IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.448 OF 2016

1. Jaysinha Shankarrao Mohite-Patil
2. Subhash Ramling Dalvi
3. Vijay Vishwanath Shinde

.. Applicants

vs

The State of Maharashtra .. .. Respondents

with
CRIMINAL APPLICATION NO.523 OF 2016
IN
CRIMINAL ANTICIPATORY APPLICATION NO.448 OF 2016

Mrs Kalyani Dinkar Bhosale .. Intervener
vs
The State of Maharashtra .. Respondents

with
ANTICIPATORY BAIL APPLICATION NO.460 OF 2016

Manoj Madan Relekar .. Applicant
vs
State of Maharashtra .. Respondent

Mr.A.P.Mundargi Sr.Advocate I/b Mr.Hrishikesh Mundargi for Applicant in ABA No.448/2016
Mr.Harshad Nimbalkar I.b Mr.Satyam Nimbalkar in ABA No.460/2016

Mr.Deepak Thakre Additional Public Prosecutor for State
Mr.Abad Ponda I/b Mr.Jitendra M.Pathade for Intervener in Criminal Application No.523/2016

CORAM: A.M.BADAR, J
DATE: <u>4TH AUGUST, 2016</u>

P.C.

1. Applicants-Jaysinha Shankarrao Mohite-Patil and Vijay

Vishwanath Shinde respectively Chairman and Director of Sumitra Co-operative Non-Agriculture Credit Society in Anticipatory Bail Application No.448 of 2016 (hereinafter referred to as the 'credit society' for the sake of brevity) and Applicant-Manoj Madan Relekar in Anticipatory Bail Application No.460 of 2016 who are Accused in Crime No.42 of 2016 for offences punishable under section 306 read with section 34 of Indian Penal Code registered with police station Sadar Bazar,District Solapur at the instance of Mrs.Kalyani Dinkar Bhosale; by these Applications are seeking pre-arrest bail.

2. Heard the learned senior counsel appearing Applicants in Anticipatory Bail Application No.448 of 2016. He drew my attention to the FIR as well as suicidal note dated 5 October 2012 and 12 January 2016 written by the deceased-Dinkar Dagdu Bhosale. The learned senior counsel argues that an offence of 'abetment' is not even remotely attracted in the case in hand. The learned counsel submitted that the deceased was an employee of the 'credit society'. He died suicidal death on 17 January 2016. The learned counsel submitted that the deceased left Akluj where the society was functioning in the year 2013 for Pune. Consequently, because of misappropriation of funds the services of the deceased

were terminated from 19 July 2014. The learned senior counsel submits that thereafter proceedings were initiated against the deceased as well as his family members under section 101 of the Maharashtra Co-operative Societies Act, 1961 for recovery of the misappropriated amount. Simultaneously, an FIR came to be lodged against the deceased and others for commissioin of several offences vide Crime No.8 of 2016. The learned senior counsel further argued that the entire money paid by the deceased and his family members was properly accounted for settling their debts. According to the learned senior counsel right from 5 October 2015 the deceased was writing suicidal notes and addressing them to several authorities and also to his family members. The learned senior counsel further argued that the element of knowledge as well as ***mens rea*** is completely missing and the alleged harassment of the year 2013 has no nexus with the suicide committed in the year 2015.

3. I have also heard the learned counsel appearing for Applicant-Manoj Madan Relekar. He argued that the Applicant had purchased a house from the vendors by a registered document for a valuable consideration of Rs.3,80,000/- and the deceased was an attesting witness to this Deed of Conveyance. Therefore, it cannot be

said that the Applicant had abetted commission of suicide by the deceased-Dinkar Dagdu Bhosale.

