

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

920 ANTICIPATORY BAIL APPLICATION NO.928 OF 2020

- 1) Shivaji s/o Dinkar Bhor,
Age 48 years, Occ. Agri.,
R/o. Bhorwadi, Taluka Nagar,
Dist. Ahmednagar.
- 2) Bhausahab s/o Haribhau Bhor,
Age 65 years, Occ. Agri.,
R/o. Bhorwadi, Taluka Nagar,
Dist. Ahmednagar.
- 3) Baban s/o Bansi Bhor,
Age 63 years, Occ. Agri.,
R/o. Bhorwadi, Taluka Nagar,
Dist. Ahmednagar.
- 4) Smt. Asha Prabhakar Jasud,
Age 55 years, Occ. Household,
R/o. Bhorwadi, Taluka Nagar,
Dist. Ahmednagar.
- 5) Bhausahab s/o Balkrishna Salunke,
Age 54 years, Occ. Agri.,
R/o. Bhorwadi, Taluka Nagar,
Dist. Ahmednagar.
- 6) Shrikant s/o Rambhau Lomte,
Age 55 years, Occ. Agri.,
R/o. Bhorwadi, Taluka Nagar,
Dist. Ahmednagar.
- 7) Vithal s/o Deoram Jasud,
Age 63 years, Occ. Agri.,
R/o. Bhorwadi, Taluka Nagar,
Dist. Ahmednagar.
- 8) Vikas s/o Ramchandra Bhor,

Age 55 years, Occ. Agri.,
R/o. Bhorwadi, Taluka Nagar,
Dist.Ahmednagar.

- 9) Smt. Nirmala Vikas Bhor,
Age 45 years, Occ. Agri.,
R/o. Bhorwadi, Taluka Nagar,
Dist. Ahmednagar.
- 10) Arun Dinkar Bhor,
Age 51 years, Occ. Agri.,
R/o. Bhorwadi, Taluka Nagar,
Dist. Ahmednagar.

VERSUS

State of Maharashtra,
Through Nagar Taluka Police Station,
Ahmednagar, Taluka and District
Ahmednagar.

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Advocate for Applicants : Mr. Santosh S. Jadhavar
APP for Respondent-State : Mr. P.G. Borade
Advocate for the applicants (Crim.ApIn.No.2008/2020) :
Mr.Shriraj R. Wakale (Assist to PP)
Advocate for the applicant (Crim.ApIn.No.374/2021) :
Mr.Shivaj T. Shelke (Assist to PP)

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CORAM : MANGESH S. PATIL, J.
DATED : 18 FEBRUARY 2021

PER COURT :

This is an application under Section 438 of the Criminal Procedure Code, as the applicants are apprehending their arrest in connection with Crime No.I-0284/2020 registered with Nagar Taluka Police Station, Ahmednagar for the offences punishable under Sections 409, 420, 468 and 471 read with

Section 34 of the Indian Penal Code.

2. The First Information Report has been lodged by a Special Auditor, Co-operative Societies, Ahmednagar, pursuant to the audit undertaken by him of one Padmavati Gramin Bigar Sheti Sahakari Pat Sanstha Maryadit, Bhorwadi, Tq. Nagar Dist. Ahmednagar, which is Credit Co-operative Society established and functioning under the Maharashtra Co-operative Societies Act and the Rules framed thereunder. Pursuant to the provisions of Section 83(3) (c) of the Act, he undertook the special audit of the society for the period 01.04.2008 to 31.03.2018. Since several misappropriations and misdeeds were revealed, he lodged the FIR against the Chairman, Vice-chairman, Directors and the Secretary of the society. The applicants are some of these directors. It is alleged that acting in unison and by sharing common intention, they have misappropriated an amount of almost four crores.

3. The learned Advocate for the applicants would submit that there has been indeed such a misappropriation to this tune as is being alleged. However, it is one Mr. Nitin Bhor, a director, who was an ex-chairman in collusion with the secretary of the society, namely Balasaheb Bhor have indulged

in such misappropriation. Nitin Bhor has derived wrongful gain and amassed huge immovable and immovable properties disproportionate to his income. There is no such increase in the assets of the applicants. Balasaheb Bhor committed suicide on 03.09.2018. He left behind an affidavit sworn before a notary, stating as to how at the instigation of Nitin Bhor, he siphoned off the money of the society. Even Nitin Bhor is being prosecuted for abetment of his suicide regarding which Crime No.691/2018 has been registered. The learned Advocate would submit that pursuant to such affidavit of Balasaheb Bhor, the applicants undertook search of the record and realised that the entire misappropriation was done by Nitin Bhor in collusion with Balasaheb Bhor. The applicants, therefore, lodged a complaint with Nagar Taluka Police Station on 05.12.2018, which clearly demonstrates their *bona fides* and their innocence.

