

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1438 OF 2015

[Sau. Nirmala Sudhir More and others Vs The State of Maharashtra and anr.]

AND

CRIMINAL APPLICATION NO. 1431 OF 2015

[Anil s/o Birdichand Gandhi vs The State of Maharashtra]

Office Notes, Office  
Memoranda of Coram,  
appearances, Court's  
orders or  
directions and  
Registrar's orders

Court's or Judge's orders

Shri V.D.Hon, Senior advocate and  
Shri R.A.Tambe, advocate for applicants  
Smt. V.A.Shinde, A.P.P. for respondent/State

.....

**CORAM : V.M.DESHPANDE, J.**

**DATED : 27<sup>th</sup> April, 2015**

**PER COURT :-**

- 1] These two applications can conveniently be disposed of by this common order, since the applicants in both the applications are apprehending their arrest in connection with Crime No. 193 of 2014, registered at Parner police station, District Ahmednagar, for the offences punishable under Sections 120B, 406, 408, 420, 467, 468, 470, 471 r/w 34 of the Indian Penal Code.
- 2] I have heard Shri V.D.Hon, learned Senior counsel and Shri R.A.Tambe, learned counsel for the applicants in the applications.
- 3] Both these applications are opposed by the learned Additional Public Prosecutor Smt. V.A.Shinde.
- 4] In Ahmednagar District, at two different places, two different Non-Agricultural Cooperative Societies were functioning. One is Vasant Dada Rural Non-Agricultural Cooperative Society Limited at Takali Dhokeshwar of Parner

Tehsil, District Ahmednagar (for short, "Vasant Dada Cooperative Society") and another is Shri Vardhman Rural Non-Agricultural Cooperative Societies Limited Wakadi, Taluka Rahata, District Ahmednagar (for short, "Vardhman Cooperative Society").

The present applicants are Ex-Managing Directors of Vasant Dada Cooperative Society. A proposal was submitted by Vasant Dada Cooperative Society to Vardhman Cooperative Society about its merger with Vardhman Cooperative Society. In order to verify the viability of the said proposal, five men committee was appointed by Vardhman Cooperative Society to go into the said proposal and to conduct the audit of Vasant Dada Cooperative Society. The said committee consists of Shri P.V.Gaikwad, the internal auditor of Vardhman Cooperative Society; whereas the other member was Shri L.K.Thorat, a statutory auditor of Vardhman Cooperative Society. Apart from these two experts in accountings, three other members were also in the said committee. The auditors thoroughly audited the accounts of Vasant Dada Cooperative Society. The audit period was 1.4.2012 to 31.1.2013. After the detailed audit, five men committee constituted by Vardhman Cooperative Society submitted its report to the Managing Committee of Vardhman Cooperative Society, whereby it was pointed out that the proposal submitted by Vasant Dada Cooperative Society for its merger with Vardhman Cooperative Society is viable.

5] The proceedings of merger were initiated before the District Deputy Registrar, Cooperative Societies, Ahmednagar. The District Deputy Registrar, Cooperative Societies, Ahmednagar exercised his power under Section 17 of the Maharashtra Cooperative Societies Act, 1960 and thereby passed an order of merger. After the merger, Vasant

Dada Cooperative Society lost its identity and its registration number was also cancelled. While merging, the District Deputy Registrar, Cooperative Societies, Ahmednagar imposed certain conditions.

6] After the said order of merger was passed on 4.1.2014, entire documents of Vasant Dada Cooperative Society were handed over to Vardhman Cooperative Society. The Chairman of Vardhman Cooperative Society acknowledged the receipt of all the documents from Vasant Dada Cooperative Society .

7] Shri L.K.Thorat, who was one of the members of the five men committee has lodged report with police station Parner. The said report is registered as Crime No. 193 of 2014. The first information report accuses that prior to the merger of Vasant Dada Cooperative Society with Vardhman Cooperative Society misappropriation is committed by the present applicants.

8] Smt. V.A.Shinde, learned Additional Public Prosecutor strenuously urged before this court that the present applicants being the Directors of Vasant Dada Cooperative Society are responsible for misappropriation. She also submitted that individual notices were also given to each of the Directors, however, in spite of the receipt of those notice, the Directors did not submit their reply, and therefore, the present application is liable to be dismissed.

9] Admittedly, prior to lodging the present first information report by Shri L.K.Thorat, who is the statutory auditor of Vardhman Cooperative Society, was one of the members of five men committed and he himself has conducted a thorough audit of Vasant Dada Cooperative Society and thereafter submitted the report to the Managing Director of Vardhman Cooperative Society for merger of Vasant Dada Cooperative Society. Thus, Shri L.K.Thorat,

who has lodged the present first information report himself has found that while conducting the audit prior to merger everything in order.

10] The present applicants are submitting that their custodial presence is not required in view of the fact that the entire record is already handed over to Vardhman Cooperative Society and it is in possession of the investigating agency.

11] There is communication available on record dated 17.2.2015 by the Special Auditor, Flying Squad, Cooperative Societies, Ahmednagar by which it is communicated to the investigating officer that presently it will not be possible to give any opinion in respect of the authenticity of the auditor's report given by Shri L.K.Thorat, first informant namely P.R.Harne, auditor Class II Flying Squad of Cooperative Department.

12] The learned Additional Public Prosecutor has fairly stated that entire record of Vasant Dada Cooperative Society is in possession of the investigating officer since on 4.1.2014 entire record was handed over by Vasant Dada Cooperative Society to Vardhman Cooperative Society. Further, in the reply there is not a single statement from the investigating officer that the investigating officer requires custodial presence of the present applicants. Further, the District Deputy Registrar, Cooperative Societies, Ahmednagar has exercised the power under Section 17 of the Maharashtra Cooperative Societies Act, 1960 and after his due satisfaction he has passed the order of merger. In that view of the matter, custodial presence of the present applicants is not at all necessary for the further investigation. Hence I pass following order.

**ORDER**

(i) Criminal Application Nos. 1438 and 1431 of 2015 are allowed.

(ii) Applicants No.1-Sau. Nirmala Sudhir More, No.2-Pranavkumar s/o Sudhir More, No.3-Ashwini w/o Ankush Khilari, No.4-Ankush s/o Eknath Khilari and Applicant No.1-Anil s/o Birdichand Gandhi, in the event of their arrest, in connection with Crime No. 193 of 2014, registered at Parner police station, District Ahmednagar, for the offences punishable under Sections 120B, 406, 408, 420, 467, 468, 470, 471 r/w 34 of the Indian Penal Code, be released on anticipatory bail, on they each executing P.R. bond of Rs. 20,000/- with two solvent sureties in the like amount by each of them.

(iii) Applicants No.1-Sau. Nirmala Sudhir More, No.2-Pranavkumar s/o Sudhir More, No.3-Ashwini w/o Ankush Khilari, No.4-Ankush s/o Eknath Khilari and Applicant No.1-Anil s/o Birdichand Gandhi shall attend Parner police station twice a week preferably on every Sunday and Monday in between 10.00 a.m. to 2.00p.m. till charge sheet is filed.

(iv) Applications are disposed of.

**(V.M.DESHPANDE, J.)**

dbm/crap1438.15