IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1606 OF 2017

Mrs. Bhoomi Ankit Brahmakshatriya
Hindu, Age : 32 years, Occ : Advocate,
Residing at :
H-202, Indraprastha-II,
Nr. Tulip Citadel, Shreyas Tekra,
Ambawadi, Ahmedabad 380 015.
..APPLICANT

-VERSUS-

1) The State of Maharashtra
Through The Senior Police Inspector,
Kranti Chowk Police Station,
Aurangabad.

2) Rushikumar Vikramchand Sahuji
Age : 32 years, Occ : Business,
R/o N-11 B, House No.155/3,
Subhashchandra Bose Nagar,
HUDCO, Aurangabad.
..RESPONDENTS

WITH

CRIMINAL WRIT PETITION NO. 518 OF 2017

1. Chintan Jitendra Acharya
Age : 36 years, Occ : Service,
R/o 1, Bapu Nagar, Ahmedabad,
Ahmedabad City, Gujrat.

2. Alkesh Donnarrao Dave
Age : 44 years, Occ : Service,
R/o 55, Jaiambe Nagar, Naroda,
Ahmedabad, Gujarat.
..PETITIONERS

-VERSUS-

1) The State of Maharashtra
At the instance of Senior Police Inspector,
Kranti Chowk Police Station,
Aurangabad.

2) Rushikumar Vikramchand Sahuji
Age : 32 years, Occ : Business,
R/o N-11 B, House No.155/3,
Subhashchandra Bose Nagar,
HUDCO, Aurangabad.
..RESPONDENTS

WITH
CRIMINAL APPLICATION NO. 1646 OF 2017

1. Anish Kasturbhai Shah
Age : 50 years, Occ : Business,
R/o Opp. Shipiki Apartments,
Sanjivani, Ahmedabad City, Gujrat,
India

2. Kamal Rameshbhai Sheth
Age : 61 years, Occ : Business,
R/o Vastrapur, Plot No.42,
Akshanim Bungalow, Ahmedabad City,
Gujrat, India.
..APPLICANTS

-VERSUS-

1) The State of Maharashtra
Through The Senior Police Inspector,
Kranti Chowk Police Station,
Aurangabad.

2) Rushikumar Vikramchand Sahuji
Age : 32 years, Occ : Business,
R/o N-11 B, House No.155/3,
Subhashchandra Bose Nagar,
HUDCO, Aurangabad.

..RESPONDENTS

WITH

CRIMINAL APPLICATION NO. 1645 OF 2017

1. Chandresh Bhupendra Pandya
Age : 38 years, Occ : Service,
R/o 16/B, Krishna Bungalow,
Isanpur, Ahmedbad, Gujrat.

2. Shashin Mahesh Mehta
Age : 48 years, Occ : Service,
R/o A-8, Suresha Apartments,
Opp. Eeshita Tower, Navrangpura,
Ahmedabad, Gujrat.

3. Shwetang Shaileshbhai Patel
Age : 34 years, Occ : Service,
R/o E/E-28, Bhagyoday Society,
Bethak, Naroda, Ahmedabad, Gujrat.

4. Harsh Prathusinh Jhaveri
Age : 45 years, Occ : Service,
R/o E-201, Abhilasha Apartments,
Opp. Arohi Bunglow, Near D-Mart Store,
Ahmedabad, Gujrat

5. Ashokkumar Chimanlal Patel
Age : 65 years, Occ : Service,
R/o Block No.149, Sarvoday Nagar,
Outside Shahpur Gate, Ahmedabad
Gujrat.

..APPLICANTS

-VERSUS-

1) The State of Maharashtra
Through The Senior Police Inspector,
Kranti Chowk Police Station,
Aurangabad.

2) Rushikumar Vikramchand Sahuji
Age : 32 years, Occ : Business,
R/o N-11 B, House No.155/3,
Subhashchandra Bose Nagar,
HUDCO, Aurangabad.

