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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 1432 OF 2018**

1. Dagadu Bhagwan JadhavApplicants
2. Dhondiram Narayan Gaikwad

V/s.

The State of MaharashtraRespondent

WITH**ANTICIPATORY BAIL APPLICATION NO. 1324 OF 2018**

Balasaheb Bhimashankar ShelkeApplicant

V/s.

The State of MaharashtraRespondent

WITH**ANTICIPATORY BAIL APPLICATION NO. 1325 OF 2018**

1. Shrishail Gulchand GaikwadApplicants
2. Hakim Mahamad Saheb Shaikh

V/s.

The State of MaharashtraRespondent

WITH**ANTICIPATORY BAIL APPLICATION NO. 1249 OF 2018**

1. Indumati Paramchand Algonda	}	
2. Dilip Brahmadeo Mane	}	
3. Rajendra Laxman Gund	}	
4. Pravin Vishnupant Deshpande	}	Applicants
5. Sojar Shivram Patil	}	
6. Uttareshwar Ambadas Bhutte	}	
7. Urmila Raosaheb Shinde	}	

V/s.

The State of Maharashtra	Respondent
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WITH
CRIMINAL APPLICATION NO. 855 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 1249 OF 2018

Agricultural Produce Market Committee Solapur	Intervener
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IN THE MATTER BETWEEN

Indumati Paramchand Algonda and others	Applicants
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V/s.

The State of Maharashtra	Respondent
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WITH
ANTICIPATORY BAIL APPLICATION NO. 1256 OF 2018

Rajshekhar Shivdare	Applicant
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V/s.

The State of Maharashtra	Respondent
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**WITH
ANTICIPATORY BAIL APPLICATION NO. 1255 OF 2018**

Basavraj Nilppa DulangeApplicant

V/s.

The State of MaharashtraRespondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1253 OF 2018**

1. Siddharam Baburao ChakoteApplicants
2. Appasaheb Shivshankar Umbarje
3. Prabhakar Gangadhar Vibhute

V/s.

The State of MaharashtraRespondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1252 OF 2018**

Sidram @ Sidramappa GurusiddhaApplicant
Yaragale

V/s.

The State of MaharashtraRespondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1389 OF 2018**

Nagraj Kalyanrao PatilApplicant

V/s.

The State of Maharashtra

....Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1390 OF 2018**

Shankar Nagnath Yengure

....Applicant

V/s.

The State of Maharashtra

....Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1392 OF 2018**

Chandrakant Amasidha Khupsange

....Applicant

V/s.

The State of Maharashtra

....Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1393 OF 2018**

Ashok Anandrao Devkate

....Applicant

V/s.

The State of Maharashtra

....Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1395 OF 2018**

Pirrapa Gurusidha Mhetre

....Applicant

V/s.

The State of Maharashtra

.....Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1340 OF 2018

Nasir Ahemad Mehboobsab Khalifa

....Applicant

V/s.

The State of Maharashtra

.....Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1347 OF 2018

Avinash Shridhar Martande

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. A. P. Mundargi Senior Advocate i/b Mr. Sarang Aradhye for the applicant in ABA 1249/2018

Mr. Y. S. Jahagirdar Senior Advocate with Mr. Sarang Aradhye and Miline Prabhaune for the applicant in ABA 1256/2018

Mr. Manoj Mohite i/b Mr. Ritesh Thobade a/s Sagar Tambe for the applicant in ABA Nos. 1253/18, 1252/18, 1231/18 and 1432/18

Mr. Abhijit Kulkarni i/b D.D. & Abhijit Associates for applicant in ABA Nos. 1324/2018, 1325/2018, 1340/2018, 1347/2018, 1389/2018, 1390/2018, 1392/2018 and 1395/18.

