IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 ANTICIPATORY BAIL APPLICATION NO. 774 OF 2020

RUSHIKESH VIJAYANAND HANCHATE
VERSUS
THE STATE OF MAHARASHTRA AND ANR.
.....
Mr. A.M.Gaikwad, Advocate for Applicant.
Mr. V.M.Kagne, A.P.P. for State.
......
WITH
ANTICIPATORY BAIL APPLICATION NO. 693 OF 2020

SAROJA W/O GOVIND CHAVAN
VERSUS
THE STATE OF MAHARASHTRA
.....
Mr. G.G.Kadam, Advocate for Applicant.
Mr. V.M.Kagne, A.P.P. for State.
......
WITH
ANTICIPATORY BAIL APPLICATION NO. 699 OF 2020

VAISHALI ASHOKRAO DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA
.....
Mr. M.S.Karad h/f Mr. S.S.Thombre,
Advocate for Applicant.
Mr. V.M.Kagne, A.P.P. for State.
......
WITH
ANTICIPATORY BAIL APPLICATION NO. 761 OF 2020

SHRIKANT S/O BAJRANG TERKAR
VERSUS
THE STATE OF MAHARASHTRA
.....
Mr. Satej S.Jadhav, Advocate for Applicant.
Mr. V.M.Kagne, A.P.P. for State.
......

CORAM : V.L.ACHLIYA, J.
DATE : 29/10/2020
......

ORDER :

1. The applicants named above have preferred these applications u/s 438 of Cr.P.C. seeking pre-arrest bail in Crime No. 175/2020 registered with Anandnagar Police Station, Osmanabad for the offences punishable u/s 406,420 read with section 34 of Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Finance Establishment) Act, 1999 [hereinafter referred to as 'M.P.I.D. Act'].

2. Heard learned counsel for applicants, learned A.P.P. representing the respondent – State as well as learned counsel representing the intervener. Perused the F.I.R. and copy of charge sheet.

3. In brief, it is the contention of learned counsel for applicants that the allegations made in F.I.R. prima facie discloses no offence against applicants and they have been unnecessarily implicated in the case. It is submitted that the informant had lodged complaint on 25/06/2020 that in the year 2016 Balaji Mohan Salunke, the Chairman of Sushiladevi Nagari Sahakari Pat Sanstha, Osmanabad [hereinafter referred to as 'said Credit Co-operative Society'] with whom the informant had acquaintance invited him at his house. When the informant visited the house of Balaji Mohan Salunke, the Directors of said Credit Co-

operative Society which include above named applicants were present. He was requested to invest the amount with said Credit Co-operative Society. He was told that on the investment made as fixed deposits, interest @ 14.40% p.a. will be paid to him. He, therefore, invested his own money as well as the money of his family members. After the maturity of amount deposited in Fixed Deposit when the informant approached said credit co-operative society for payment he was told that the recovery process is going-on and amount invested in Fixed Deposit shall be paid within four months. Relying upon the assurance given by the Chairman of said Credit Co-operative Society and its Directors, the informant waited for considerable period but the amount was not paid to him. In short it is alleged that informant and his family invested Rs. Sixty Two Lakhs in Fixed Deposit with said credit co-operative society which has not been repaid. On the basis of complaint lodged by the informant the aforesaid offences came to be registered against the applicants.

4. It is the contention of applicant Vaishali Ashokrao Deshmukh [the applicant in ABA No. 699 of 2020] that the applicant has never attended any meeting of said Credit Co-operative Society nor signed any document as Director of said credit co-operative society. She is unaware as to her appointment as Director of said Credit Co-operative

Society. She being a defaulter member, not entitled to hold the office as a Director. It is the further contention of applicant that she is Advocate by profession and working as Legal Adviser of said Credit Co-operative Society. By no point of time she was Director of said Credit Co-operative Society.

5. Similarly, it is the contention of Saroja w/o Govind Chavan [the applicant in ABA No. 693 of 2020] that since 25/08/2018 she is not Director of said Credit Co-operative Society. The accusations against her are totally false and baseless. She has never induced the informant to invest amount nor beneficiary of any amount so as to attract the registration of offences u/s 406,420 read with section 34 of Indian Penal Code as well as Section 3 of the Maharashtra Protection of Interest of Depositors (In Finance Establishment) Act, 1999 against her.

