IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 ANTICIPATORY BAIL APPLICATION NO.1330 OF 2018

1. Bhausaheb Baban Dherange
   Age: 60 years, Occu. Agri.
2. Haushiram Anaji Dherange
   Age: 60 years, Occu. Agri.
   R/o. As above.
3. Babasaheb Ananda Talekar
   Age: 50 years, Occu. Agri.
4. Ramdas Lahanu Dherange
   Age: 58 years, Occu. Agri.
5. Madhukar Bhawaka Walunj
   Age: 55 years, Occu. Agri.
6. Harishchandra Lahanu Dherange
   Age: 70 years, Occu. Agri.
7. Gangadhar Bhawaka Aglawe
   Age: 60 years, Occu. Agri.
8. Vithal Rodiba Walunj
   Age: 60 years, Occu. Agri.
9. Kailas Pandharinath Wakchaure
   Age: 60 years, Occu. Agri.
10. Dattatray Raghunath Walunj
    Age: 38 years, Occu. Agri.
11. Ganpat Dhondiba Dherange
    Age: 62 years, Occu. Agri.
12. Laxman Anna Walunj
    Age: 30 years, Occu. Agri.
13. Rahul Goraksh Wakchaure
    Age: 30 years, Occu. Agri.
14. Mrs. Suman Karbhari Dherange
    Age: 58 years, Occu. Agri.
15. Mrs. Manisha Ramnath Chachan
    Age: 38 years, Occu. Agri.

All R/o. Khanderaiwadi,
Post. Pimpagaon Depa,
Tq. Sangamner, Dist. Ahmednagar. ... Applicants.

VERSUS

The State of Maharashtra. ... Respondent.

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Mr. Satej S. Jadhav, Advocate for the Applicants.
Mr. D.R. Kale, APP for Respondent-State.

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CORAM : V.L. ACHLIYA, J.

DATED : 17th DECEMBER, 2018

PER COURT:-

1. The applicants apprehending arrest in connection with offences U/sec. 409, 418, 420, 468, 471 r/w. 34 of IPC registered vide Crime No.I-159/2018 with Ghargaon Police Station, Dist. Ahmednagar, preferred this application seeking anticipatory bail.

2. Heard the learned counsel for the applicants and the learned APP for the Respondent-State. Perused the F.I.R. and the order passed by the Additional Sessions Judge, Sangamner, rejecting the application seeking anticipatory bail filed by applicants.

3. In brief, it is the contention of the learned counsel for the applicants that the applicants are innocent. They have not committed any act of cheating, forgery, fabrication and misappropriation of amount as alleged in the F.I.R. By referring the allegations made in the complaint lodged at the instance of Shri Vikram Waman Ghule, a certified auditor, cooperative societies, the learned counsel submits that the report of the auditor itself spell out that no amount misappropriated by the

present applicants. It is submitted that as per the report of the auditor, which form the basis of filing of police complaint against the applicants it is mentioned that the Credit Cooperative Society which the applicants were Directors, sustained the loss to the tune of Rs.39,31,331.25 Ps. during the period of 2012-2018 due to certain lapses on their part. For that purpose, the auditor has held the Chairman of Society responsible to indemnify to the extent of 80% of said amount. The present applicants are held responsible to pay for losses to the extent of 20% of the said amount of loss. The liability of the Chairman has been worked out to Rs.31,45,065.25 Ps. Whereas, the liability of the present applicants is worked out to the extent of 20% of the said amount, which according to the learned counsel for the applicants works out approximately Rs.8 Lakhs. Out of 16 Directors, except one of the Director all the director have deposited the amount as per notice given by auditor. It is submitted that pursuant to the notice dated 05.10.2018 (Exhibit 'A) issued by the auditor, each of the present applicants have deposited Rs.49,200/-. It is further submitted that pursuant to the statement made by the applicants before this Court on 10.12.2018, each of the applicants have deposited Rs.51,000/- without prejudice to their rights and contentions that they have not committed any offence and not liable to pay any amount as per assessment made by auditor-informant. It is submitted that the applicants are made accused only for the reason that during the period referred in the audit report, the applicants were members of the Board of Directors of *Raosaheb Dada Walunj Gramin Bigarsheti* Cooperative Credit Society. It is submitted that the applicants are innocent. They have no past record of indulging into criminal activity. They are agriculturists by profession. The act of misappropriation of the amount is mainly attributed to the Manager of the Credit Cooperative Society, who is a absconding. The applicants have deep roots in the society. In case, the applicants are not protected, there is every likelihood that they may be arrested, humiliated and harassed for no offence committed on their part. Learned counsel for the applicants submits that the applicants are ready to cooperate in conduct of in investigation and recovery of money due to society.

4. On the other hand, the learned APP opposed the application with contention that there is *prima facie* case to connect the applicants with the commission of offence. By referring the allegations made in the F.I.R., the learned APP submits that being the members of the Board of Directors of the society, the applicants were duty bound to supervise the financial affairs of the society. Due to failure on the part of applicants to discharge their statutory obligations, the said Credit Cooperative Society has sustained huge loss. It is submitted that the role of the applicants in misappropriation of amount of Credit Cooperative Socieity requires to be investigated, and therefore the custodial interrogation of the applicants is necessary.

