IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LD-VC-CRIMINAL APPLICATION (ABA) NO. 626 OF 2020

(Faizi Moin Sheikh & Ors. vs. State of Maharashtra thr. P.S.O. of Police Station Tahsil, District - Nagpur)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Shri A.S. Manohar, Advocate for the applicants.
Shri S.K. Mishra, Senior Advocate with Shri J.M. Gandhi, Advocate for the complainant.
Shri N.B. Jawade, APP for the non-applicant - State.

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CORAM : PUSHPA V. GANEDIWALA, J.
JULY 24, 2020.

Heard Shri Manohar, learned counsel for the applicants and Shri Mishra, Senior Advocate with Shri Gandhi, learned counsel for the complainant and Shri Jawade, learned APP for the non-applicant – State, through video conferencing.

The applicants are apprehending arrest in Crime No. 94 of 2020 registered at Tahsil Police Station, District – Nagpur, for the offence punishable under Sections 406, 409, 420, 120-B read with Section 34 of the Indian Penal Code. Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as M.P.I.D. Act), came to be added later on.

The allegations against the present applicants are with regard to illegal and unauthorized sanction of loan to the tune of Rs.38 crores and obtaining Rs.54.50 lakh towards membership fee of the society, security deposit and processing charges with the intention to grab the amount without disbursing loan amount.

The learned counsel for the applicants drew attention of this Court to the affidavit/ undertaking on behalf of the applicants stating therein that the applicants are willing to return the outstanding money accepted by Bharatiya Apang Cooperative Society to its members at the earliest and in any case within a period of two months and also showed their willingness to immediately deposit with this court the sum of Rs.10 lakh and remaining amount within a period of two months. The applicants also showed willingness to deposit the amount of other members too, totaling to Rs.1.87 crores.

The learned APP, who is assisted by Shri S.K. Mishra, learned Senior Counsel with Shri J.M. Gandhi, learned counsel for the intervenor, strongly opposed the application and submitted that the present applicants were having no authority at all to disburse the loan to the person out of jurisdiction of Ward No. 38 of Nagpur Municipal Corporation. The applicants who are the General Manager, Secretary and office bearers of Bhartiya Apang Cooperative Society, Nagpur, granted loans and accepted deposits even from the people outside the district of Nagpur. The said society wherein the applicants are either working or office bearers, was established for the benefit of educated unemployed persons, who are registered with employment exchange.

The investigation revealed that not a single person who is educated unemployed is given loan. It is further pointed out by the learned APP that during the course of investigation, two bank accounts of the society are found. In one of the bank account only Rs.20,000/- is balance wherein in another bank account it is only Rs.1,95,600/-. This fact shows that the applicants have withdrawn the amount which is sent through R.T.G.S. by the complainant and have appropriated the same for their own use and benefits.

The learned APP also pointed out various irregularities which are reflected in the Audit Report for the period between 2009 and 2016.

It is also submitted that considering the meager balance amount, not more than Rs. Two lakh in the accounts of the society, how the applicants would be able to comply with the undertaking i.e. for payment of Rs.1.87 crores.

I have considered the submissions made

on behalf of both sides.

At the outset, considering the submissions advanced on behalf of the State, prima facie case for the alleged offence against the applicants is made out. Undisputedly, the applicants are General Manager, Secretary and other office bearers of the said society.

The learned counsel for the applicants could not point out any document to show that the applicants were authorized to transact the business of disbursing loan or accepting deposits from the members out of the local jurisdiction of the society. So also, the learned counsel could not point out the authority of the applicants to sanction loans in crores of rupees by obtaining lakhs of rupees in security deposits and processing fees from the informant, who is admittedly not an educated unemployed.

Furthermore, the learned APP rightly pointed out the meager balance in the account of the society, which prima facie, reflects the case of misappropriation. The Audit Report also pointed out tons of irregularities and mismanagement in the society during the period between 2009 and 2016.

It appears that the sole object of the applicants in establishing the society was, of grabbing the money from the public on the promises of unprecedented attractive interest rates and without any obligation to refund the amount as assured.

In the given facts, prima facie case for the alleged offence is made out. Custodial interrogation, in my opinion, is utmost necessary. Hence, I am inclined to reject the application and accordingly, the same is rejected and disposed of.

This order be communicated to the counsel appearing for the parties, either on the email address or on Whats app or by such other mode, as is permissible in law.

JUDGE

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