4. The learned APP opposed the Application by contending that the Statutory Auditor's report shows that out of loan amount of Rs.10,00,000/- by the deceased, he had refunded an amount of Rs.6,54,000/-. The total outstanding amount against the deceased and his wife was about Rs.7,00,000/-. The learned APP further argued that despite pendency of proceedings under section 101 of the Maharashtra Co-operative Societies Act, 1961 Mr.Shinde and Mr.Deshmukh posing to be Recovery Officers had visited the house of the wife of the deceased i.e. the informant and forced her to deliver a cheque for Rs.2,35,000/-. The learned APP argued that accused persons were instigating the deceased to commit suicide by harassing him. The learned APP argued that Applicant-Manoj Madan Relekar is a relative of the Chairman of the society.

5. I have also heard learned counsel for the informant. He argues that this is a case wherein money is given importance than human life and the deceased was forced to commit suicide by continuously harassing and torturing him.

6. It is not in dispute that with passage of time now the charge sheet has been filed in the crime in question. The learned senior counsel pointed out that now after committal of the case, the same is fixed for framing of charge.

7. With the assistance of the learned counsels appearing for the parties, I have carefully perused the record of investigation made available so also Annexures to Applications filed by Applicants as well as the informant.

8. It is not in dispute that the deceased-Dinkar Dagdu Bhosale was in the employment of the credit society from the year 2001 and that on 9 July 2014 he was terminated from service of the credit society. Applicant-Jaysinha Shankarrao Mohite-Patil is stated to be the Chairman of the credit society and Applicant-Vijay Vishwanath Shinde is stated to be the Director thereof. The learned APP has not disputed that Applicant-Manoj Madan Relekar is not concerned with the management of the said credit society. It is not in dispute that on 12 January 2016 deceased-Dinkar Dagdu Bhosale had consumed the insecticide at the office of the Collector at

Solapur. He died suicidal death on 17 January 2016. His wife Mrs.Kalyani Dinkar Bhosale lodged an FIR in the matter of his suicidal death on 21 January 2016. Informant-Mrs.Kalyani Dinkar Bhosale in her FIR has averred that by using name of the Chairman of the society, senior Officers of the credit society were indulging in misappropriating funds of the said society. Her deceased husband had brought those irregularities to the notice of the Chairman and as well as the Director of the credit society but from January 2013 the management started harassing her husband by holding him responsible for the irregularities in the affairs of the society.The informant further averred that in March 2013 her family deposited an amount of Rs.81,00,000/- with the credit society for settling the amount of loans but, the credit society passed a receipt for Rs.41,00,000/- only. The informant further averred that the Chairman as well as the Directors of the credit society forced them to sell out the house standing in the name of her brother-in-law to Applicant-Manoj Madan Relekar for a meagre consideration of Rs.2.80 lacs. The informant further averred that because of harassment meted out by the Chairman of the credit Society she got herself transferred to the Civil Hospital at Pune and shifted to Pune along with her deceased husband. The informant contended that the

Chairman of the credit society then sent persons by name Mr.Shinde and Mr.Deshmukh to her house at Pune demanding refund of the loan amount. According to the informant-wife on 15 October 2015 depositors as well as Debtors of the credit society formed an Action Committee. The said Committee gave a representation to the Collector but, the Collector has not conducted any inquiry. Her husband also represented the Collector and informed the Collector that he will be committing suicide. The informant pointed out accusing finger to present Applicants and contended that because of their constant harassment and torture her husband-Dinkar Dagdu Bhosale committed suicide.

9. At this stage, it would be apposite to refer to letters written by the deceased and addressed to several authorities. These letters are reflecting the circumstances of the transaction which has resulted in his death and therefore are dying declarations of deceased-Dinesh Dagdu Bhosale. On the day of consuming poison i.e. 12 January 2016 deceased-Dinkar Dagdu Bhosale wrote to the Collector that he had been been to the Collector's office for committing suicide on 5 October 2014 and 6 October 2015. The deceased further wrote that on 7 January 2016 proceedings under

