THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

HON'BLE SHRI JUSTICE RAJENDRA KUMAR SRIVASTAVA

M.Cr.C No. 54662/2019

ABHAY KUMAR OJHA

VS.

STATE OF M.P.

Shri Manish Datt, learned senior counsel with T.P. Jaiswal learned counsel for the applicant.

Shri Devendra Kumar Gangrade, learned G.A. for the respondent/State.

Shri Anil Lal and Shri Rahul Deshmukh, learned counsels for the objector.

O R D E R
(02.06.2020)

The petitioner has filed some documents on 22.05.2020, the same are taken on record.

2. This is first bail application filed on behalf of the applicant under Section 439 of the Cr.P.C.

3. The petitioner-accused is in custody since 16.12.2019 in connection with Crime No.817/2019, registered at Police Station Bagsewaniya District Bhopal (MP), for the offence punishable under Sections 420, 406 read with Section 34 of the IPC.

4. As per the case of prosecution, an official letter dated 15.12.2019 was given by Rajeev Jain, Cooperative Inspector, to the SHO, P.S. Bagsevania in respect of registering a First Information Report ("**FIR**") against Ajay Pathak, Chairman, Board of Directors of Kamdhenu Grih Nirman Sahakari Sanstha Maryadit, Bhopal ("**the**

Society"), Abhay Kumar Ojha, Manager and Shri Brijesh Kumar Shukla, builders. It was stated in letter dated 15.12.19 that the Society was registered on 07.08.1982 which main objective was to provide developed plots to its members. Further, on 07.05.2012, elections of the Society were concluded and elected board of directors comprised of Ajay Kumar Pathak–Chairman, P.K. Nandy–Vice Chairman and direcorts who are Rahul Singh, Naval Singh, Atul Sareen, Anil Gour, Javed Akhtar, M.Pathak, Satish Prajapati, Girja Bai and Brinda Saini. Abhay Kumar Ojha was appointed as Manager by the Board. Further, the Chief Secretary has issued a letter dated 11.8.17 in accordance with order dated 3.11.16 and 10.01.17 passed by this Court in W.P. No. 8209/16 and W.P. No. 801/16, respectivaly. In the point no. 1 of said letter, it was found that Deputy Commissioner, Cooperatives did not have powers for issuing directions for registry of plots and letter issued by him was only of administrative character. In this regard the Order was required to be issued in accordance with "Madhya Pradesh Co-operative Societies Act, 1960 ("**Co-operative Societies Act**")" which was not done by the Deputy Commissioner, Cooperatives. Further, in point no.3 of said letter, it was found that there was no order of competent court for accepting membership and adding 13 persons on the basis of administrative letter dated 28.11.11 is not proper in view of section 19 of the Co-operative Societies Act. From point no. 14 to 16 of the letter dated 11.8.17, by not conducting audit of the Society for the year 2011-12, there is violation of sections 72 and 74 of the Co-operative Societies Act and in view of the same, show cause notice dated 19.6.17 has been issued to the Chairman,

Vice-Chairman and Directors of the Society. In point no.22 of the letter, it was found that the price accepted in respect of plots allotted to Yashoda Education and Social Society was not in accordance with guidelines issued by the Collector.

5. It is further the case of the prosecution that letter dated 28.9.17 written by one Aravind Sharma to the Chief Secretary discloses serious financial irregularities in the Society. Information in respect of sale of 61 plots between 07.05.2012 and 02.03.2017 through conspiracy amongst Chairman, Vice-Chairman, Board of Directors and Manager Abhay Kumar Ojha was highlighted in a complaint made by Anil Goud. As per letter dated 28.10.16 written by Deputy Registrar to the Deputy Commissioner, a total of 54 plot sale deeds were registered during period between March, 2012 and March, 2015. Further, aforesaid 61 plots were sold for price less than Collector approved rates by inducting new members and by acting contrary to the principle of seniority and most of the price received was not deposited in the account of the Society. It is further the allegation that it was necessary to deposit such amount in the account of the society and Brijesh Shukla had misappropriated amount by withdrawing those amounts which were deposited in the bank account and those amount, which were not deposited in the bank account, were misappropriated by accepting the same in cash.

