the committee. Managing Director is also the member of the committee. The present applicant is no way concerned with the functions of the said committee.

13. He further submitted that there is no affidavit or efforts by the prosecution to demonstrate before this Court that why they need the applicant in jail. He further submitted that the arrest is not compulsory, no reasons are placed before this Court as to why the applicant should be arrested. He further submitted that in most of the meetings, in which resolutions/decisions are taken for disbursement of loan, the present applicant was not present. He further submits that the present applicant has answered all the queries raised by the auditors. Every year there is audit of the Bank. In the respective years, the auditors have not found any fault with any of the borrowers or Directors. He invited my attention to the reply given by the present applicant to the notice issued by the auditors. He further invited my attention to page 98 to 120 of the compilation and submitted that applicant was absent on various meetings.

14. He further submitted that many sections of the Indian Penal Code are mentioned in the complaint without application of mind. In his submissions, the sections 420, 465, 468 are not attracted at all in the present case. There is no prima facie evidence to

attract those sections in the present case. He further submitted that even the sections 406, 408 or 409 are not attracted in the present case. He further submits that there is no material to show that there was conspiracy among the Directors or between the Directors and borrowers, therefore, section 120-B of I.P.C. is not attracted at all. There is no disappearance of evidence, no dishonest intention, entire F.I.R. is only on the basis that loans are illegally disbursed and therefore, in the respectful submissions of the counsel for the applicant, the applicant deserves to be released on bail.

15. According to the learned counsel for the applicant, at the most, civil liability is attracted and no criminal liability is attracted in the present case.

16. The learned counsel invited my attention to the judgment of the Supreme Court in the case of **Shri.Gurbaksh Singh Sibbia and others Vs. State of Punjab and Sarbajit Singh and another Vs. State of Punjab** reported in (1980) 2 Supreme Court Cases 565 and submitted that at the time of considering the bail application for anticipatory bail, the Court cannot

have third eye to assess the blatantness of corruption at the preliminary stage. He further submitted that even the bail can be granted in the serious offences, if the Court is satisfied at the stage of granting anticipatory bail that such charges appears to be false or groundless. He has further invited my attention to para 26 of the said judgment and submitted that since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of section 438, especially when not imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted for the offence in respect of which he seeks bail. The learned counsel further invited my attention to the judgment of full Bench of the Allahabad High Court in the case of **Smt. Amarawati and another Vs. State of U.P., reported in 2005 CRI.L.J. 755** and submitted that the arrest of the accused is not a "must". The sum and substance of the argument of the learned counsel for the applicant is that the applicant is

innocent, though the loan is borrowed by the father and one another relative of the applicant, sincere efforts have been made to repay the amount of loan. According to him, even the bank has granted permission to mortgage the property and the remaining amount will also be paid as and when the property is sold. The learned counsel submits that though the loan was taken by his relatives, that was in accordance with the rules and regulations of the Bank. He further submitted that there was no question of giving any security or surety since 50% loan are on hypothecation and entire goods in business are hypothecated. In the end, he prayed that the applicant may be released on bail.

17. The learned A.P.P. assisted by the advocate for the Bank submitted that the Special Auditor Class II Co-operative, Chalisgaon, set the criminal law in motion by submitting criminal complaint in Chalisgaon Police Station, which came to be registered on 19.10.2008 as Crime No. 216/2008. The total detected fraud is of Rs. 5,51,23,000/- with interest.

18. The learned A.P.P. submitted that there are 13 F.I.R. came to be registered under sections 406,

408, 409, 420, 465, 468, 471, 120-B r/w. 34 of the Indian Penal Code. According to the learned A.P.P., the total fraud detected is of Rs.20,78,56,325/-. The various crimes are registered i.e. Crime Nos. 216/2008, 248/2008 to 259/2008.