Mr. Rajiv Chavan Senior Advocate a/w Ms. Priyanka Chavan, Mr. Y. G. Thorat, Ms. Anupama Pawar, Ms. Sumangala Yadav i/b Mr. Ashok Tajane for intervener in APPP 855/2018

Smt. J. S. Lohokare APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : MARCH 5, 2019.

P.C.

In all these applications, applicants who were office bearers of APMC Solapur are seeking pre-arrest bail in Crime No. 258/2018 registered with Jail Road Police Station, Dist. Solapur for offence punishable under sections 406, 409, 120-B of the Indian Penal Code.

2 The prosecution case against the applicants is, applicants were office bearers of APMC as directors or in some other capacity have mismanaged administration of Agricultural Produce Market Committee, Solapur (Hereinafter referred as 'APMC') committing criminal breach of trust, cheating, etc. in a planned manner by hatching criminal conspiracy.

3 The submissions of the learned senior counsel, Shri. Mundargi, Shri. Mohite and other respective counsel representing the applicants are that there was an audit report by the Special

Auditor, Class I, Cooperative Societies for the year 2015-2016. The issues which are part of the F.I.R. were looked into the said audit report and it is in categorical terms opined that there is no need to file F.I.R. perhaps for the reason of absence of element of *mens rea* on the part of the applicants.

4 The second and important limb of submission of the learned counsel are, the Division Bench of this Court in Writ Petition nos. 8428 of 2016, 9380 of 2016, 10703 of 2016, 11553 of 2016 & 11555 of 2016 has stayed the action initiated against the applicants pursuant to provisions of Section 45 of the MAPC Act. A subsequent attempt on the part of the State Government and its officers initiating action under section 57 of the said Act was also stayed in Writ Petition no. 9573 of 2017 vide order dated 06/06/2018.

5 According to learned counsel, the issues which are formed to be basis for registration of offences are taking decisions thereby causing financial loss to the APMC. The learned counsel then would urge that it is within the ambit of APMC to plan its finances and

administration in accordance with the statutory provisions and whether the fixed deposits of the APMC finances are to be for a period of 90 days or more, can not be a basis for inferring *mens rea* on the part of the applicants.

6 When confronted, the learned APP submits that what has been stayed by the Division Bench of this Court is the civil proceedings and not criminal investigation. The learned APP then would urge that custodial interrogation of the applicants is not warranted provided they cooperate with the investigation.

7 From the record, what could be inferred is, the issues which were formed to be a basis for initiating action under section 45 and section 57 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 which proceedings are stayed by the Division Bench of this Court are formed to be basis for registration of offence. The issues viz. tenure of fixed deposit with the bank of the finances of APMC, settlement of the matters before the *Lok Adalat*, non completion of construction work are within

administrative domain of the executive body of the APMC are relied upon for the purpose of registration of the crime in question.

8 Pursuant to call of this Court, Shri. Chavan, the learned senior counsel representing the interest of the administrator, was heard. He submits that prior to appointment of administrator, APMC was running in loss, however, pursuant to corrective measures taken by the Administrator, APMC is running in profit. According to him, there are instances wherein this Court can infer that financial loss is caused to APMC.

9 Even if the aforesaid submissions are appreciated, the fact remains that the Statute i.e. Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 provides for a mechanism for recovery of financial loss, if any caused by an independent director to the APMC.

10 In the aforesaid background, in my opinion, the Ad-interim protection ordered by this Court needs to be confirmed.

(A) In the event of arrest of the applicants in Crime No. 258/2018 registered with Jail Road Police Station, Dist. Solapur, applicants be released on bail on executing P.R. bond in the sum of Rs. 50,000/- each with one or more sureties in the like amount.

(B) Applicants to attend Investigating Officer as and when directed by him.

(C) All the applicants are directed to submit their contact details including landline/mobile no., their permanent place of abode and their property details within period of two weeks from today.

(D) Applicants shall not influence witnesses or tamper with evidence.

11 Applications stand disposed of.

[NITIN W. SAMBRE, J.]