section 101 of the Maharashtra Co-operative society Act,1961 were filed against him as well as his family members. He further wrote that he is not committing suicide because an offence has been registered against him. He had deposited Rs.81,00,000/- in cash and also executed a sale deed of his house costing Rs.60,00,000/- to 70,00,000/-but, still proceedings under section 101 of the Maharashtra Co-operative Societies' Act are initiated and his wife is served with a notice in respect of dishonour of the cheque. The deceased further declared that the credit society had not accounted the amount of Rs.81,00,000/- so also the amount received towards consideration for sale of the house. The deceased further wrote that therefore, guarantors are harassing him and his family and therefore he is indulging in self-effacement. The deceased in his dying declaration has mentioned the loan cases in respect of him as well as his family members. This dying declaration shows that the deceased and his following family members had taken loan from the credit society: They are, Mrs.Kalyani Dinkar Bhosale, Mr.Dinkar Dagdu Bhosale, Dilip Dagdu Bhosale, Dagdu Pralhad Bhosale, Mrs.Kalyani Dinkar Bhosale, Suvarna Dilip Bhosale, Kondabai Dagdu Bhosle, Vimal Nivruti Bhosale, Renuka Kashinath Walke. Some of them are stated to be debtors of Swaruprani Credit society. The deceased also declared that there are nine loan cases and has also named persons who are responsible for his death.

10. On this factual drop, let us now examine what the Statutory Auditor says about the loan cases. It is apposite to note that reference to the Statutory Auditor is also in the FIR. In the FIR lodged against the deceased vide crime no.8 of 2016 for the offences punishable under section 409, 420, 468, 471 read with section 120-B and 34 of the Indian Penal Code informant-Chandrashekar Raichand Doshi, Chartered Accountant had reported that being a Statutory Auditor he conducted the audit of the credit society and submitted his detailed special report about misappropriation of funds in the credit society. The deceased was serving in Bhaji Mandi branch of the credit society. The Statutory Auditor has specifically named the deceased as an accused in crime No.8 of 2016. This FIR lodged by the Statutory Auditor on 9 January 2016 is alleging that the deceased had opened bogus deposit account in the name of three members by depositing Rs.1,00,000/- in the account of each account holder. Then, by showing that deposit as security, loan was released in favour of those depositors. Thereafter, without deducting the amount of loan, the amount under the deposit came to be refunded to these

depositors. The relevant paras of the FIR lodged by the Statutory auditor so far as it relates to deceased-Dinkar Dagdu Bhosale reads thus:

> " However, herein accused namely 1) Dilip Lonkar (General Manager) residing at Lonkar colony, Adkuj (2) Ramesh More (Computer Main, Head office) residing at Ratnpuri 9,Sangram Nagar 3) Hari Jagtap (Head office Branch Officer) 4) Arjun Jagtap (Branch Officer, Bhaji Mandai branch) residing at Sumitra nagar, Akluj (5) Dinkar Bhosale Clerk (Bhaji Mandai Branch) residing at Akluj 6) Bharat Gorave (Jayshankar Udyan Branch Officer) residing at Ratnpur 9,Sangram Nagar &) Nandmukar Devkhule (Jayshankar Udyan Branch Clerk) residing at Ratnpur 10,Sangram Nagar while working at Sumitra Rural Non-Agricultural cooperative credit society Ltd Akluj Taluka Malshiras' Main branch, Bhaji Mandai Branch, Jayshankar Branch, Akluj making collusion and hatching conspiracy opening various bogus debt account and making bogus signature of bogus account holders, drawing amount of Rs.2,02,32,296/-from account of credit society, making its appropriation using said amount for own benefit have cheated society. So have legal complaint against above people on behalf of government."

11. Thus according to the Statutory Auditor, the deceased and co-accused have misappropriated funds of the credit society to the tune of more than Rs.2 crores and action for prosecuting them for several offences was initiated against them.

12. The Chart at Exhibit D to the Anticipatory Bail Application No.448 of 2016 shows total outstanding amount against 9 loan accounts which are referred to by the deceased in his dying

declaration dated 12 January 2016. This Chart shows that on 31 January 2016 amount of more than Rs.98 lacs was still outstanding so far as those 9 accounts are concerned.

