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

CRIMINAL APPLICATION NO. 2706 OF 2016

1. Satyashil Avinash Akole,
Age: 61 years, Occu: Agril.& Business,
R/o C.T. Survey No. 8313,
Purnawad Bhavan, Purnawad Nagar,
Near Gangopi Apartment,
Ring Road, Jalgaon,
Tq. and dist. Jalgaon

2. Pradip Raosaheb Patil,
Age: 41 years, Occu: Agril.,
R/o Shirsoli, Tq. And
Dist. Jalgaon

3. Sham Avinash Akole,
Age: 47 years, Occu: Business,
R/o Savda, Tq. Raver,
Dist. Jalgaon ..APPLICANTS

VERSUS

1. Superintendent of Police,
Jalgaon, Dist. Jalgaon

2. Amalner Police Station,
Amalner, Tq. Amalner,
Dist. Jalgaon
through Police Inspector ..RESPONDENTS

WITH
CRIMINAL APPLICATION NO. 2797 OF 2016

1. Jitendra Krushnamurti Kulkarni,
Age: 41 years, Occu: Business,
R/o Shakar Nagar, Savedi,
Ahmednagar,
Tq. & Dist. Ahmednagar

2. Vijay Shankar Rane,
Age: 55 years, Occu: Service,
R/o Patil Pura Savada,
Tq. Raver, Dist. Jalgaon

3. Vadu Ganpat Lokhande,
Age: 44 years, Occu: Agril.,
R/o Savda, Tq. Raver,
Dist. Jalgaon

4. Ravindra Prabhakar Sonar,
Age: 50 years, Occu: Service,
At Post Jalgaon, Tahsil Jalgaon,
Dist. Jalgaon ..APPLICANTS

VERSUS

1. Superintendent of Police,
Jalgaon, Dist. Jalgaon

2. Jilha Peth Police Station,
Jalgaon, Tq. & Dist. Jalgaon
through Police Inspector ..RESPONDENTS

WITH

CRIMINAL APPLICATION NO. 2698 OF 2016

1. Satyashil Avinash Akole,
Age: 61 years, Occu: Agril.& Business,
R/o C.T. Survey No. 8313,
Purnawad Bhavan, Purnawad Nagar,
Near Gangopi Apartment,
Ring Road, Jalgaon,
Tq. and dist. Jalgaon

2. Dr. Ashok Ganpati Raverkar,
Age: 55 years, Occu: Medical Practitioner,
R/o Waghulede Nagar, Jalgaon,
Tq. & Dist. Jalgaon

3. Pradip Raosaheb Patil,
Age: 41 years, Occu: Agril.,
R/o Shirsoli,
Tq. & Dist. Jalgaon

4. Rajesh Prabhakar Gade,
Age: 50 years, Occu: Advocate,
R/o Yawal, Tq. Yawal,
Dist. Jalgaon ..APPLICANTS

VERSUS

1. Superintendent of Police,
Jalgaon, Dist. Jalgaon

2. Jilha Peth Police Station,
Jalgaon, Tq. & Dist. Jalgaon
through Police Inspector ..RESPONDENTS

Mr Mahesh S. Deshmukh, Advocate for applicants;
Mr A. S. Shinde, Addl. Public Prosecutor for respondents

WITH
CRIMINAL APPLICATION NO. 2647 OF 2016

Swarupkumar s/o Bhagchand Lunkad,
Age: 49 years, Occu: Business,
R/o 96, Bhavani Peth, Jalgaon,
Tq. & Dist. Jalgaon ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Jalgaon,
Zilla Peth Police Station,
Jalgaon, Dist. Jalgaon ..RESPONDENT

Mr V. D. Salunke, Advocate for applicant;
Mr A. S. Shinde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 14th June, 2016

ORAL ORDER :

The applicants in Criminal Application No. 2706 of 2016, are seeking their release on pre-arrest bail in connection with Crime No. 66 of 2016, registered with Amalner Police Station, Dist. Jalgaon and the applicants in Criminal Application Nos. 2797 of 2016, 2698 of 2016 and 2647 of 2016 are seeking their release on pre-arrest bail, in connection with Crime No. 61 of 2016, registered with Zilla Peth Police Station, Dist. Jalgaon.

