IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

Criminal Application No. 4533 of 2016

District : Jalgaon

1. Vilas s/o. Harikrishna Patil,
   Age : 70 years,
   Occupation : Consulting Engineer.

2. Anuradha w/o. Vilas Patil,
   Age : 60 years,
   Occupation : Household.

   Both R/o. 42-A,
   Krushnagiri Upvan Co-operative
   Housing Society,
   Kulupwadi Road, Boriwali (East),
   Mumbai. .. Applicants.

versus

The State of Maharashtra,
Through Police Inspector,
City Police Station,
Jalgaon,
Taluka & District : Jalgaon. .. Respondent.

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Mr. V.J. Dixit, Senior Advocate, with
Mr. Sushant V. Dixit, Advocate, for applicants.

Mrs. P.V. Diggikar, Addl. Public Prosecutor,
for the respondent.

Mr. Vijay B. Patil, Advocate, for the intervenor.

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CORAM : A.M. BADAR, J.

DATE : 31ST AUGUST 2016

ORAL ORDER:

Applicants who are debtors of Gujrathi Urban Co-operative Credit Society Ltd., Jalgaon, by this application under Section 439 of the Code of Criminal Procedure, 1973, are seeking bail in Crime No. 53/2014, for offences punishable under Sections 406, 408, 409, 420, read with Section 34 of the Indian Penal Code, registered with City Police Station, Jalgaon, District Jalgaon, at the instance of statutory Auditor of the said Society.

2. Heard the learned Senior Counsel appearing for applicants / accused. He argued that the applicants are already contesting disputes filed by the Society for recovery of amount of the loan advanced to them. The learned Senior Counsel further argued that on bare reading of the FIR as well as papers of investigation, no offence can be found to have been committed by present applicants. The learned Senior Counsel further argued that Directors of Gujrathi Urban Co-operative Credit Society Ltd. are already released on anticipatory by this Court vide orders dated 29th April 2014, 23rd June 2014 and 11th July 2014.

3. As against this, the learned Addl. Public Prosecutor by taking me through the entire text of the FIR, so also through papers of investigation,

argued that both applicants have deceived Gujrathi Urban Co-operative Credit Society Ltd. by obtaining huge loan by violating bye-laws of the Society. The learned Addl. Public Prosecutor further argued that personal loan from the Society cannot be more than Rs. 30,000/- to Rs. 50,000/-, but in the case in hand, each of the applicants has obtained loan of Rs. 50,00,000/- and ultimately the same was never refunded by them.

4. I have also heard the learned Counsel appearing for Gujrathi Urban Co-operative Credit Society Ltd. He argued that prima facie offence punishable under Section 420 of the IPC as well as under Section 409 of the IPC is made out as applicants have acted as an agent.

5. The FIR lodged by the statutory Auditor of Gujrathi Urban Co-operative Credit Society Ltd. shows that Directors of the said Society have disbursed huge amount of loan to several debtors without taking property security from the debtors. The FIR mentions that both applicants have obtained loan of Rs. 50,00,000/- each from the said Society. The learned Counsel for the intervenor submitted that amount of more than 5,00,00,000/- is to be recovered from both applicants.

6. It is not in dispute that Directors of

Gujrathi Urban Co-operative Credit Society Ltd. have been granted pre-arrest bail by this Court in Criminal Applications bearing Nos. 3341, 3342, 3340, 3343 and 3344 of 2014, on 11.07.2014. Allegations against Directors of the said Society were more serious as they being custodian of deposits of small investors, had committed breach of trust by disbursing loan without obtaining proper security. However, in this application, I am dealing with case of debtors who have failed to refund the amount of loan. Appropriate proceedings as prescribed by law are already filed against them for recovery. Perusal of statements of witnesses and more particularly, that of Satish Linge goes to show that properties of both applicants are already attached in pursuant to some judicial orders. Prima facie it is seen that investigation of the crime in question qua present applicants is already over.

7. The learned Counsel appearing for the intervenor argued that interest of the Society be secured by directing applicants to pay some amount. When proceedings for recovery are already pending, this Court will not act as a recovery agent for the Society by directing pre-trial detention of applicants.

8. In this view of the matter, I pass the following order :-

(a) The Application is allowed.

(b) Applicants / accused, in the above crime, be released on bail on their executing P.R. Bond in the sum of Rs. 25,000/- each and on furnishing one or more solvent sureties of the like amount by each of them.

(c) Applicants shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(d) Applicants shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial, if any, against them.

(e) Applicants shall not repeat commission of similar type of offences in future.

9. The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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