19. It is further submitted by the learned A.P.P. that the Special Auditor Class II found the illegalities, misappropriation, siphoned of money of the bank, violation of rules and regulations of the Maharashtra Co-operative Societies Act, 1960, Banking Regulation Act, 1949 and the notification issued by the R.B.I. from time to time as well as violation of exposure limit of loan and also found the bogus loan cases and disbursement of amount under the garb of loan.

20. According to the learned A.P.P., the arrest is part of the process of the investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There are possibilities and circumstances in which the accused may provide information leading

to discovery of material facts.

21. The learned A.P.P. submitted following points for rejection of bail.

a. There is sufficient material to indicate that financial irregularities, dishonest and fraudulent loan transactions have been taken place in the affairs of the said bank, for which the Board of Directors and certain borrowers, who were in collusion with them are responsible.

b. According to the learned A.P.P., the present applicant was Director of the said bank from 1.4.1991 to 6.9.2006. The involvement of the applicant in the alleged offence is clearly made out.

c. According to the learned A.P.P., the ground of parity does not exist, the other persons are released on bail whose cases are of not that serious nature like present applicant. Considering the nature and gravity of the offence, the applicant is not entitled to be released on anticipatory bail.

d. There is documentary evidence against the

applicant. The overtacts of applicant and others is manifest. The crime in which the applicant is involved, is very serious and involving conspiracy to cheat and defraud public institution in a systematic manner.

e. In the present crime, involving public mischief resulting into serious offences involving huge illegal finance, committed against the bank at large, in this event it may be keep in view the potential threat, which may cause huge financial set back to gullible public i.e. depositors.

f. There was designed plan, prima facie to defraud the depositors and members of the bank. The bank is put to loss of approximately 20 corror due to finical bungling, manipulations and money laundering. The applicant joined hands with other Directors, intentionally, knowingly and deliberately defrauded the bank.

g. The Chairman, members of Board of Directors, Manager in furtherance of their common intention committed breach of trust and they have involved in unlawfully disbursement of amount in corror to their

relatives under the garb of loan. The said so-called loan was not refunded from the borrowers. The loan was given for the purpose of business to the close relatives of some of the Directors or Ex-Directors or Manager. In fact the business for which the loans are given were never in existence. The loan is disbursed by passing the provisions of Co-operative Law, by-laws and Rules and Regulation to their close relatives, well wishers illegally without obtaining security and mortgage or proper security from the borrowers. At the time of obtaining and sanctioning loan forged documents were prepared and on that basis the loans were granted by the Board of Directors.

h. During the course of investigation, prima-facie it appears that there is systematic fraud committed due to which the bank has caused great loss.

i. As per the master circular dated 4th July, 2007, in point No. 6.2 - the wilful default is defined and in point No. 6.3 - diversion and siphoning of funds elaborately narrated. The penal measures are also narrated in 6.6(b) and in point No. 6.9 - a criminal action is directed to be taken against the borrower by the R.B.I. In the circular in

point No. 4.6.3 oral sanction is prohibited.

j. It is further submitted by the learned A.P.P. that the total number of directors till 1998 were 13, till 21.2.2004 the number of directors were 15 and thereafter, 17 directors were there. The Board of Directors was dissolved by the learned D.D.R. on 6.9.2006 as there were illegality. There was 6 committees constituted by the Board of Directors. In each committee near about 5 directors were nominated. Amongst the directors in the 6 committees, each of the Directors were given representation. All Directors were represented in two or three committees. The committees were constituted as valuation committee, supervision committee, scrutiny committee, guarantor committee, loan sub committee, godown committee. In the said committees, all the Directors were nominated. After the report of all committees the loan case has to be put up before the Board of Directors for sanctioning the loan. The Directors, who were represented in the above committees, were again sit as a Board of Directors to sanction the loan. It means each of the Director were acted in dual capacity. All these registers are seized by the I.O. It is also disclosed in the investigation that though these

committees were there, in fact, they have not performed their duties. No loan officer was appointed. Managing Director was also not appointed. All the work to scrutinize, to value the property, to verify the goods etc. was with the Board of Directors.