6. It is further the case of the prosecution that by order dated 25.4.18 of the Deputy Registrar, Co-operative Societies, offences were found to be proved under section 76(2) of the Co-operative Societies Act against the members of the Society. Further,

despite best efforts of the department, audit of the Society is pending for the year 2011-12. It is further the allegation that record in respect of registries done during the tenure of the Board of Directors, membership register, proceedings register, cash book and other documents have either been hidden or have been destroyed so that irregularities and misappropriation done during its tenure cannot be brought forward. It is further the allegation that from perusal of the statements of bank account of the Society reveals that amounts have been transferred to different persons on different dates and no proper record has been maintained in this respect. In accordance with chart presented by Anil Goud, an amount of Rs. 1,92,24,199was found to have been transferred to different persons and in the absence of verification, the same is illegal and amounts to misappropriation. Further, despite the stay order of Joint Registrar, Co-operative Societies, an amount has been transferred to bank a/c no. 651005042012 belonging to Yashoda Builders (proprietor Brijesh Shukla) on different dates and the same amount has been misappropriated through conspiracy.

7. It is further the case of the prosecution that Chairman Shri Ajay Pathak, Shri Abhay Ojha and Shri Brijesh Shukla misappropriated amount by illegally selling 61 plots and not depositing amount in respect of the same with the Society. Further, amount deposited by 115 members have been returned and they have also been denied benefit of plot allotment. It is further the allegation that fact regarding illegal selling of plots was hidden by not uploading information, including membership list, seniority list,

financial condition etc. on E-cooperative portal. On the basis of above allegations, FIR in respect of Crime No. 817/2019 was registered against the accused persons.

8. Learned Counsel for the applicant submits that applicant/accused was appointed as a Manager of the society, so it was the duty of the applicant/accused only to apply the order of the Board of Society. He further submits that he is an innocent person and he has been made as an accused in the case on the basis of incorrect facts. The allegations made against him are baseless. It is further contended that based on same facts and allegations, another FIR has already been registered on 29.9.15 as Crime No. 32/15 in respect of offences under Sections 409, 420, 468, 471 and 120-B of the IPC and under section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 against the accused persons. It is submitted that against the aforesaid FIR, one Aravnid Sharm had filed petition bearing W.P. 8209/16 before this Court. The said writ petition was disposed off by this court vide order dated 3.11.16 with direction to the Principal Secretary to the state of M.P. to pass speaking order on the representations submitted by the petitioner. In compliance of the said order, the Principal Secretary passed order 11.8.17 and representation 20.3.17 was disposed off. On the basis of letter dated 15.12.2019, sent by the Complainant Rajeev Jain, P.S. Bagsevania District Bhopal has wrongly registered the offence against the Applicant/accused and other co-accused persons without any preliminary inquiry whereas fact of registration of offence by EOW, Bhopal ought to have been taken into consideration before lodging

the FIR. Applicant/accused was Director was Kamdhenu Society and he should not be related to any offence. It is further contended that before Madhya Pradesh Rajya Sahakari Adhikaran, Bhopal, dispute relating to the present fact is pending and if any irregularity has been committed, then there are provisions of recovery under the Co-operative Societies Act. He also submits several notices were issued to Objector Ajana Bhatt seeking information regarding her plot allotment and her membership of the society; but she failed to produce relevant documents in this regard. It is further contended that since records were not received from previous Board of Directions, paper publications were made regarding plots, which were found to be vacant; however, no response was received. It is further contended that there is no financial irregularity or misappropriation which has been done by the Applicant/accused. He further submits that the Applicant/accused is in jail since 16.12.19 and charge-sheet has been filed and conclusion of trial will take time. Further, there is not further requirement of custodial interrogation. Apart from that the applicant/accused is suffering from diabetes and if he does not release on bail, his health would suffer adversely.

