IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 CRIMINAL APPLICATION NO. 3180 OF 2016
WITH
APPLN/3176/2016
WITH
APPLN/3178/2016
WITH
APPLN/3431/2016
WITH
APPLN/3432/2016

PRAMOD BHAICHAND RAISONI
& ORS.

VERSUS

CRIME INVESTIGATION DIVISION
(CID), MAHARASHTRA, PUNE & ORS.

....

Mr. M.S.Deshmukh, Advocate for Applicants.

Mr. S.D.Ghayal, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 20th SEPTEMBER, 2016

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PER COURT :

1. The applicants in these applications are the accused in Crime No. 20/2015 registered at Ramanand Nagar police station, Jalgaon, Dist. Jalgaon, Crime No. 28/2015 registered at Erandol police station, Jalgaon,

Dist. Jalgaon, Crime No. 14/2015 registered at Majalgaon police station, Beed, Dist. Beed, Crime No. 28/2015 registered at Erandol police station, Jalgaon, Dist. Jalgaon and Crime No. 70/2015 registered at Jalgaon City police station, Jalgaon, Dist. Jalgaon. The offences alleged against the applicants are u/s 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 [for short, 'MPID Act'] and u/ss 406,409,120-B read with 34 of the of the Indian Penal Code, By these applications, the applicants who are Directors of Bhaichand Hirachand Raisoni Bigar Shetkari Patsanstha Maryadit, Talegaon, Tq. Jamner, District Jalgaon [for short, 'said Society'] are seeking bail after filing of the charge sheet.

2. Heard the learned counsel for applicants/accused. According to the learned counsel, in-fact, Section 3 of the MPID Act has no application to the case in hand as the Multi State Co-operative Society viz. Bhaichand Hirachand Raisoni Multi State Co-operative Credit Society can be said to be owned or controlled by the State Govt. as well as Central Govt. As such, it is excluded from the definition of Financial Establishments by virtue of Section 2 (d) of the MPID Act. To butress this contention, the learned counsel drew my attention to the Order dated 27/10/2015 by which the Central Govt. has appointed Liquidator for managing the affairs of the said Society.

3. The learned counsel further argued that now the charge sheet has been filed in all cases. The amount involved

in these crimes is about ₹ 97,83,092/-. He further argued that the procedure prescribed by MPID Act was not followed by the Investigating Officer and as such the offence under the provisions of MPID Act is not attracted. The learned counsel argued that the provisions of Sections 406 and 409 of the Indian Penal Code regarding criminal breach of the Trust is not applicable, as the amount is comprising the deposits in the Multi State Co-operative Society. The deposits in the said Society does not amount to entrustment of the amount with the Society. For this purpose, the learned counsel placed reliance on the Judgment of the learned Single Judge of this Court in ***Criminal Writ Petition No. 1133 of 2009 - Vitthal Dagadu Mahajan Vs. Namdeo Pandurang Koli & Anr. delivered on 25/02/2010.***

4. The learned counsel for the applicants argued that Section 420 of the Indian Penal Code is not attracted to the case in hand as intention of cheating since inception is missing. For this purpose, relying on para No. 12 in the case of ***Vesa Holdings Private Limited & Anr. Vs. State of Kerala & Ors. reported in (2015) 8 - SCC - 293***.

5. The learned counsel placed reliance on the Judgment of the learned Single Judge of this Court in the case of ***Suresh G.Motwani (Dr.) & Anr. Vs. State of Maharashtra & Anr. reported in 2003 ALL MR (Cri) - 2212*** and contended that for recovery of the defaulted amount, detention of the accused persons behind the bars is not necessary. The learned counsel drew my attention to para

No. 11 of the said Judgment, wherein the learned Single Judge of this Court has held that the money would come out of the running of the business of the Companies and for that purpose it is necessary to grant bail to the present applicants.

6. Reliance is also placed on the Judgment in the matter of ***Sayyed Masood Vs. State of Maharashtra reported in 2015 (3) Bom.C.R. (Cri.) - 578*** and it was argued by pointing out para No. 15 of the said Judgment that in none of the cases trial has been commenced. Therefore, according to the learned counsel for the applicants, pre-trial detention of the applicants for indefinite period is not justified.

7. Reliance is also placed on para No. 46 of the Judgment of the Supreme Court in the matter of ***Sanjay Chandra Vs. Central Bureau of Investigation reported in (2012) 1 Supreme Court Cases – 40*** by the learned counsel to argue that the Hon'ble Supreme Court in that matter has held that even if the economic offence is of huge magnitude, the accused can not be detained behind the bars.

