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

CRIMINAL APPLICATION NO. 2417/2015.
WITH
CRI.APPLN.NO.2641/2015.
WITH
CRI.APPLN.NO.2696/2015.

CRI.APPLN.NO. 2417/2015.	**CRI.APPLN.NO. 2641/2015.**	**CRI.APPLN.NO. 2696/2015.**
Rajendra Mandanlal Pipada.	Deep Narayan Chavan & Ors.	Navnitlal Lakhmichand Bora.
Versus.	**Versus.**	**Versus.**
The State of Maharashtra.	The State of Maharashtra & Ors.	The State of Maharashtra.

Appearance =>

Mr. A.S. Sawant, Advocate for the Applicant in Criminal Application No.2417 Of 2015.

Mr. Nitin Gaware, Advocate h/for Mr. Vikas Patil, Advocate for the Applicants in Criminal Application No.2641 Of 2015.

Mr. Satyajit Bora, Advocate for the Applicant in Criminal Application No.2696 Of 2015.

Mr. Abhakumar D. Ostwal, Advocate for Vinod Amlakchand Gandhi, Applicant in Criminal Application Nos. 2989/15, 2990/15 & 2987/15.

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

CORAM : V.M. Deshpande, J.

DATE : 13th July, 2015.

Per Court :-

These three Applications can conveniently be disposed of by present order; since they arise from the same Crime Number i.e. C.R. No.I 40/2015 registered with Kotwali Police Station, Ahmednagar, District – Ahmednagar for the offences punishable under Section/s 417, 420, 408, 409 of the Indian Penal Code. All the Applicants are apprehending their arrest, in connection with the aforesaid Crime Number, therefore, they are before this Court.

[2] Heard Mr. A.S. Sawant, learned counsel for the Applicant in Criminal Application No.2417/2015, Mr. Nitin Gaware, learned counsel for the Applicants in Criminal Application No.2641/2015 and Mr. Satyajit Bora, learned counsel for the Applicant in Criminal Application No.2696/2015.

All these three Applications are opposed by Mr. A.S. Shinde, learned Additional Public Prosecutor for the State of Maharashtra.

[3] I have also heard Mr. Abhakumar D. Ostwal, learned counsel for Vinod Amlakchand Gandhi, whose Applications to assist the learned Additional Public Prosecutor are allowed. He also opposed the prayer for anticipatory bail.

[4] There is one bank by name “the Nagar Urban Co-Operative Bank Limited, Head Office at Ahmednagar.” Said bank is also governed under the provisions of the Maharashtra Co-Operative Societies Act, 1960 and is Multi-State Co-Operative Bank doing a business of banking. The said bank is having its Branches at various places in various other Districts.

It is not in dispute at all that present Applicants were the Members of the Managing Committee of the said Bank, during the period 2009-2010.

[5] M/s. Patil-Davare-Girase & Pawar Associates, Nashik, a firm of Chartered Accountants, was entrusted with a work of conducting the statutory audit of “the Nagar Urban Co-Operative Bank Limited, Ahmednagar” by the Commissioner of Co-Operative, Pune. The audit period was financial year 2009-10. In pursuance to the aforesaid order, said Firm took up the audit of the said Bank. While conducting the audit, the Special Auditor noticed and found certain irregularities in working of the bank. The audit report was submitted to the Authority, who appointed the said Auditor, which resulted into filing of the First Information Report.

[6] The First Information Report is lodged by Chandrakant Vasant Pawar, who is one of the Partner of M/s. Patil-Davare-Girase & Pawar Associates, Nashik. The First

Information Report is lodged on 29th January, 2015. According to the allegations made in the F.I.R., from Sadashiv Peth, Pune Branch, three persons by name Vivek Ramchandra Thombare, Rahul Srikant Gosawi and Ganesh Babanrao Kale in connivance with the officials of the Bank and Directors of the Bank, on the basis of forged documents, obtained the vehicle loan. The First Information Report also states that, in Shrigonda Branch of the Bank, there are certain irregularities causing loss to the bank in respect of the gold loan. It is specifically stated in the First Information Report that said misappropriation has been done by the Gold Valuer namely Dhananjay Pandit and Shyam Pandit in connivance of 29 borrowers.

[7] Another allegation is that in the year 2009-10, the bank officials and Members of the Loan Committee, in connivance with one Pancharatna Auto Services, did certain acts which resulted into the irregularities in One Time Settlement (In short, OTS) of the loan.

[8] Also it has been found in the audit report which is ultimately reflected in the First Information Report that an amount of Rs.41900/- has been spent in respect of advertisement inspite of the ban. Further, according to the First Information Report, in Group Exposure Loan Limits, there is irregularity resulting into the financial loss and for which the Reserve Bank Of India has imposed the penalty of Rs.5 Lakhs.