2. The complainant alleged that certain amount was deposited with the Purnawad Nagari Sahakari Patsanstha Maryadit, Shirsoli, Tq. & Dist. Jalgaon and the present applicants who are Directors – employees, have committed offences punishable under Sections 406, 420 and 120(B) of the Indian Penal Code and under Section 3 of Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter shall referred as "MPID Act" for the sake of brevity), as the deposit, as was made by him, was not refunded.

3. While trying to make out a case for grant of pre-arrest bail, Mr Deshmukh and Mr Salunke, learned Counsel appearing on behalf of the applicants would invite attention of this Court to a circular issued by the State Government on 13th August, 2008, thereby forming Committee headed by the Collector, so as to look into the grievances in the matter of refund of deposits by the Credit Co-operative Societies or such institutions. They also would invite attention of this Court to the another circular of the State Government dated 18th August, 2009, a circular issued by the Collector, Jalgaon dated 28th October, 2010 and a communication dated 10th March, 2015, issued by the District Deputy Registrar, Co-operative Societies, Jalgaon, so as to canvass that disbursement of the amount of depositors, was based on the recommendations of the Tahsil level committees, as is stated in the above circulars. According to them, mechanism is provided by the concerned authority in the matter of around 48 Credit Co-operative Societies from Jalgaon district, which are not

operating financially well, so as to honour promises of refund of deposits of their consumers. According to them, the concerned depositor has to approach before the said Committee and said Committee on pro-rata basis, based on the priorities, as are provided, will order the refund of deposits.

4. The next claim of the learned Counsel for applicants is that the provisions of Section 406 of the Indian Penal Code are not attracted as there is no entrustment of property, as provided under Section 405 of the Indian Penal Code. He would then rely upon the observations made by this Court in the judgment rendered in Criminal Writ Petition No. 1133 of 2016, decided on 25th February, 2010. The observations in para Nos. 3 and 4 of the said judgment read as under :

> "3. In para 6 and 7 of the judgment, the learned Sessions Judge observed as follows :-
>
> > "6. The first point, which requires determination, is, whether the amounts kept with the Bank as and by way of fixed deposit by a customer, can be construed as entrustment within the meaning of Sec. 405 of the Indian Penal Code. In my opinion, the answer has to be in the negative. The person who deposits money in the Bank has a contractual relationship with the bank. The depositor becomes the Creditor and the Bank becomes the Debtor. The monies are deposited with the full knowledge of the business of the Bank, knowing well that the monies would be used and utilized by the Bank in connection with their business, which is basically

> advancing loans to the customers. In fact, it is for this reason, viz. that the money of the customer is being used by the bank, that the Bank pays interest to him. Therefore, the suggestion that such amounts deposited with the bank against the fixed deposit receipts amount to entrustment is, prima facie, not acceptable.
>
> 7. Further, Sec.405 of the I.P.C., which defines criminal breach of trust expressly provides that the misappropriation, or conversion, of the property as contemplated therein, must be dishonest. A perusal of the complaint shows that there is no such averment."

> 4. Merely because the bank has not refunded the amounts of deposits or the bank official refused to renew deposit receipts would not amount to criminal breach of trust. It will have to be proved that there was criminal breach of trust in respect of the amount deposited by the petitioner in his account. The offence of criminal breach of trust is defined under section 405 of the I.P.C. If we consider said definition, it cannot be said that there are necessary averments in the complaint to show that offence punishable under section 409 read with section 34 of the I.P.C. is made out. In the circumstances, this is not case to interfere with the order of the Sessions Court in this petition. In the result, the petition is dismissed in limine."

5. The next limb of submission of the learned Counsel for the applicants is that the Credit Co-operative Society is governed by the provisions of the Maharashtra Co-operative Societies Act and in view of the definition of the financial establishments, as is provided under sub-section (d) of Section 2 of MPID Act, the present Co-operative Society is not governed by the said provisions. They would then rely upon certain

observations made by the Learned Consumer Forum in the matter of complaint lodged by the complainant and Crime No. 66 of 2016, registered with Amalner Police Station.