4. The learned Advocate further submits that even the special auditor has made an observation in his report about Nitin Bhor, having withdrawn the funds of the society.

5. The learned Advocate would then submit that during the investigation, the investigating officer has taken search of the record of the society and has seized it its entirety.

Consequently, custodial interrogation of the applicants is not necessary. They are ready to co-operate the investigating officer and may be granted anticipatory bail subject to usual terms and conditions.

6. Lastly, the learned Advocate would submit that apart from ground of merits, the applicants are entitled to anticipatory bail, even on the ground of parity inasmuch as the Sessions Court has granted anticipatory bail to Nitin Bhor in Criminal M.A. No.1113/2020 by the order dated 17.10.2020. The learned Advocate also tenders affidavit along with annexures, which is taken on record.

7. The learned APP duly assisted by the learned Advocate for the informant as well as the learned Advocate for some of the depositors of the society. He submits that it is a grave matter regarding misappropriation of investors' money. Considering the gravity, coupled with the fact that the misappropriation has surfaced in the special audit, the applicants being the directors of the society, their custodial interrogation is highly imperative.

8. The learned APP would point out that as far as the

affidavit of deceased Balasaheb Bhor is concerned, it is a matter of investigation as to under what circumstances, it has come into being. No weight can be attached to the contents thereof at this juncture. Investigation officer will have to be given an opportunity to investigate the background on which it has been sworn in. There is a statement of the brother of the deceased Balasaheb Bhor questioning genuineness of the contents of the affidavit. Therefore, the applicants are not entitled to the discretionary relief of bail.

9. The learned APP would submit that considering the seriousness of the crime, even the ground of parity, deserves to be ignored.

10. I have carefully gone through the papers. It needs to be emphasized that it is a matter of misappropriation of public money, which was deposited by poor depositors in the Credit Society with the hope of earning some interest. There is no dispute about the fact that there has been a huge misappropriation to the tune of about rupees four (4) crores. The applicants are the directors of the society. Though, there is a record to demonstrate that they had also made an attempt to lodge complaint with the Police regarding the misappropriation

and though, there is an affidavit of deceased secretary Balasaheb Bhor regarding taking upon himself the entire blame for the misappropriation along with co-accused Nitin Bhor, it is indeed a suspicious circumstance, which needs to be probed into by the investigating officer. Admittedly, after swearing such affidavit, Balasaheb Bhor committed suicide. It would be a matter of investigation to ascertain under what circumstances, he could have sworn in such an affidavit. A doubt is now being expressed even regarding its genuineness. Considering the complexity of the situation, it is highly imperative that the investigating officer is extended an opportunity to resort to custodial interrogation of the applicants.

11. In the case of **Nimmagadda Prasad Vs. Central Bureau of Investigation (2013)7 SCC 466**, the Supreme Court has observed that the offences of this kind are grave and serious and stand on a peculiar footing. Following the principles laid down therein and bearing in mind the observations of the Supreme Court in case of **Sushila Aggrawal Vs. State (Nct of Delhi) and another (2020)5 SCC 1**, in the peculiar facts and circumstances of the case, the applicants are not entitled to the discretionary relief of anticipatory bail. It would be a very

convenient for them now to feign ignorance and pass on the blame to the co-accused Nitin Bhor and the deceased secretary. The matter of misappropriation stretches over a period of time and there are no circumstances to indicate that the applicants were innocent and had no knowledge about the misdeeds.

12. Co-accused Nitin Bhor has been granted anticipatory bail by the Sessions Court. However, this Court in this matter cannot go into the propriety or otherwise of the order granting him anticipatory bail. The fact remains that it is a matter of misappropriation of public money of the credit co-operative society. Money belongs to the poor investors and the applicants being the directors of the society *prima facie* being involved in the misappropriation, no such ground of parity can be allowed to be made a capital of.

13. The Application is rejected.

[MANGESH S. PATIL, J.]

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