6. The applicant in ABA No. 761 of 2020 namely Shrikant s/o Bajrang Terkar contended that he had never attended the meeting of said Credit Co-operative Society nor taken any part in the administration of said Credit Co-operative Society. He has resigned from the post of Director way-back in the year 2018. He is not beneficiary of any amount nor committed any act of cheating, mis-appropriation of funds of said Credit Co-operative Society.

7. The applicant in ABA No. 774 of 2020 namely Rushikesh Vijayanand Hanchate has taken a plea that he is jeweller by profession. The said Credit Co-operative Society started its business from same premises where the applicant runs his jewellery shop. At the request of Chairman and Board of Directors of said Credit Co-operative Society he had submitted documents to act as Gold Approver/Appraiser for said Credit Co-operative Society. When he came to know that he has been inducted as a Director of said Credit Co-operative Society, he tendered resignation on 05/04/2016. He has been unnecessarily made accused in the case.

8. By referring the allegations made in the F.I.R., learned counsel for applicants submits that the allegations made against applicants are vague and general in nature. The act attributing commission of offence has been solely attributed to Balaji Mohan Salunke, the Chairman of said Credit Co-operative Society. Except referring the names of applicants in F.I.R., there is no allegation against them to invite offences u/s 406,420 read with section 34 of Indian Penal Code and Section 3 of M.P.I.D. Act. The applicants are respectable persons having deep roots in the society. Even if it is accepted that informant has invested amount in Fixed Deposit and amount invested could not be returned to him due to financial crises and recovery of loan from borrowers itself not

sufficient to attract the offence u/s 406 or 420 of Indian Penal Code and Section 3 of M.P.I.D. Act . The allegations made does not attract the ingredients of act of cheating as well as criminal breach of trust on their part. There are no allegations that the applicants have mis-appropriated the amount. It is further submitted that the investigation is completed. The charge sheet has been filed in the case. The Chairman of said Credit Co-operative Society has been arrested and in jail.

9. On the other hand, learned A.P.P. opposed the applications with contention that there is prima facie case to connect the applicants with the offences registered against them. The applicants being Directors of said Credit Co-operative Society are responsible for the day to day affairs of said Credit Co-operative Society. The allegations made in the complaint discloses that the applicants induced the informant and others to invest the amount with the said Credit Co-operative Society as Fixed Deposit by assuring to provide heavy returns over the amount invested. Relying on the representation of Chairman and the Directors of said Credit Co-operative Society, the informant and others have deposited their hard earned money with said Credit Co-operative Society. On maturity of Fixed Deposit, the deposits made by the informant and others are not returned. The amount invested by them has been mis-utilized and

mis-appropriated by accused persons. For the purpose of investigation, custodial interrogation of the applicants may be required.

10. During the course of hearing the direction was given to learned A.P.P. to secure information as to whether any of these applicants have borrowed any amount from the said Credit Co-operative Society and amount to be due and payable by them. Pursuant to the direction, learned A.P.P. on instructions received from the Manager of said Credit Co-operative Society reported that except the applicant Vaishali Ashokrao Deshmukh [the applicant in ABA No. 699 of 2020], none of the applicant secured any loan nor any amount is due from them towards said Credit Co-operative Society. The counsel representing applicant Vaishali Ashokrao Deshmukh has made statement across the bar that the amount of Rs. 49,000/- due and payable by her as loan taken from the said Credit Co-operative Society repaid by her and obtained the 'No dues certificate'. Learned A.P.P. has confirmed the clearance of dues by said applicant. On the basis of information received, learned A.P.P. has submitted that since the formation of said Credit Co-operative Society, the amount of Rs. 1,95,56,888/- received as deposits from 1109 depositors. As against said amount of deposit, some of the depositors have taken loan to the tune of Rs. 45,86,542/-. The amount of Rs. 2,56,88,929/- has been disbursed to 827

borrowers.