..RESPONDENTS

WITH

CRIMINAL APPLICATION NO. 1644 OF 2017

1. Vishad Ashok Jagasheth
Age : 48 years, Occ : Business,
R/o J 702, Shilalekh Shahibaug,
Ahmadabad, Gujrat

2. Jairaj Harishchandra Pednekar
Age : 53 years, Occ : Business,
R/o Block No.210, Room No.1295,
Bapunagar, Ahmadabad, Gujrat

..APPLICANTS

-VERSUS-

1) The State of Maharashtra
Through The Senior Police Inspector,
Kranti Chowk Police Station,
Aurangabad.

2) Rushikumar Vikramchand Sahuji
Age : 32 years, Occ : Business,
R/o N-11 B, House No.155/3,
Subhashchandra Bose Nagar,
HUDCO, Aurangabad.

..RESPONDENTS

WITH

CRIMINAL APPLICATION NO. 1643 OF 2017

1. Mr. Amol Shripalbhai Sheth
Age : 49 years, Occ : Business,
R/o Plot No.96/5, Koteshwar Gam,
Gandhinagar, Gujrat, India.

2. Nalinkumar Mohanbhai Thakur,
Age : 56 years, Occ : Business,
R/o 501, Shri Niketan Apartment,
Near Mitra Mandal Society, Usmanpura,
Ahmedabad, Gujrat.

..APPLICANTS

-VERSUS-

1) The State of Maharashtra
Through The Senior Police Inspector,
Kranti Chowk Police Station,
Aurangabad.

2) Rushikumar Vikramchand Sahuji
Age : 32 years, Occ : Business,
R/o N-11 B, House No.155/3,
Subhashchandra Bose Nagar,
HUDCO, Aurangabad.

..RESPONDENTS

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Shri Rajiv Patil, Senior Advocate a/w Mr. Hasan P. Patel, Advocate for petitioners in WP No.518 of 2017
Mr. Joydeep Chatterji a/w Mr. R.R. Totala holding for Mr. A.S. Radikar, Advocate for the applicants in all Criminal Applications.
Mr. S.Y. Mahajan, A.P.P. for respondent/State.
Mr. D.J. Chaudhary, Advocate for respondent no.2.

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CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.

DATE : 10th April, 2017

JUDGMENT (S.S. SHINDE,J):-

All these applications and the Petition are filed with the prayer to quash and set aside F.I.R. bearing Crime No.212/2017 registered with Kranti Chowk Police Station, Aurangabad for the offences punishable under Sections 420, 406, 120-B of the Indian Penal Code and Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. Mr. Rajiv Patil, the learned senior counsel appearing for petitioners in Writ Petition and Mr. Joydeep Chatterji, learned counsel appearing for the applicants in Applications submit that, the alleged transaction of purchasing the food grains is through broker and the same is of civil nature. There is no criminality. Even if the allegations in the first information report are taken at its face value and read in its entirety, no offences are disclosed as against the petitioners/applicants. The learned Senior counsel further invites our attention to the fact that, there was

conversation between respondent No.2-informant and General Manager and Director Shri Amol Sheth that, there is insufficient amount in the bank account of Anil Limited Company, and therefore, the cheque was issued from the account of Anil Mines and Mineral Company in favour of respondent no.2. It was told to the informant that, due to insufficient funds in the account of Anil Limited Company, respondent no.2 shall not present the cheque since same can not be cleared. He submits that, one of the petitioner in Writ Petition is working as Deputy General Manager and another petitioner is working as Accountant, and therefore, they had no role to play in the alleged transaction between the Company and respondent no.2. There is no direct transaction between the petitioners and the informant. Therefore, he submits that the first information report deserves to be quashed.

4. Advocate Mr. Chatterji appearing for the applicants in applications, in addition to the arguments already advanced by the learned Senior counsel Mr. Rajiv Patil, submits that, at the most the Director of the

Company Amol Sheth, who entered into transaction and conversation with respondent no.2, against whom there are allegations in the first information report, an investigation can proceeded further. Other applicants have no role to play in the alleged transactions. He submits that, the entire transaction is of civil nature and no criminal element is involved in it. Therefore, he submits that, the first information report deserves to be quashed and set aside.