k. It is further submitted that the earlier auditors have time and again objected and pointed out the bogus loan cases, however, the Board of Directors were in power till 6.9.2006, therefore, they have not filed any criminal case because they could have become accused and that criminal case could be filed against themselves and therefore, knowing and deliberately they avoided and ignored the audit report. The present applicant was also in supervision committee, guarantor committee, godown committee and valuation committee.

l. It is further submitted by learned A.P.P. that as per the resolution dated 13.7.2001 though again the loan sub committee, audit and inspection committee, staff sub committee, recovery sub committee were reconstituted, however, those committees were never come in existence, those committees were remain

on paper only.

m. It is further submitted that there is no possibility to recover the huge amount and therefore, there is every possibility that applicant is likely to abscond and will tamper with the prosecution evidence and witnesses and hence, bail may be rejected.

22. I have given anxious consideration to the rival submissions. Since the present application is filed for seeking anticipatory bail, it may not be in the interest of either side to comment on the merits of the matter since investigation is in progress. Therefore, I proceed to decide this application, mentioning relevant facts confined to prayer in this application.

23. At this juncture, it would be relevant to refer to the observations of the Apex Court while dealing with the applications for anticipatory bail and scope of section 438 of Cr.P.C. Section 438 of Cr.P.C. makes special provision for granting "anticipatory bail" which was introduced in the present Code of 1973. As observed in **Balchand Jain Vs. State of M.P., (1976) 4 S.C.C. 572,**

"anticipatory bail" means a bail in anticipation of arrest. The expression "anticipatory bail" is misnomer inasmuch as it is not as if bail presently granted in anticipation of arrest. Where a competent Court grants "anticipatory bail", it makes an order that in the event of arrest, a person shall be released on bail. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative.

. It is also observed in the said judgment that the the power of granting "anticipatory bail" is extraordinary in character and only in exceptional cases where it appears that a person is falsely implicated or a frivolous case is launched against him or "there are reasonable grounds for holding that a persons accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail", that such power may be exercised. Thus, the power is "unusual in nature" and is entrusted only to the higher echelons of judicial service i.e. a Court of Sessions and a High Court.

24. The Apex Court in the case of **Gurbaksh Singh**

Sibba V. State of Punjab reported in (1980) 2 S.C.C. 565 has made observations regarding scope of section 438 of Cr.P.C. The Supreme Court has observed in para 26 that section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. It is further observed in the same paragraph that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when not imposed by the legislature. In para 31, it is further observed that in regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice, but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the orders of anticipatory bail, he will flee from justice, such an order would

not be made. But, the converse of these propositions is not necessarily true. In fact, there are numerous considerations, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail.

. In para 40 and 41 the Apex Court has further observed that a blanket order i.e. an order which serves as a blanket to cover or to protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had, should not generally be passed. Such a blanket order is bound to cause serious interference with the functions of the police.

. It is further observed in para 36 that if an

application for anticipatory bail is made to the High Court or the Court of Session, it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. It is further observed in para 27, 38 and 39 that the filing of an F.I.R. is not a condition precedent to the exercise of the power under section 438. Anticipatory bail can be granted even after an F.I.R. is filed, so long as the applicant has not been arrested. But the provisions of section 438 cannot be invoked after the arrest of the accused. It is further observed in para 42 that an order of bail can be passed under Section 438(1) without notice to the Public Prosecutor. But notice should issue to the Public Prosecutor or the Government Advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties. The ad-interim order too must conform to the requirements of the section and suitable conditions should be imposed on the applicant even at that stage.

25. In case of **State represented by the C.B.I.**

Vs. **Anil Sharama, (1997) 7 Supreme Court Cases 187,**
the Supreme Court in para 6 has observed thus :-

Custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been cancelled. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible

manner and that those entrusted with the task of disintering offences would not conduct themselves as offenders.