8. The learned counsel for the applicants argued that in all 57 F.I.Rs. are filed against the Directors of Bhaichand Hirachand Raisoni Multi State Co-operative Credit Society and in 23 cases, accused were arrested. In 12 cases, they were granted default bail. The learned counsel further argued that Liquidator was appointed for recovery of the amount. 49 properties of the said Society are worth more than ₹ 100 Crores. Out of that, 17 properties were put up in auction and

those were purchased by the said Society itself for the consideration of ₹ 17 Crores.

9. The learned counsel for the applicants argued that the properties mortgaged for securing loan is costing double the amount of loan. My attention is also drawn to the affidavit of Pramod Raisoni as well as the F.I.R. lodged against the General Manager of one of the branches of the said Society regarding defalcation by the Branch Manager to the tune of ₹ 5 Lakh. It was argued that because of this F.I.R., investors started pressing hard for refund of deposits, resulting in collapse of working of the Society.

10. The learned A.P.P. opposed the application by arguing that as yet the investigation of the crime in question is not over. The learned A.P.P. further argued that the report of the Liquidator is recently received, so also the report of the Auditor appointed for examination of the working of the Society. According to the learned A.P.P., money received for other purpose is amounting to ₹ 104 Crores. The loans were granted to the relatives and Directors of the Society without obtaining security. The learned A.P.P. further argued that the properties worth ₹ 8 Lakh was leased out to the Society by taking advance of ₹ 25 Lakh from the Society. The learned A.P.P. further argued that the amount is mis-appropriated by showing the same as transferred for maintenance of 'Goshala'. This amount comes to more than ₹ 8.68 Crores. He further argued that the loans were disbursed to 373 borrowers without taking any security from them. According to the

learned A.P.P., some entries are deleted from the computer and the Directors have withdrawn ₹ 104 Crores of the Society by way of loan without repayment thereof.

11. I have carefully considered the rival submissions, so also I have gone through the charge sheet. *Prima facie*, in the case in hand, it appears that huge number of investors were cheated by the Directors of the Society by accepting deposits and then by failure to repay the deposits. Section 2 (d) of the MPID Act excludes the Co-operative Societies owned and controlled by the State or Central Govt. In the case in hand, Bhaichand Hirachand Raisoni Multi State Co-operative Credit Society can not be said to be owned or controlled by the State or Central Govt. It is not pointed out that a single pai towards its share capital was contributed by the State or Central Govt. It is not pointed out that State or Central Govt. has right to vote in the election of the Society. Merely because the State exercises statutory power over the Multi State Co-operative Society in the matter of liquidation, etc. by no stretch of imagination, it can be said that such society is instrumentality of the State being owned or controlled by it. As such, *prima facie*, it can not be said that the MPID Act is not applicable to the case in hand.

12. In the case in hand, thousands of investors are cheated, at least as seen *prima facie* from the charge sheet, because of acts of commission and omission of the Directors, who are applicants before the Court. It is seen that in this white collar crime, large amount of money of the depositors is

siphoned. The money is yet not recovered. As stated by the learned A.P.P., further investigation of the crime in question is still going-on. The learned A.P.P. has made a statement that the Investigating Officer is going to file supplementary charge sheet as occasioned because of receipt of report of the Liquidator as well as receipt of the report of the Auditor.

13. In the matter of ***Nimgadda Prasad Vs. Central Bureau of Investigation reported in (2013) 7 Supreme Court Cases - 466***, the Hon'ble Apex Court in paragraph Nos. 23 and 25, has observed as under,

> *" 23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offenes have serious repercussions on the development of the country as a whole. In State of Gujrat Vs. Mohanlal Jitamalji Porwal, this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under : (SCC p. 371, para 5)*
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> *5. .... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to hook. A murder may be committed in the*

heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with an permissive eye unmindful of the damage done to the national economy and national interest.

24. ------------------------------

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted, conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the ountry as a whole and thereby posing serious threat to the financial health of the country"

14. In this view of the matter, though charge sheet

has been filed against the applicants, no case for releasing them on bail is made out. Hence, the following order.

(i) The Criminal Application stands rejected and disposed of.

[A.M.BADAR, J.]

KNP/Cr.Apln. 4984.2016