5. In order to appreciate the submissions advanced, I have perused the F.I.R. lodged by the certified auditor, who conducted the audit of the said Credit Cooperative Society for the period of 01.04.2017 to 31.03.2018. So also perused the notice dated 05.10.2018 issued by the auditor to applicants fixing the liability of the members of Board of Directors of said Credit Cooperative Society as well as the Chairman of the said Credit Cooperative Society. Perusal of the F.I.R. reveals that during the conduct of audit, the auditor has noticed that some of the amount, which

was received towards fixed deposit as well as towards the repayment of loan in the form of cash, the Manager of the said Credit Cooperative Society has not credited such amount and misappropriated the same. It was found that the amount to the tune of Rs.70,72,222.25 Ps. was misappropriated by Shri Vishwanath Umaji Kachre, the Manager of the said Credit Cooperative Society. The amount of Rs.39,31,331.25 Ps. has shown as an amount liable to be recovered from Chairman and Board of Directors towards loss caused to society till 31.03.2018. The amount of Rs.1,53,268/- shown as interest over the amount shown in hand, which was not credited in the account of said Credit Cooperative Society. The amount of Rs.19,74,040/- is shown to be bogus withdrawal made from the savings bank. If we consider the role attributed to the present applicants in commission of offence, then it confines to the loss sustained by the said Credit Cooperative Society to the tune of Rs.39,31,331.25 Ps.. Out of said amount, the Chairman has been held responsible for the amount to the tune of Rs.31,40,819/-. The liability of the present applicants has been worked out to 20% of said amount of Rs.39,31,331.25 Ps i.e. loss sustained by the said Credit Cooperative Society. The applicants have deposited the amount double the amount for which they are held liable by the auditor. There are no specific act attributed to the applicants as to act of of cheating, forgery, fabrication and misappropriation of amount by the present applicants. The act of cheating, forgery and misappropriation of amount are basically made against the Manager of Society, who is absconding.

6. Thus, considering the overall facts of the case, the nature of allegations made against the applicants, no specific role

attributed to the applicants in commission of offence, the conduct of applicant to deposit the amount, which is more than the liability fixed by the auditor, the character, antecedents and occupation of the applicants, I am of the view the applicants deserves to be protected by exercising powers U/sec. 438 of Cr.P.C. In the facts and circumstances of the case, the possibility cannot be ruled out that the applicants may be arrested, humiliated and harassed for no offence committed on their part. In the facts and circumstances of the case, and more particularly the deposit of amount, the custodial interrogation of the applicants is not required. So also, the release of applicants on bail would not affect the on going investigation. I am therefore inclined to allow the application.

7. It is clarified that the deposit of amount made by the applicants pursuant to the orders of the auditor as well as, as per the voluntary statement made before this Court shall not be treated as an act of admission of guilt by applicants. Since the applicants have deposited the amount without prejudice to their rights and contentions and defence taken in the case, in case, if any surplus amount is left out after satisfying the claims of investors and creditors, the applicants may claim the surplus amount towards the amount deposited by them.

8. Learned counsel for the applicants, on instructions from the applicants submits that the applicants have no objection to transfer the amount deposited by them in this Court to *Raosaheb Dada Walunj Gramin Bigarsheti* Cooperative Credit Society so as to utilized the same for payment of money to investors/creditors of said Society.

9. Hence, the following order:-

ORDER

[i] The application is allowed.

[ii] In the event of arrest of the applicant nos. 1 to 15 in connection with offences U/sec. 409, 418, 420, 468, 471 r/w. 34 of IPC registered vide Crime No.I-159/2018 with Ghargaon Police Station, Dist. Ahmednagar, they be released on furnishing bail in the sum of Rs.10,000/- each with one surety in the like amount on the following conditions:-

[a] The applicants shall appear before the Investigation Officer of economic offences wing from 19.12.2018 to 21.12.2018 in between 11.00 a.m. to 2.00 p.m. and co-operate in investigation.

[b] On and after 22.12.2018, the applicants shall appear before the Investigating Officer economic offences wing as and when directed by the Investigating Officer.

[c] The applicants shall not indulge into the act amounting to pressurizing the prosecution witnesses as well as to tamper with the evidence of the prosecution.

[d] The applicants shall extend their full cooperation in recovery of dues of the *Raosaheb Dada Walunj Gramin Bigarsheti* Cooperative Credit Society.

[e] Liberty granted to *Raosaheb Dada Walunj Gramin Bigarsheti* Cooperative Credit Society to apply for

transfer of the amount deposited by applicants to the Cooperative Credit Society by submitting the detail scheme of distribution of amount to the investors, who are legally entitled to receive the amount.

[f] Needless to observe that the amount deposited by the applicants with the Cooperative Credit Society as well as this Court shall not be used except for paying the amount on pro data basis to the persons, who are legally entitled to receive the amount invested in the said Cooperative Credit Society.

[g] In the event of breach of any of the conditions of bail, the bail granted to the applicants liable to be cancelled.

10. The application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

Sudhir Rane