[9] Another limb in the First Information Report is that, there is huge mal-practices in suspense Account of the Bank, by which inspite of the fact that, particular borrowers were not having sufficient amount in their Bank Accounts, the cheques drawn by such account holders are cleared / honoured in the clearing house and, thereby, caused huge loss to the Bank.

[10] Before adverting to the First Information Report, *vis-a-vis* the entitlement of the present Applicants for anticipatory bail, undisputed position as emerged from records would be useful to refer the same :-

> **(A)** The position is that, for the allegations which are specifically mentioned in the First Information Report, the authorities under the Maharashtra Co-Operative Societies Act, 1960 have already appointed Enquiry Officer as contemplated under Section 83 of the Maharashtra Co-Operative Societies Act, 1960.
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> Section 83 of the Maharashtra Co Operative Societies Act, 1960, empowers the Registrar either to start an inquiry *suo moto* or on the application of one-third of the members of a society or on the basis of special report. Section 88 deals with powers of Registrar to access damages against delinquent promoters etc.

(B) It is not in dispute that, the learned Registrar passed the appropriate order fixing certain liability against the various members of the Managing Committee including the present Applicants. Order passed under Section 88 of the Maharashtra Co-Operative Societies Act, 1960 is appealable order. Appeal lies with the State Government. The provisions to approach before the State Government in Appeal are Section 152 of the Maharashtra Co Operative Societies Act, 1960. The said Appeal was preferred by the Bank itself. Said Appeal was registered as Appeal No.800/2010. The Hon’ble Minister of Co Operation, vide his order एपीपी २०१०/प्र.क्र.८००/१५ सहकार पणन व वस्त्रोद्योग विभाग, मंत्रालय, मुंबई ४०.० ०३२, दिनांक २५/०९/२०१४ allowed the said Appeal. By the said order all the notices issued against the present Applicants are set aside.

(C) It is submitted at bar by Mr. Abhakumar Ostwal, learned counsel that, against the said order dated 25th September, 2014, Writ Petition is filed before this Court; however, on specific query made, Mr. Abhakumar Ostwal, learned counsel fairly submitted that, till today, leave apart granting any stay to the effect and operation of order dated 25/09/14 even this court has not issued notices to the Respondents in the said Writ Petition.

[11] Though the First Information Report reflects on various aspects, names of present Applicants in all these Applications are not mentioned therein as the persons responsible for all the acts. According to the First Information Report none of the Applicants name find place in so far as irregularities, resulting into the losses in respect of Sadashiv Peth Branch at Pune.

In so far as the irregularities at Shrigonda Branch in respect of Gold Loan is concerned, in the First Information Report, name of Applicants – Dr. Paras Devichand Kothari, Deep Narayan Chavan, Sanjay Jagannath Challare and Abhay Jagannath Agarkar (Applicants in Cri.Appln.No. 2641/15) are appearing. Name of Navnitlal Lakhmichand Bora (Applicant in Cri.Appln.No.2696/15) is also appearing in that behalf. Name of Rajendra Mandanlal Pipada (Applicant in Cri.Appln.No.2417/15) is not find place in so far as such allegations are concerned.

[12] None of the Applicants name is appearing in the first Information Report, in so far as O.T.S. procedure. Also none of the Applicant/s was/were held responsible for the expenses, those are incurred on the advertisement. Names of the Applicants

– Navnitlal Lakhmichand Bora and Abhay Jagannath Agarkar are appearing in respect of group exposure loan limits.

Name of Applicant – Dr. Paras Devichand Kothari, Navnitlal Lakhmichand Bora, Deep Narayan Chavan, Sanjay Jagannath Challare, Abhay Jagannath Agarkar and Rajendra Mandanlal Pipada are appearing in the irregularities in respect of clearing of the cheques of the account holders whose negotiable instruments were honoured inspite of the fact of "insufficiency of funds" in their respective bank accounts.

[13] Firstly, in respect of Gold Loan is concerned, First Information Report is very specific that said mis-appropriation has been done by Dhananjay Pandit and Shyam Pandit, who are the Gold Valuer. Specific allegations are that those two persons (gold valuers) in connivance with the borrowers have shown excessive weight of the gold and then obtained the loan. No allegations are made against the present Applicants that they were in connivance either with Gold Valuer or with any of the borrower of the Bank.

From the First Information Report itself it is crystal clear that offence is already registered with Police Station, Shrigonda, District – Ahmednagar vide CR No.247/2010 against Gold Valuer and other borrowers of the bank. Allegations in the First Information Report in respect of present Applicants is that present Applicants have not taken any action against the responsible persons.

[14] In the First Information Report or even as per the submission of Mr. A.S. Shinde, learned Addl.Public Prosecutor, there is nothing to show that, even remotely and/or these Applicants were any connivance with the gold valuer or ultimate beneficiary, who were the borrowers of the bank. Same is the nature of accusation in respect of the group exposure loan limit.