26. The Supreme Court in the case of **Narinderjit Singh Sahni and another V. Union of India and others**, reported in A.I.R. 2001 Supreme Court 3810 has observed that if accused facing a charge under sections 406, 409, 420 and 120-B is ordinarily not entitled to invoke the provisions of section 438 of the Criminal Procedure Code unless it is established that such criminal accusation is not a bona fide one.

27. In the case of **Ram Narain Poply Vs. Central Bureau of Investigation with Pramod Kumar Monocha Vs. Central Bureau of Investigation with Vinayak Narayan Deosthali**, reported in A.I.R. 2003 Supreme Court 2748 in para 382 the Supreme Court has observed thus :-

382. The cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona non granta whose cause may be treated with disdain. The entire community is aggrieved if

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 offences 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, as was aptly stated in State of Gujrat V. Mahanlal Jitamalji Porwal and another, (A.I.R. 1987 1321).

28. While considering the scope of anticipatory bail under section 438 of Criminal Procedure Code in case of **Adri Dharan Das V. State of West Bengal** reported in 2005 A.I.R. S.C.W. 1013, relying on the earlier Constitutional Bench judgment in case of **Balachand Jain V. State of Madhya Prades** reported in

A.I.R. 1977 S.C. 366, the Supreme Court in para 7 has observed thus :-

The power exercisable under Section 438 is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty then power is to be exercised under Section 438. The power being of important nature it is entrusted only to the higher echelons of judicial forums i.e. the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation of non-bailable offence. The object which is sought to be achieved by Section 438 of the Code is that the moment a person is arrested if he has already obtained an order from the Court of Session or High Court, he shall be released immediately on bail without being sent to jail.

29. The Supreme Court in the case of **Himanshu**

Chandravadan Desai & ors. Vs. State of Gujrat
reported in 2006 Cri.L.J. 136 while considering bail
application of the applicants therein has observed
thus :-

Accused a Director of Bank and others involved
in Bank Scam - Siphoned off funds of Bank
worth crores by bogus loans and fictitious
letters of credit in name of their friends,
relatives etc. - Offence is very serious -
Evidence showing their prima facie involvement
in offence - Having regard to huge amounts
involved there is danger of accused
absconding, if released on bail, or attempting
to tamper with evidence by pressurizing
witnesses - Refusal of bail is proper.

30. This Court in the case of **State of Maharashtra
V. Pramod Sahebrao Rohankar**, reported in 2008 ALL
M.R. (Cri.) 3476 has cancelled the anticipatory bail
granted to the applicants therein with observations in
para 12 that :-

12. In the fact situation of the present
case, there is sufficient material available

to infer that the Directors joined hands with Chairman Rajendra Wani while sanctioning the loan cases on a single day, in the four lots mentioned above, which resulted into huge financial loss to the Co-operative Credit Society. Nobody made any attempt to verify whether the borrowers were eligible, whether the proper procedure was followed, whether the sufficient securities were obtained and whether such huge loans were likely to be recovered. Since some of the borrowers are not in existence at all and no security is obtained from many of them, it is obvious that recovery of the loans under the Maharashtra Co-operative Societies Act would be difficult. The learned Additional Sessions judge failed to consider these aspects of the matter. He did not record sufficient reasons and vaguely observed that the respondents were not directly involved in the financial misdeeds. Needless to say, the impugned orders are illegal, perverse and liable to be quashed.

31. In the light of above cited judgments and observations made therein by the Apex Court and this

Court, I proceed to decide the present application for anticipatory bail.

32. The present applicant was the Director of the Bank for the period from 1.4.1991 till 6.9.2006. During the period in which the present applicant was Director, he attended 15 meetings and in the said meetings resolutions were passed to grant loans to various persons which are around 17 in numbers. According to the complainant, as disclosed in the said resolutions, taking decision to grant loan to various persons was in contravention of Bank Regulation, R.B.I. Regulation, By-laws of the concerned Bank, the provisions of Maharashtra State Co-operative Societies Act and other relevant regulations issued from time to time by the Government.