13. For recovery of the allegedly misappropriated amount by the deceased and other employees, the credit society had taken resort to the provisions of section 101 of the Maharashtra Co-operative Societies Act 1961.The deceased, as seen from his dying declaration dated 12 January 2016 came to know about this fact on 7 January 2016 itself. The FIR against the deceased and other employees of the credit society was lodged on 9 January 2016. Then the deceased consumed poison on 12 January 2016 and died suicidal death on 17 January 2016. Thus, this chronology of the events ***prima facie*** goes to show that the deceased was aggrieved by the events which were taking place and he was in financial crunch with tension of guarantors of loan. This also appears to be the reason stated by him in the letter addressed to the Collector for committing suicide.

14. Applicants in Anticipatory Bail Application No.448 of 2016 are the Chairman and the Director of the said credit society

who had initiated action against the deceased of recovery of misappropriated amount. Applicant-Manoj Madan Relekar in Anticipatory Bail Application No.460 of 2016 is the purchaser of the house from Shailesh Dilip Bhosale, Rshikesh Dilip Bhosale and Smt.Suvarna Bhosale on 21 March 2013. The chronology of the events and the record thus shows that the deceased had left Akluj i.e area of operation of the credit society in the year 2013. In the year 2014 he was terminated by the credit society.

15. Record of investigation do show that all documents regarding the disbursement of loan/deposits/refunds of loan/debts in respect of the deceased so also other debtors are seized by the Investigator by drawing a seizure panchanama. It is therefore, matter of accounts as to how the amount refunded by the deceased was adjusted in the accounts of the credit society. However, it is seen from the FIR lodged against the deceased and other employees that making several loan cases substantial amount was withdrawn from the accounts of the credit society by the deceased as well as other co-employees. Even in the name of the informant loan cases were made and amount is withdrawn from the credit society.

16. In such a situation, even if the deceased was feeling that he was wronged by the management of the society, averments in the suicidal note ***prima facie*** falls short of making an offence under section 306 of the Indian Penal Code. It would have to be objectively seen whether the allegations made could reasonably be viewed as proper allegations against present Applicants to the effect that they had intended or engineered suicide of deceased-Dinkar Dagdu Bhosale. When we put suicide note written by the deceased on this test, ***prima facie*** it falls short of making out an offence punishable under section 306 of the Indian Penal Code. For making out that offence intention and ***mens rea*** is required. It is required to show that accused persons have stimulated or intentionally aided the deceased to commit suicide. The acts of harassment are of the year 2013 whereas suicide was committed on 12 January 2016. There does not seem to be a reasonable nexus between the alleged acts and act of commission of suicide. As such, ***prima facie*** it cannot be said that suicide by the deceased is a common course of event and natural conduct of a normal human being; as a result of the acts attributed to present Applicants.

17. With passage of time, now the charge sheet has been

filed and the case is also committed to the Court of Sessions. The offence is primarily based on documentary evidence and financial transactions of the deceased and his family members with the credit society.Those documents are already seized by the Investigating officer. No apprehension of tampering of evidence of the prosecution or thwarting the course of justice is expressed by the prosecution. All recoveries are already effected.

18. In the light of foregoing reasons, the custodial interrogation of Applicants is not warranted and therefore the following order :

O R D E R

(i) Both Applications are allowed.

(ii) Orders granting ad-interim anticipatory bail to the Applicants on 10 March 2016 and 11 March 2016 respectively are confirmed on same terms and conditions.

(iii) Applicants shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of accusation against them so as to dissuade them from disclosing such facts either to the Court or to any Police Officer and that they shall not tamper with the evidence;

(iv) Applicants/accused shall co-operate for expeditious disposal of the trial;

(v) Applicants shall co-operate with the Investigating Officer by visiting the concerned police station as and when reasonably called.

All observations made in this order are ***prima facie*** observations having no bearing on trial against Applicants.

With disposal of these Applications, all interim Applications if any, stands disposed of accordingly.

(A.M.BADAR, J)