[15] From the First Information Report itself, it is clear that for sanction of loan, there exists Sub Committee, constituted by the Bank. From the First Information Report, it is clear that none of the present Applicants were the Members of the said Sub Committee, who are responsible for the sanction of loan after scrutinizing the proposal/s for loan. Who are the members of said Sub Committee are specifically mentioned in the First Information Report.

[16] In so far as 'Suspense Account' is concerned, namely clearing Negotiable Instruments of Account holders are concerned, allegations against each of the Applicants are general in nature. There is nothing to show that these persons were having any control over the procedure when the cheques and/or negotiable instruments of such persons were honoured by clearing house.

[17] First Information Report is silent that these Applicants misappropriated the amount. Even Mr. A.S. Shinde, learned Additional Public Prosecutor and Mr. Abhakumar D. Ostwal, learned counsel submit that there is no iota of allegations in the First Information Report that any of the present Applicants have misappropriated any amount. Neither any specific role is attributed against them. Further for the very same allegations made in the First Information Report the quasi judicial authority has already pronounced its verdict. Though same is *sub judice* before this court, till today, even this court has not issued notices to the Respondents in the said Writ Petition. Thus, it can be safely concluded that the order passed by the Hon'ble Minister dated 25th September, 2014 still holds the field.

[18] Further upon specific query made by this court, Mr. A.S. Shinde, learned Additional Public Prosecutor has submitted that, all the record in respect of the First Information Report for the relevant period is already in the custody of the Enquiry Officer and the Investigating Officer. Further it is not case of the prosecution or Mr. Abhakumar D. Ostwal, learned counsel that present Applicants are in the Board of Directors of the Bank, presently.

[19] In view of the nature of the accusation made against the present Applicants, which does not shows that they have misappropriated any amount for themselves. Further, it is not case of the prosecution that they are beneficiary of illegality, as alleged in the First Information Report, since they don't hold any control by virtue of their position as Ex Directors of said Bank. Since all the documents are already seized and in custody of the Enquiry Officer and the Investigating Officer, I am of the considered view that their custodial presence is not warranted, however, at the same time, the interest of prosecution can be achieved by imposing certain conditions.

[20] According to Mr. A.S. Shinde, learned Additional Public Prosecutor the Applicants be directed to attend the Police Station once in a week, till charge sheet is filed and also direct them to extend their fullest co-operation to the investigation. That leads me to pass the following order :-

ORDER

(i) Criminal Application Nos. 2417/2015, 2641/15 and 2696/15 are allowed.

(ii) In the event of arrest, Applicant – Rajendra Mandanlal Pipada (Applicant in Criminal Application No.2417/15), Applicant No.1 – Deep Narayan Chavan, Applicant No.2 – Abhay Jagannath Agarkar, Applicant No.3 – Dr. Paras Devichand Kothari and Applicant No.4 – Sanjay Jagannath Challare

(Applicants in Criminal Application No.2641/15) and Applicant - Navnitlal Lakhmichand Bora (Applicant in Criminal Application No.2696/15) shall be released on anticipatory bail on they executing P.R. Bond of Rs. 50,000/- [Rs. Fifty Thousand.] each with two solvent sureties in the like amount, in connection with C.R. No. I 40/2015 registered with Kotwali Police Station, Ahmednagar, District – Ahmednagar for the offences punishable under Section/s 417, 420, 408, 409 read with 34 of the Indian Penal Code.

(iii) Applicant – Rajendra Mandanlal Pipada (Applicant in Criminal Application No.2417/15), Applicant No.1 – Deep Narayan Chavan, Applicant No.2 – Abhay Jagannath Agarkar, Applicant No.3 – Dr. Paras Devichand Kothari and Applicant No.4 – Sanjay Jagannath Challare (Applicants in Criminal Application No.2641/15) and Applicant –Navnitlal Lakhmichand Bora (Applicant in Criminal Application No.2696/15) shall attend the Investigating Officer in the Kotwali Police Station, Ahmednagar, District – Ahmednagar once in a week, preferably on every Sunday, till charge sheet is filed.

(iv) The Applicants shall remain present in the said Police Station between 11.00 a.m. to 3.00 p.m., on the date of their attendance.

(v) Apart from every Sunday, if the Investigating Officer is of the view that further attendance of Applicants is required, in that event, the Investigating Officer shall give clear cut written notice of 48 hours to the applicants.

(vi) The Applicants shall extent full co-operation to the Investigating Officer and shall not tamper with the prosecution case.

(vii) Needless to mention, observation made in this order are in respect of decision of anticipatory bail applications filed by present Applicants only and the learned trial court, who shall be ultimately seisin with the trial, shall not get himself influenced by such observations.

(viii) With this, Criminal Applications are allowed and same are disposed of accordingly.

(V.M. DESHPANDE, J.)