11. Mr. G.G.Kadam, learned counsel for applicant Saroja w/o Govind Chavan in ABA No. 693 of 2020 submitted that the information provided by learned A.P.P. refers to the amount collected and disbursed from the inception of said Credit Co-operative Society. It is submitted that at present the amount due against 188 borrowers is more than Three Crores, which is much more than the amount to be repaid to the depositors.

12. In response to the query made to the learned counsel representing the applicants, they made statement that without prejudice to their rights and contentions that they are not the Directors and not liable to pay any amount to said Credit Co-operative Society, they shown their willingness to voluntarily deposit some amount as interest-free deposit with said Society to be refundable to them after the process of recovery is concluded and claims of all the depositors are satisfied. In terms of voluntary statement made, the applicant Saroja w/o Govind Chavan in ABA No. 693 of 2020 has deposited Rs. Five Lakhs with the said Credit Co-operative Society. The applicant Rushikesh Vijayanand Hanchate in ABA No. 774 of 2020 and applicant Shrikant s/o Bajrang Terkar in ABA No. 761 of 2020 have deposited Rs. 2.5 Lakhs each with the said Credit Co-operative Society

without prejudice to their rights and contentions made in the application. The applicant Vaishali Ashokrao Deshmukh has deposited Rs. One Lakh beside paying Rs. 49,000/- as due and payable towards loan secured by her.

13. By Order dated 09/10/2020 the interim bail was granted to the applicants in order to facilitate them to deposit the amount. The direction was also given in respect of disbursement of amount to small depositors out of the amount deposited by the applicants.

14. Learned A.P.P. has submitted report to the effect that the applicants have deposited the amount in terms of the statement made and complied the order.

15. In my view, considering the overall facts of the case, nature of accusations against the applicants, the role attributed to the applicants in commission of offence, the character and antecedents of the applicants and bonafides shown on their part to voluntarily deposit the amount as interest-free deposit with the said Credit Co-operative Society, I am of the view the applicants deserves to be extended protection u/s 438 of Cr.P.C. The investigation in the case has been completed and charge sheet is already filed. The Chairman, Vice Chairman and one more person has been arrested in

the case. The names of the applicants are shown as absconding accused Nos. 6 to 9.

16. If we consider the allegations made in the F.I.R., then prima facie there are no specific allegations made against the applicants inviting registration of offence u/s 406, 420 read with section 34 of Indian Penal Code. In order to constitute an offence of cheating, there must be dis-honest intention on the part of accused from very inception of act complained. In the case in hand, the informant has alleged that in the year 2016 he has deposited the amount with the said Credit Co-operative Society as Fixed Deposit. The record reflect that he was regularly getting interest over the amount invested. It appears that said Credit Co-operative Society could not recover the loan disbursed which created a financial difficulty in repayment of amount to is depositors. Due to financial crisis and non recovery of loan disbursed to borrowers, the amount could not be repaid to the informant and other persons. Except the allegation that applicants were present when informant was called at the house of Chairman and requested the informant to deposit the amount as Fixed Deposit with the said Credit Co-operative Society, there are no allegations that applicants have mis-appropriated the amount. Failure to return the deposits of depositors of Credit Co-operative Society on its maturity, itself not sufficient to invite offence

u/s 406 and 420 of Indian Penal Code as well as the offence under the provisions of M.P.I.D. Act. The informant has deposited the amount way back in the year 2016. The complaint has been filed in the year 2020.

17. The investigation of the case is concluded. The charge sheet has been filed in the case. The applicants appears to be respectable persons having no criminal antecedents. They have deep roots in the society. The grant of anticipatory bail to applicants would not affect the investigation against them. No recovery to be made from the applicants. On the contrary, the applicants have voluntarily come forward and deposited the amount as interest-free deposit with the said Credit Co-operative Society to address the needs of small depositors. In that view, the applicants have made out strong case to extend protection u/s 438 of Cr.P.C. Hence, the following order.

ORDER

[i] ABA Nos. 774 of 2020, 693 of 2020, 699 of 2020 and 761 of 2020 are allowed.

[ii] Interim bail granted to the applicants vide Order dated 09/10/2020 is confirmed and made absolute on same terms and conditions.

[iii] The amount deposited by applicants be

disbursed to small depositors in terms of direction given vide Order dated 09/10/2020.

18. The applications are disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP