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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5783 OF 2015

1. Sangita w/o Vishnu Dalvi,
Age: 32 years, Occu: Household,
R/o Khadkat Road, Ashti,
Tal. Ashti, Dist. Beed
2. Kamal w/o Madhukar Dalvi,
Age: 48 years, Occu: Household,
R/o Kazi Galli, Ashti,
Tal. Ashti, Dist. Beed
3. Nalanda w/o Balbhim Khade,
Age: 34 years, Occu: Household,
R/o Sambhajinagar, Nagar Road,
Dist. Beed

..APPLICANTS

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Taloda Police Station,
District Nandurbar

..RESPONDENTS

Ms Pradnya Talekar, Advocate holding for Mr S. B. Talekar, Advocate for applicants;
Mr A. B. Girase, Public Prosecutor for respondent

**WITH
CRIMINAL APPLICATION NO. 5772 OF 2015**

1. Dipchand Sampat Patil,
Age: Major, Occu: Agriculture,
R/o Ranjane, Tq. Shindkheda,
Dist. Nandurbar
2. Sahebrao Manga Bagul,
Age: Major, Occu: Agriculture,
R/o Ranjane, Tq. Shindkheda,
Dist. Nandurbar
3. Smt. Heerabai Dipchand Patil,
Age: Major, Occu: Household,
R/o Ranjane, Tq. Shindkheda,
Dist. Nandurbar

..APPLICANTS

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VERSUS

The State of Maharashtra,
Through Police Station Officer,
Taloda Police Station,
District Nandurbar

..RESPONDENTS

Mr Rahul S. Pawar, Advocate for applicants;
Mr A. B. Girase, Public Prosecutor for respondent

**WITH
CRIMINAL APPLICATION NO. 5994 OF 2015**

Dinesh Gopal Koli,
Age: years, Occu: Service,
presently under suspension
R/o Room No. 8, B & C Quarter,
Opposite Tahasil Office,
Taloda, District Nandurbar

..APPLICANT

VERSUS

The State of Maharashtra,
Through the Superintendent of Police,
Nandurbar, District Nandurbar

..RESPONDENTS

Mr A. S. Shivpuje, Advocate for applicant;
Mr A. B. Girase, Public Prosecutor for respondent

**WITH
CRIMINAL APPLICATION NO. 5997 OF 2015**

Shukracharya Gokul Dudhal,
Age: years, Occu: Service,
presently under suspension
R/o Residence of Project Officer,
Integrated Tribal Development Project,
Taloda, District Nandurbar

..APPLICANT

VERSUS

The State of Maharashtra,
Through the Superintendent of Police,
Nandurbar, District Nandurbar

..RESPONDENTS

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Mr Mukul S. Kulkarni, Advocate for applicant;
Mr A. B. Girase, Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.
DATE : 17th December, 2015

ORAL ORDER :

By these applications under section 438 of the Code of Criminal Procedure, the applicants seek their release on bail, in the event of arrest, in connection with C.R. No.70 of 2015, registered with Police Station, Taloda, District Nandurbar, for offences punishable under sections 409, 420, 467, 468, 471, 477-A read with section 34 of the Indian Penal Code. Since the applicants are seeking bail in the same offence, the applications are heard and decided together by this common order.

2. The In-charge Project Officer of Integrated Tribal Development Project, Taloda, District Nandurbar, a tribal dominated area, lodged a complaint on 5th October, 2015, alleging that between 21st July, 2014 and 14th August, 2015, the applicants herein have committed offences punishable under sections 409, 420, 467, 468, 471, 477-A read with section 34 of the Indian Penal Code. Pursuant to the complaint, C.R. No.70 of 2015 came to be registered against them on 5th October, 2015, for offences punishable under the above referred sections.

3. The complaint in question came to be lodged pursuant to the directions/instructions issued by the State Government, having noticed that under the scheme sponsored by the Central/State Government, the

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amount of scholarship which was to be paid to the concerned students taking education in the schools administered by the private societies was withdrawn by the applicants from the account, instead of transferring the same online in the Bank accounts of the concerned students – beneficiaries, despite that it was the mandate of the Government to transfer and deposit the same by adopting on-line procedure in the accounts of students – beneficiaries.

4. It is alleged that there are two societies/institutions, which are named in the first information report, namely, Tulja Bhavani Mahila Mandal, Ashti, District Beed and Swami Samarth Samajik Bahuddeshiya Vikas Sanstha, Ranjane, Taluka Shindkheda, District Dhule. The first institution has caused defalcation of total amount of Rs.6,42,00,000/- in the academic years 2011-12 and 2012-13, which upon assessment for year 2011-12 was assessed to be Rs.3,61,57,500/- and for the year 2012-13 Rs.2,82,42,500/-.