5. The learned A.P.P. appearing for the respondent/State and the learned counsel appearing for respondent no.2 invited our attention to the allegations in the first information report and also investigation papers and submit that, the alleged offences have been disclosed and those need investigation. The learned A.P.P. submits that, the applicants/petitioners have cheated number of persons and involvement of the total amount in such transaction is of Rs.12 Crores. He submits that, though the agreement between the informant and Anil Limited Company was entered into, the cheque from the account of Anil Mines and Mineral Company was

issued. The said cheque was dishonoured. Thereafter, another cheque was issued, that was also dishonoured. The informant and number of persons have been cheated by the applicants/petitioners. Their intention to cheat the applicants/petitioners was since inception, as it is clear from the fact that, though the transaction has been entered into between Anil Limited Company and the informant through broker, the cheque was issued from the account of Anil Mines and Mineral company. It is submitted that, the applicants/petitioners conspired with each other and their intention since inception was to cheat the informant and other similarly situated persons and defraud the amount. Therefore, they jointly submit that, the Petition and the applications may be rejected.

6. We have given careful consideration to the submissions advanced by the learned Senior counsel Mr. Rajiv Patil and Advocate Joydeep Chatterji, appearing for the applicants/petitioners, the learned A.P.P. appearing for respondent/State and the learned counsel appearing for respondent no.2. With their able assistance, we have

perused the grounds taken in the Petition/Applications and also the contents of the first information report and the investigation papers made available for perusal.

7. Upon careful perusal of the allegations in the first information report, it appears that, respondent no.2 is involved in sale and purchase transaction of the commodities and for the said purpose, he has formed Param Trading Company. The commodities of wheat, jwar, maize etc., are sold by the applicants/petitioners through Broker namely Swastik Corporation, Old Mondha, Aurangabad to various businessmen. It is further alleged in the first information report that, quantity of maize to the extent of 1007 quintal was sold by the informant through Broker Swastik Corporation, Old Mondha, Aurangabad in favour of Anil Limited Company, Bapunagar, Ahmadabad, on various dates mentioned in the first information report. It appears that, the said Anil Limited Company, Bapunagar, Ahmadabad issued cheque of Punjab National Bank on 31st May, 2016 from the account of Anil Mines and Mineral instead of issuing the same from the account of Anil

Limited Company. Admittedly, the agreement to purchase the commodities was in between Anil Limited Company and informant through Swastik Corporation, Old Mondha, Aurangabad. It further appears that, the said cheque was dishonoured when it was presented in the Bank. It further appears that, the informant was communicated that, due to insufficient funds in the account of Anil Limited Company, the cheque cannot be honoured and therefore, the amount of Rs.14,48,754/- be invested for further 90 days and Company will offer 18% interest upon the said amount and thereafter, the cheque of Anil Limited Company was issued on 1st March, 2017 drawn on Punjab National Bank of account No. 2318002100015384, that cheque was also not honoured since the said account was blocked by the office bearers of the Company.

8. Upon careful perusal of the allegations in the first information report, it is abundantly clear that, all the applicants/petitioners are named in the first information report. There are allegations of conspiracy, which would attract the ingredients of Section 120-B of the Indian Penal Code. It further appears that, like the

informant other persons have been also cheated by the accused, who are Directors and employees of the Company. It further appears that, various persons are cheated and total involvement of the amount is more than Rs.11 Crores. Upon careful perusal of the investigation papers, it appears that, Investigating Officer has recorded the statements of number of persons, who are cheated by the accused and also cheques which were issued in their favour and on presentation, those were dishonoured, are also seized by the Investigating Officer during the course of investigation. Prima facie, it appears that, the accused in collusion with each other are involved in various transactions of purchasing the commodities and issuing cheques from the account of Anil Mines and Mineral Company, instead of issuing the cheques of Anil Limited Company, who is party to the agreement.

9. In that view of the matter, all the applications and Petition stand rejected. However, we make it clear that, the observations made hereinbefore are prima facie in nature and confined to the

adjudication of the aforementioned Petition and the applications only.

(K.K. SONAWANE, J.) **(S.S. SHINDE, J.)**

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