IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.338 OF 2020

RAMPRASAD S/O. ANNASAHEB KALE
VERSUS
THE STATE OF MAHARASHTRA

WITH
ANTICIPATORY BAIL APPLICATION NO.168 OF 2020

GAUTAM S/O. YESHWANTRAO WATODE
VIKAS S/O YESHWANT WATODE
ATTAM S/O YESHWANT WATODE
VINOD BABANRAO BEGATE
VERSUS
THE STATE OF MAHARASHTRA

WITH
ANTICIPATORY BAIL APPLICATION NO.177 OF 2020

YESHWANTRAO S/O CHAMPATRAO WATODE
VISHWANATH NARAYAN GHODKE
VERSUS
THE STATE OF MAHARASHTRA
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Advocate for Applicant in ABA/338/2020: Mr. Mayur V. Salunke
Advocate for Applicant in ABA/168/2020, ABA/177/2020: Mr. P. R. Katneshwarkar h/f. Mr. Y.B. Bolkar
APP for Respondent/State: Mr. S.W. Mundhe
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CORAM : MANGESH S. PATIL, J.

DATE : 17.02.2021

PER COURT :

These are the Applications by different accused from Crime No.430/2019 registered with Purna Police Station, District Parbhani for the offence punishable under Sections 420, 465, 468, 471 and 120-B of the Indian Penal Code, seeking bail in the event of their arrest.

2. In sum and substance the allegations are to the effect that the applicants from ABA No.168/2020 and ABA No.177/2020 conspired and setup Industrial Co-operative Society. As per the Government Resolution dated 29.03.2011 a decision was taken to extend financial assistance to the Scheduled Caste Co-operative Societies by way of loans. These applicants then setup the Societies, derived financial assistance but failed to utilize it for the purpose for which it was advanced and the money was siphoned of. It is being alleged that even perhaps hand in gloves with the Government Officials, Utilization Certificates were also procured from the District Collector when in fact there was no optimum utilization of all the advances for land, building, plant machinery etc.

3. The allegations against the applicant in ABA No.338/2020 are to the effect that he being an auditor failed to detect the misappropriation and even he conspired with the other accused.

4. The learned advocates for the Applicants in ABA No.168/2020 and ABA No.177/2020 would submit that the moneys were advanced in the year 2011-12. Even the then Collector had issued Utilization Certificates. It is abruptly, without giving any notice in advance, the present Collector visited the premises of the factories and suspected that there was misappropriation. He appointed a committee which arrived at its subjective satisfaction and the FIR has been lodged perceiving that there is misappropriation where there is none.

5. The learned advocate would further submit that the applicants

were granted ad-interim protection about an year back. They were required to attend and did attend the concerned Police Station daily for initial period of about six months and thereafter on every Saturday for last six months. The Investigating Officer must have had the opportunity to resort to their interrogation. Considering the fact that the money was advanced only by way of a loan, even if it is not utilized to the optimum extent, that could be for variety of reasons. An opportunity ought to have been extended by the Collector to the applicants to put up their version. No inference as to misappropriation is deducible based on subjective finding of the committee after a lapse of many years.

6. The learned advocate for the applicant in ABA No.338/2020 would submit that the applicant is merely an auditor. He had specifically pointed out on the basis of the accounts made available to him as to how much money was utilized/spent for the purpose for which it was borrowed. He has also pointed out that the balance was shown to have been paid by way of advance. Being an auditor he was not expected to investigate the matter threadbare. He was concerned with the accounts only and had rightly reported the portions which were not actually utilized but were given by way of advance. He therefore has not indulged in any misappropriation and the ad-interim relief may be confirmed.

7. The learned APP strongly opposes the applications. He submits that it is a matter of systematic siphoning of public money. *Ex facie* the moneys that were paid were not utilized to the optimum extent. The

difference has been misappropriated. It is a matter of custodial interrogation. The Investigating Officer would be able to unearth all the facets of the crime and every link in the chain by resorting to custodial interrogation.

8. As can be gathered the present Collector seems to be perceiving that the money that was advanced to the borrowers was not utilized to the optimum extent and the difference between the advance and utilization has been siphoned of.

9. Apparently, the Collector has drawn such an inference based on a report of a committee appointed by him to visit the spot and to draw assessment. However, one cannot but ignore the fact that the moneys were advanced way back in the year 2011-12. It is after a lapse of almost 8 to 9 years that the present Collector thought it fit to undertake the investigation. Without intending to encroach over his powers it is suffice to observe that his predecessor had issued Utilization Certificates for whatever reason and under whatever circumstances.

10. So far as the auditor applicant is concerned an auditor is supposed to be a watchdog and not a bloodhound. A perusal of his report *prima facie* reveals that he has pointed out the component that was actually utilized and the remainder regarding which he has pointed that it was shown to be paid to the concerned vendors by way of advance.

11. Apart from the aforementioned facts and circumstances, it is also imperative to note that all these applicants were granted ad-interim

anticipatory bail almost a year back. For first six months they were asked to and attended the concerned police station daily. Thereafter the condition was relaxed and they have been attending the police station every Saturday for last six months. If such is the state of affairs, it was expected of the Investigating Officer to have precisely pointed out as to how and what kind of investigation has he undertaken post grant of ad-interim relief when the applicants have been attending the Police Station for last almost one year. The written instructions forwarded by him to the learned APP are conspicuously silent about he having taken any initiative for taking the investigation further during the last one year. He is also conspicuously silent as to what kind of the interrogation of the applicants he had undertaken for all this while. It is not his case that they were not co-operating him during the course of interrogation when they were available at the Police Station.

12. It is in view of such peculiar state of affairs, in my considered view the Applications deserve to be allowed and the ad-interim anticipatory bail deserves to be confirmed with the same terms and conditions.

13. The Applications are allowed. The ad-interim relief granted to the respective applicants stands confirmed with the same terms and conditions. It is clarified that the condition for attendance would continue only till filing of the charge sheet.

(MANGESH S. PATIL, J.)

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