33. In the instant case, it is pertinent to mention that it is not only that the present applicant was party for the resolutions which were passed on various dates from 1.4.1991 till 6.9.2006, but his father namely Badrinarayan Balmukund Somani and his brother Kishor Badrinarayan Somani has also taken loan from the said Bank. There is substance in the contention of the A.P.P. assisted by the learned

counsel for the bank that not only that the applicant's relatives i.e. father and brother have taken huge amount of loan contrary to the permissible limit and contrary to the various regulations, the applicant is vicariously liable for all the bogus loan cases sanctioned during his period. The applicant has not opposed any of the bogus loan cases during the meetings. If the arguments of the learned A.P.P. are carefully perused, the various instances have been cited by the learned A.P.P. to show that how the loans are advanced to concerned persons illegally contrary to the by-laws of the Bank, Regulation of R.B.I., the provisions of Maharashtra Co-operative Societies Act and other relevant directions issued by the Central Government as well as the State Government. It must be stated that the instances which are referred by the A.P.P. in support of the contention of the prosecution that large amounts have been systematically siphoned off and there is misappropriation to the tune of more than twenty seven crores, the Bank is put to loss by hatching systematic plan/conspiracy by the Directors and borrowers and as a result, the thousands of depositors who have put more than thirty seven crores in the bank are not getting their deposits back due to non recovery of

amount of Rs. twenty seven crores loan disbursed by the bank.

34. In the case of present applicant, his father has borrowed the loan of Rs. 20 lakhs and another loan of Rs. 6 lakhs for purchasing vehicle. The total amount which was borrowed by the father of the present applicant was Rs.26 lakhs. According to the Bank, the said amount is not returned by the father of the present applicant. So far hypothecation loan is concerned, now the total amount due to be recovered from the father of the applicant is Rs.61,97,687/-. So far the loan which was taken for vehicle is concerned, the total due amount due to be recovered is Rs.12,65,697/-. Now, it is admitted position that the father of the applicant is died. The brother of the applicant Kishor Somani has borrowed Rs.10 lakhs as hypothecation loan and the amount is not repaid and as a result, now the total outstanding loan amount towards the said Kishor is Rs.26,45,935/-. The present case is not only the case in which the present applicant as a member of Board of Directors in its meetings participated and signed the proceedings in which decisions were taken to disburse the loan amount illegally, contrary to the by-laws of the Bank,

Regulation of R.B.I. and other provisions of Maharashtra Co-operative Societies Act and instructions from time to time from Central or State Government, but, the brother and father of the present applicant have been granted the loan contrary to the permissible limit of the Bank and contrary to by-laws of the Society. It would not have been possible for the father of the applicant and brother of the applicant to borrow such huge loans and further not to repay the same, in absence of position of the present applicant as a Director during the period from 1991 till 2006.

35. Since the application is only for the anticipatory bail though various contentions are raised by the applicant and the learned A.P.P. in his detail arguments in reply to the application, it would not be appropriate to comment in detail about the merits of the case since the investigation is in progress. Suffice to say that if the F.I.R./ complaint is perused carefully, prima facie conclusion can be drawn that there was systematic plan hatched by the majority of the Directors to grant loan amounts illegally to various borrowers who are either relatives of the Directors or the Directors have some

interest shared with them, causing heavy loss to the Bank and depositors of the Bank.

36. In the case of present applicant, his father Badrinarayan Balmukund Somani whose case is shown at item No. 14 in complaint shows that on 27.2.2001 the amount of Rs. 20 lakhs has been borrowed without mortgage / hypothecation. On 23.11.1998 Rs. 6 lakhs have been borrowed by him. According to the contents of the F.I.R., the said amount is borrowed and allowed to be borrowed in the self-interest of the father of the applicant and there is systematic misappropriation of the said amount. There are no any documents showing the profit and loss account, income taxes, stock, the R.C. book of the vehicle or the evidence of the purchase of the vehicle placed on record by Lonee. Further, it is stated in the complaint that there is violation of circular issued by the R.B.I. The applicant has misused his powers by granting loan to the father with conspiracy with the then Manager of the Bank by systematic plan to misappropriate the amount by cheating the Bank. The said amount has been used for the benefit of the applicant. The said amount is not repaid and on 31st March, 2008, the said amount with interest comes to Rs.61,96,686/-. It is

further stated that by 31st March, 2008 the amount of Rs.12,65,687/- was supposed to be paid towards vehicle loan.

37. In complaint, item No. 15 is shows about the loan of Kishore Badrinarayan Somani. It is stated that said Kishore Somani is brother of the applicant. On 27th March, 2000 loan of Rs. 10 lakhs was given to him without mortgage. The said loan amount was obtained for own benefit and the same had been misappropriated. No necessary documents, required to be submitted for obtaining loan, has been submitted. There is violation of R.B.I. guidelines. There is systematic plan and conspiracy to siphoned off the Bank amount in systematic manner for the benefit of the applicant and his relatives.

38. Apart from the specific allegations against the present applicant as disclosed in the complaint as Director, the applicant is a signatory to the various resolutions passed from time to time by which there was disbursement of loan amount to various persons contrary to the by-laws of the society, guidelines of R.B.I. and various rules and provisions of Maharashtra Co-operative Societies Act. It can not be

forgotten that thousands of depositors have deposited more than Rs.37 crore in the said Bank and total loan on the date of filing the complaint was to be recovered from the borrowers to the extent of around Rs.28 Crores. If the contents of the complaint and other documents which are made available, are perused carefully, same would demonstrate that loans have been sanctioned by the Society in utter disregard to the by-laws of the society, inasmuch as the loans have been granted. The loans have been sanctioned in excess of permissible limit under the by-laws. It can also be seen that the loans have been sanctioned without obtaining requisite security. It could also be seen from the record that loans have been sanctioned to close relatives of the Directors including relatives of some of the nominated directors in huge amount. It can also be seen that loans have been sanctioned in utter disregard to the by-laws of the society, in as much as, the loans have been granted to persons who are not residing within the jurisdiction of the area of operation of the said society. It could be seen that there is a prima facie evidence of involvement of the present applicant in granting loans in huge amounts to various persons including relatives of the some of the Directors. As

such prima facie involvement of the present applicant is seen from the material collected by the Investigating agency.

39. In my considered view if the judgments of the Apex Court and this Court referred hereinabove are considered in the light of facts of this case, the present application deserves to be rejected. In my considered view, the case in hand is clearly covered by the law laid down by the Apex Court in the case of **Himanshu Desai V. State of Gujarat, reported in 2006 Cri.L.J. 136.**

40. It cannot be forgotten that thousands of depositors have deposited their hard earned money in the Bank which are above Rs. 37 crore as stated by the A.P.P. in his reply. The society has been duped by the Directors of the society without having any regard to the security of the society or the interest of the society. The applicant was Director for a long time and he is influential person, therefore, the possibility of influencing the witnesses or tampering with the evidence cannot be ruled out. In that view of the matter, no case for grant of anticipatory bail is made out.

41. As stated earlier in para 27 the observations of the Supreme Court in para 382 in the case of **Ram Narain Poply V. Central Bureau of Investigation** reported in A.I.R. 2003 Supreme Court 2748, the cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona non granta whose cause may be treated with disdain. The entire community is aggrieved if 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 offences 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.

42. For all these reasons stated hereinabove, in

my considered view, the application deserves to be rejected and accordingly same is rejected. Rule discharged.

[S.S.SHINDE, J.]

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