5. The applicants in Criminal Application No.5783 of 2015 claim to be office bearers of the said institution. It is claimed by the applicants in the said application that they are falsely implicated in the crime in question. According to them, in spite of the fact that this Court in Writ Petition No.8440 of 2015 has passed an order directing the Collector not to proceed with the inquiry against the petitioners, in the background of the inquiry already conducted by the Tribal Development Department Committee, the offences in question came to be lodged against them.

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According to the learned Counsel, lodging of the first information report and registration of offence is contemptuous act on the part of the State Government. In addition, the learned Counsel appearing on behalf of the applicants would urge that the amount received by the society of which the applicants are office bearers, was not received for the respective years, but was received in later point of time, i.e. after the said academic years were over. She would try to prevail upon the Court to submit that the amount of scholarship was already disbursed to the concerned students by the society, by making them cash payments and the amount of scholarship as such, was reimbursed by the State Government to the society and thus there is no defalcation. She would then urge that it is the State Government who has relaxed the online mode of payment by permitting direct payments to the beneficiaries. Learned Counsel, in addition to above, would urge that inspection was carried out on 13th March, 2015. She would then urge that in respect of the inquiry which is formed to be the basis for registration of the crime against the applicants, the applicants had sought the certified copies of the record of the institution of the applicants from the office of the Tribal Development Department and also the Board of Education, with whom the students were registered, as it was stated to have been destroyed in fire in their institution. According to her, the record of Government got burnt in fire and same has happened in the applicants' institution. According to her, in view thereof, the applicants cannot be blamed for non production of the record for verification. She would then urge that the applicants have shown their *bona fides* by demonstrating that they were ready and willing to co-operate with the investigation and they

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being women, custodial interrogation is not required. According to her, what was directed by the Government was to proceed against the Project Officer and not against the present applicants and to that effect, has relied upon the communication of the State Government issued on 3rd October, 2015.

6. Learned Counsel then would urge that the law laid down by this Court in the matter of **Bhadresh Bipinbhai Sheth vs. State of Gujarat & anr.**, reported in **2015 ALL MR (Cri) 4116 (S.C.)** is relevant for consideration in the present matter, for principles to be considered while granting bail, which according to her, squarely applies to the circumstances of present matter. According to her, custodial interrogation of the applicants is not required in view of the principles enumerated therein.

7. The applicants in Criminal Application No.5772 of 2015, are the office bearers of another institute, namely, Swami Samarth Bahuuddeshiya Samajik Vikas Sanstha at Ranjane, which is located in the tribal dominated Shindkheda, Taluka Shindkheda, District Dhule. In the first information report, the allegations against the applicants are that they have committed defalcation of amounts; in the year 2011-12, an amount of Rs.1,58,80,050/- and in the year 2012-13 an amount of Rs.78,57,000/-, totaling Rs.2,37,37,050/-, by not making payment of the said amount to the concerned students and by withdrawing the same in cash from the society's account.

8. Learned Counsel, while trying to make out a case for grant of pre-arrest bail would urge that the amount was disbursed in favour of the applicants after scrutiny of the accounts and the proposals submitted to that effect. He would then submit that in addition to the proposals as were submitted by the society, a consent letter of applicants was also filed, wherein they have shown their readiness and willingness to make good the loss by depositing the amount with the Government, in case any illegality is noticed. According to him, in order to show their *bona fides*, the applicants are ready and willing to deposit the amount in the account of the Government in five equal installments of Rs.50,00,000/- each.

9. Learned Counsel, in addition to towing the line of argument as advanced in Criminal Application No.5783 of 2015, would further add that the applicants hold substantial immovable property at the place where the offence is registered and there are hardly any chances of they running away from the prosecution. The applicants, as such, submit that they are ready and willing to cooperate and assist the investigation and as such, prayed for grant of pre-arrest bail.

10. In Criminal Application Nos. 5997 of 2015 and 5994 of 2015, the applicants are the public servants, who are respectively posted as Project Officer and in-charge Clerk with the office of Tribal Development Department, who are dealing with issue of disbursement. The applicant-Project Officer would urge that having cleared the Maharashtra Public

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Service Commission examination, he was appointed for the first time in 2013 and was hardly having any practice experience of the working of the Department. Mr Kulkarni, learned Counsel appearing on behalf of the applicants then would add that if the scheme of the allotment of the scholarship as provided under the Government Resolution dated 9th August, 2004 is examined, it could be noticed that the entire responsibility is that of the management. According to him, by the time applicant-project officer joined the Department, the entire procedure of processing the claim was over, as the scrutiny of the proposal was carried out by his predecessors and it is after receipt of the amount from Government he had mechanically disbursed it, as was the only option left with him. Mr Kulkarni then would urge that the amount of scholarship was transferred in the P.L.A account of the concerned educational institution of the applicants and as such they cannot be held any way responsible for the defalcation committed by the office bearers of the institutions as applicants have no control over the management after the transfer of the amount to society. He would urge that once the amount is transferred in P.L.A. accounts of the societies, the applicant has hardly any control over the said amount. Similar line of argument is adopted by the dealing Clerk, who is applicant in Criminal Application No. 5994 of 2015. According to him, he is responsible only for the purpose of administrative work and no powers of disbursement are vested in him.