9. Learned Government Advocate for the State opposes the present bail application. He contends that the present crime is of serious nature and involves misappropriation of a large amount of money. He further submits that the Applicant/accused is actively involved in the present application and prays for rejection of the present bail application.

10. Learned Counsel for the Objector (M.L. Goud) opposes the present application mainly on the ground that the present case is an example of organized crime against society. The Applicant/accused is actively involved in the present crime with other co-accused persons and they have misappropriated crores of rupees of the Society by selling plots to non-members and deprived old members of the benefit.

11. Learned Counsel for the Objector (Ajana Bhatt) submits that since the FIR registered by EOW is different and name of the Applicant/accused is not present in it and as such, the Applicant/accused cannot take benefit of the said fact. He further submits that pursuant to the directions of this Hon'ble in writ petition filed by one of the members of the Society, Chief Secretary has conducted detailed inquiry and came to conclusion that the Applicant/accused and other persons committed financial irregularities. He further submits that the Objector was one of the eligible members but no plot was allotted to her despite the fact that she had deposited the amount. He further submits that perusal of the FIR clearly indicates active role of the Applicant/accused.

12. Considering the contentions of all the parties and perused the record.

13. On perusal of the record, it indicates that the FIR has already been registered by the EOW in respect of Crime No. 32/15 on the basis of allegations as that of present Crime No. 817/19, registered at P.S. Bag Sevaniya. The allegations are found similar. Further, even the report of the Chief Secretary dated 11.8.17, it also

reflected that dispute in respect of facts to the present case is pending before “Madhya Pradesh Rajya Sahakari Adhikaran, Bhopal”. There is no material which shows that any amount is deposited in the account of applicant/accused or applicant/accused received any amount from any person. So far as the contention of Objector (Anjana Bhatt) is concerned, it appears that several notices were issued regarding her membership but proper response was not given by her. It is also evident from the documents produced by the applicant/accused that co-accused-Ajay Pathak informed the concerned authority regarding non receiving of record from the previous Board of Directors, hence, paper publications were made regarding vacant plots, however, no response was received.

14. Considering the aforesaid circumstances as well as the fact that applicant/accused is in jail since 16.12.2019 and charge sheet has already been filed. Co-accused are absconding, therefore, trial will take time for final disposal. This is not a proper case in which applicant/accused should be kept in jail during the trial. Therefore, without commenting on merits of the case, the first application for bail under Section 439 of the Code of Criminal Procedure filed on behalf of petitioner is **allowed.**

15. It is directed that the **applicant-Abhay Kumar Ojha** shall be released on bail on his furnishing a personal bond in the sum of Rs. **5,00,000/- (Rupees Five Lakh Only)** with two solvent sureties of the amount of **Rs. 2,50,000/-** each to the satisfaction of the concerned trial Court for his appearance before it on the dates given

by the concerned Court. This order will remain operative subject to compliance of the following conditions by the applicant:-

1. The applicant will comply with all the terms and conditions of the bond executed by him;
2. The applicant will cooperate in the trial;
3 . The applicant will not indulge himself in extending inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or to the Police Officer, as the case may be;
4. The applicant shall not commit an offence similar to the offence of which him is accused;
5. The applicant will not seek unnecessary adjournments during the trial; and
6. The applicant will not leave India without previous permission of the trial Court.

16. Further, in view of the outbreak of pandemic Covid-19 , the applicant shall also comply with the rules and norms like social distancing and others. In view of the terms of order passed by the Hon'ble Supreme Court in **suo moto W.P. No. 1/2020**, it would be appropriate to issue the following direction to the jail authority also:-

1. The Jail Authority shall ensure the medical examination of the applicant by the jail doctor before his release.
2. The applicant shall not be released if he is suffering from 'Corona Virus disease'. For this purpose, appropriate tests will be carried out.
3. If it is found that the applicant is suffering from 'Corona Virus disease', necessary steps will be taken by the concerned authority by placing him in appropriate quarantine facility.

17. C.C. as per rules.

(Rajendra Kumar Srivastava)
Judge

L.R.

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