

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

33 ANTICIPATORY BAIL APPLICATION NO.893 OF 2020

- 1 Nilima Shivaji Gobare,
Age 53 yrs., Occ. Household,
- 2 Hausabai Bhanudas Gilbile,
Age 77 yrs., Occ. Household,
- 3 Mandubai Sandipan Ingole,
Age 68 yrs., Occ. Household,
- 4 Jayabai Munja Shinde @
Janubai Munjaba Shinde,
Age 70 yrs., Occ. Household,
- 5 Laxmibai Bhanudas Gilbile,
Age 77 yrs., Occ. Household,
- 6 Antikabai Bansi Kakade,
Age 74 yrs., Occ. Household,
- 7 Kusum Dattatraya Shinde,
Age 72 yrs., Occ. Household,

All are r/o Harishchandra-Pimpri,
Tq. Wadwani, Dist. Beed.

... Applicants

... **Versus** ...

The State of Maharashtra

... Respondent

...

Mr. S.S. Jadhav, Advocate for applicants

Mr. V.M. Kagne, APP for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.**DATE : 07th DECEMBER, 2020****ORDER :**

1 Present applicants are apprehending their arrest in connection with Crime No.6/2020 registered with Wadwani Police Station, Dist. Beed for the offence punishable under Section 420, 424 read with Section 34 of the Indian Penal Code.

2 Heard learned Advocate Mr. S.S. Jadhav for applicants and learned APP Mr. V.M. Kagne for respondent.

3 It has been vehemently submitted on behalf of the applicants that the perusal of the FIR would show, that it has been lodged by Naib Tahsildar on the orders given by superior. Present applicants were office bearers of one co-operative society by name Taramati Mahila Gruhwastu Audyogik Sahakari Sanstha Maryadit, Harishchandra Pimpri, Tq. Wadwani. They used to run ration shop. The FIR shows that the inquiry was made and certain irregularities have been found. In fact, there is already a provision under the statute for taking action for the irregularities. There is no question of taking any criminal action. The contents of the FIR are not disclosing the

ingredients of offence under Section 420 of the Indian Penal Code. Most of the applicants are aged more than 70. They all are ladies and most of them are illiterate. Though they were running ration shop, in fact, they used to get it run through other officials. Under such circumstance, the physical custody of the applicants is not at all required for the purpose of investigation.

4 Learned APP strongly objected the application on the ground that so many irregularities have been committed and the applicants have assisted each other in misappropriating huge amount pertaining to the fair price shop, which was generated because of the excess quota procured by them. The misappropriation amount has gone to Rs.28,80,688/- for a year and there is such misappropriation for about five years. Prima facie there is involvement of the applicants in the economic offence, and therefore, their custodial interrogation is necessary.

5 The perusal of the FIR, which has been filed by Mr. P.U. Khillare, Naib Tahsildar, Wadwani, Tq. Wadwadi, Dist. Beed, it has been stated that the District Supply Officer had cancelled the licence granted to the institution of the applicants on 12.11.2011. It was then decided that how much was the quota, which was taken in excess during January to August, 2011. The amount of grain, which was taken in excess, has been recovered on 02.01.2012. Thereafter Hon'ble the Minister (Food and Civil Supplying,

Consumer Protection) granted licence once again to the institution of the applicants on 09.11.2012. At that time, the Tahsildar had given certificate that there is no dues from the institution. However, it is stated that when the audit was performed and report was given on 23.12.2015 the irregularities have been pointed out. Thereafter, the Assistant Registrar, Co-operatives, Wadwani did not get the audit completed, and therefore, the further supply of grain was stopped. That audit was got completed on 16.04.2016, and further action was taken. It also appears that writ petition was filed before this Court, in which there was reference about cancellation of nomination of auditor Mr. Mahesh Narayan Niturkar, who had given the report. It is further stated that inspite of specific orders about improvement in the work was given to the co-operative society run by the present applicants there was no improvement. The Balance Sheet and other registers have not been made available for the purpose of audit, and therefore, the informant says that the Government has been cheated. Thus, the entire tenor of the FIR would show that certain irregularities have been committed. How and in which manner the cheating of the Government has been done is absolutely cannot be gathered. No claim has been added for misappropriation though the learned Additional Sessions Judge has referred in his order that there is huge misappropriation of Rs.28,80,688/-. At least this figure is not appearing in FIR. Another Section, under which the offence has been registered, is Section

424, which is in respect of dishonest or fraudulent removal or concealment of property. Another fact, that is required to be noted is, that the informant at one stage says that there was audit and certain directions were given and at another stage the allegations are that registers and Balance Sheet for the year 2010 to 2015 were not made available for the purpose of audit. Taking into consideration the contents of the FIR it cannot be stated that the custody of the present applicants would be required for the purpose of investigation. Further, the offence appears to be based on the documents and directions can be given by the Investigating Officer to make him available all the relevant documents, which might be with the office of the institution. Therefore, the present application deserves to be allowed. Hence, following order.

ORDER

1 Application stands allowed.

2 The order passed by learned Additional Sessions Judge, Majalgaon in Miscellaneous Criminal Application No.256/2020 dated 04.08.2020 is hereby set aside. Said application stands allowed.

3 The ad-interim protection, granted by this Court earlier to applicants vide order dated 22.10.2020, is hereby confirmed and made absolute. In the alternative, in the event of arrest of the applicants, in

connection with Crime No.6/2020 dated 09.01.2020 registered with Wadwani Police Station, Dist. Beed for the offence punishable under Section 420, 424 read with Section 34 of the Indian Penal Code, they be released on P.R. of Rs.15,000/- each.

4 The applicants shall not indulge in any criminal activity nor they should tamper with the prosecution evidence, in any manner and cooperate with the investigation.

(Smt. Vibha Kankanwadi, J.)

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