6. The next limb of submission is that the financial condition of the Credit Co-operative Society, of which applicants are office bearers, is not so bad, so as not to honour for consumer's prayer of refund of the deposits, as was made by the complainant, but according to them, applicant's hands are tied by virtue of the various circulars, issued by the competent authorities, so as to regulate refund of deposits.

7. Sum and substance of the submissions advanced by the respective Counsel is that the applicants cannot be held responsible individually for the alleged offence and for policy to refund the deposits of the depositors.

8. Learned Counsel would then invite my attention to the unforeseen circumstances, under which recovery was not effected, pursuant to Section 101 of the Maharashtra Co-operative Societies Act, 1960 and failure on the part of Co-operative Society to authorise the Recovery Officer, to initiate recovery proceedings. They would submit that there is no criminal intention to commit the crime in question.

9. Learned Additional Public Prosecutor submits that the present applicants lack bona fides. According to him, there is sufficient material available on record, so as to infer that the applicants are prima facie

involved in the crime in question, as there was mismanagement, for which the depositors are required to be suffered. He would then submit that, in the year 2012, there was an adjudication in favour of the complainant, by the learned Consumer Forum, directing refund of deposits. Said deposits were neither refunded by honouring the order of learned Consumer Forum nor the applicants have taken any steps, particularly for approaching the Committee for refund of said deposits. According to him, for implementing the said order, the applicants are not required to approach the authority for permission. He would then submit that the present situation of the applicant, as is existing, is noticed by the Government way back in 2010 and as such the Committee was constituted to deal with the issue of the depositors. Till date, there is admittedly no progress in the matter of rejuvenation of the said Credit Co-operative Society and the applicants could be prima facie held responsible for mismanagement.

10. Having bestowed my thoughts to the submissions made, it is required to be noted that the applicants in the present case, have already approached before the Division Bench of this Court, questioning the issue of registration of offence against them. It is also not in dispute that one of the issues, raised is whether the applicants' financial establishment can be termed as Co-operative Society, which is governed by the provisions of the Maharashtra Co-operative Societies Act. Prima facie, in my opinion, upon perusal of the said Section, to establish Credit Co-operative Society, of which the applicants are office bearers, neither any control of the State Government, nor its shares are held by the State Government by any entity

of the State Government. The only supervision and control by the State Government is under the provisions of Maharashtra Co-operative Societies Act. There are powers vested in the applicants to administer the Co-operative Society, in accordance with provisions of Co-operative Societies Act and Rules framed thereunder. As such, the claim of the applicants that their Co-operative society is not covered within the meaning of financial institutions under the MPID Act and as such, no offence could have been registered against applicants, is liable to be rejected.

11. The next limb of the submission is the refund is governed by the various Government's directives decided in the light of scheme, as is provided in such directives. It is to be noted that the applicants have failed to fulfill the promises, as no steps have been taken by them so as to honour the attempt of respective depositors for getting back their deposits. It is to be noted that there is no blanket embargo on the powers of present applicants to refund the amount of deposits made with the Co-operative Societies, of which they are Directors, but the refund of deposits is governed as per proportion of the recovery made by them. Applicants are trying to use the Government's decision about release of amount, as crunches so as to cover up their criminal misdeeds.

12. Apart from above, judicial note can be taken of the fact that the Society, through its Directors had suffered the order of Consumer Forum dated 7th November, 2012 at the behest of the complainant, whereby the applicants were directed to refund the deposits made. It is really painful to

observe that the order passed by the learned Consumer Forum in 2012, is not taken to its logical end by the applicants in spite of lapse of four years.

13. From the overall conduct of the applicants, it appears that the applicants have hardly any respect for the Court orders or for the process of law as is established. The conduct of the applicants has taken the financial institutions to such a low level that they are not in a position to follow the order issued by the learned Consumer Forum, about 4 years back.

14. In the above background, in my opinion, no case for grant of pre-arrest bail is made out. Criminal Applications fail and stand rejected.

15. At this stage, learned Counsel for applicants submit that interim protection that was granted to the applicants, may be continued for a period of six weeks. In this circumstances, Interim protection granted to the applicants, is hereby extended by six weeks.

(N.W. SAMBRE, J.)

sjk