11. Mr Girase, learned Public Prosecutor appearing on behalf of the respondents, while strenuously opposing the bail applications would urge

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that the ultimate beneficiaries of the scheme in question were the students and instead of passing on benefit to them, all the applicants have acted hand in glove by playing fraud on the Government, duped the Government by Crores of rupees, which were due and payable to the tribal students who were taking various trainings/education in the courses administered by the institutions named in the first information report. According to him, there is a large scale fraud played by the office bearers of the management in connivance with the public servants and he would submit that there is enough *prima facie* evidence available against the applicants. He would urge that the public servants, who are before the Court, have not followed the procedure as was prescribed and have released Crores of rupees in the P.L.A. accounts of the institutes, which were permitted to be withdrawn in cash by the office bearers and the applicants-public servants have failed to supervise the same for obvious reasons. According to him, the loss of the record of the institution in fire from the custody of applicant and also from the concerned section of the Tribal Development Department speaks about criminal conduct of the applicants. According to him, the investigation is at preliminary stage and if bail is granted to the applicants, the same will hamper the investigation, as custodial interrogation of the applicants having regard to nature and gravity of the matter, is very much necessary. He would then urge that the Supreme Court, time and again, has alerted the Courts not to permit release of accused persons on bail, who are involved in the matter having financial implications. According to him, the applications are liable to be rejected.

12. Having bestowed my anxious thought to the submissions made, it is required to be noted that what was stayed by the Division Bench of this Court in Writ Petition No. 8440 of 2015, was the communication Exh. "H" to the said petition and not the decision of initiating criminal action against the culprits. Apart from above, it is required to be noted that, on perusal of the record it cannot be inferred from any of the communications that the State Government, at any point of time, has directed the concerned not to file criminal complaint/first information report against the accused persons. Reliance placed on the inspection notes dated 13th March, 2013, in my opinion, is hardly of any assistance, as the same is as much vague as it could be and does not speak of the detailed inspection when same appears to be a document sought to be relied on for the purpose of benefit to the applicants.

13. Apart from above, appropriate inference can be drawn in relation to the incident of fire, which took place in the institution of the applicants in Criminal Application No. 5783 of 2015 and also in the concerned sections of the Tribal Development Department, which deals with the issue of scholarship, resulting into destroying the relevant record in fire. It is also worth to note that it is claimed that the amount of the scholarship was disbursed to the beneficiary students in cash, however, no record to substantiate the same, so as to infer such cash payment. It is hard to believe in the set of facts that the amount was really disbursed in cash to the students by the society in advance, from their account and then same

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was reimbursed by the Government, as the same does not appear to be the object and procedure in the scheme.

14. It is further worth to mention here that, though the applicants in Criminal Application No. 5772 of 2015, have tried to submit that they are ready to re-deposit the entire amount with the Government, yet that would not absolve them of the criminal liability. In fact, that would indicate their criminal role in the matter.

15. Government Resolution dated 9th August, 2004 speaks of the responsibility of the management, so also the officials of the Tribal Development Department while implementing the scheme in question. *Prima facie*, it could be noticed that the officials from the said Department have shown failure to supervise the implementation of the scheme, rather their said conduct has been in aid of the office bearers of the institutions to commit defalcation. The investigation carried out till date depicts *prima facie* involvement of the applicants in the commission of the crime in question.

16. This Court is also required to be alive to the fact that the benefit, which was meant for the tribal students, *prima facie* appears to have been usurped by the office bearers of the institutes in connivance with the officials of the Tribal Development Department. The financial defalcation is required to be dealt with, by having stern approach and as such, in view of above, in my opinion, the claim of the applicants for grant of pre-arrest bail

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requires rejection.

17. Before parting, it is worth to observe here that from the record, as is placed along with the bail applications and investigation papers, the offence appears to have been committed in connivance with the higher ups in the Tribal Development Department, which angle is yet to be investigated into. In my opinion, regard being had to seriousness of the matter, it will be appropriate to direct the Superintendent of Police or the Additional Superintendent of Police of the concerned districts, i.e. Nandurbar and Dhule to supervise the investigation in the matter and they are directed accordingly.

18. In the light of foregoing observations, Criminal Applications stand rejected.

(N.W. SAMBRE, J.)

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