

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPLICATION NO. 2340 OF 2015.

DAMODAR VITHAL ZAWARE & ORS.
VERSUS
THE STATE OF MAHARASHTRA.

Appearance =>

Mr. Rahul Tambe, Advocate for the Applicants.

Mr. A.S. Shinde, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 10th June, 2015.

Per Court :-

By the present Application, Applicants are seeking pre arrest bail; since they 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 read with 34 of the Indian Penal Code.

[2] I have heard Shri. R.A.Tambe, learned counsel for the applicants.

[3] The application is opposed by the learned Additional Public Prosecutor Shri. A.S. Shinde.

[4] In Ahmednagar District, at two different places, two different Non Agricultural Co-operative 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 were Ex-Managing Director of Vasant Dada Cooperative Society. A proposal was submitted by Vasant Dada Cooperative Society to Vardhman Cooperative Society about its merger with Vardhman Co-operative Society. In order to verify the viability of the said proposal, five men committee was appointed by Vardhman Co-operative 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 Co-operative Society; whereas the other member was Shri L.K.Thorat, a statutory auditor of Vardhman Co-operative 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 Co-operative 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 Co-operative Society, whereby it was pointed out that the proposal submitted by Vasant Dada Co-operative Society for its merger with Vardhman Cooperative Society is viable.

[5] The proceedings of merger were initiated before the District Deputy Registrar, Co-operative Societies, Ahmednagar. The District Deputy Registrar, Co-operative 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 Co-operative 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 Co-operative Society misappropriation is committed by the present applicants.

[8] 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.

[9] The present applicants have submitted that his custodial presence is not required in view of the fact that the entire record is already handed over to Vardhman Co-operative Society and it is in possession of the investigating agency.

[10] There is communication available on record dated 17.2.2015 by the Special Auditor, Flying Squad, Co-operative 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.

[11] The 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 and when 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.

[12] The application of Ex-director of Vasant Dada Cooperative Society to Vardhman Cooperative Society bearing No.Cri.Application No.1438/2015 and Cri.Appln.No.1431/2015 is already allowed by this Court. The role of the applicants is similar to the role of the applicants in those applications. Hence, on the ground of parity also, the applicants are entitled for the relief which he has claimed. Hence, I pass the following order :-

ORDER

(i) Criminal Application is allowed.

(ii) Applicant No.1 – Damodar Vitthal Zaware, Applicant No.2 – Narayan Yeshwant Zaware, 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/- each with two solvent sureties in the like amount by each of them.

(iii) Applicant No.2 – Narayan Yeshwant Zaware is directed to attend the Police Station Parner, District – Ahmednagar once in a week, preferably on every Sunday, between 10.00 a.m to 2.00 p.m.; where-as Applicant No.1 Damodhar to the Police Station Parner, District – Ahmednagar twice in a week, preferably on every Sunday and Monday, between 10.00 a.m to 2.00 p.m., till charge sheet is filed.

(iv) Application is disposed of.

(V.M. DESHPANDE, J.)