IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1221 OF 2020

1] Sau.Vidhya W/o Ajay Munot
Age 54 years, Occu-Business & Agri,
R/o 15/16, Royal Residency, Pushpa Nagari
C.B.S. Road, Aurangabad 431001

2] Sau.Manorama W/o Pramod Kabra
Age 46 years, Occu-Business & Agri
R/o 29, Swatantrya Sainik Colony
Aurangabad.

3] Mr.Paras S/o Amrutlal Muttha
Age 51 years, Occu-Business & Agri
R/o Lasur Station, Tq. Gangapur,
Dist.Aurangabad. .. APPLICANTS

Versus

The State of Maharashtra through
Superintendent of Police (Rural)
Aurangabad. .. RESPONDENT

WITH
ANTICIPATORY BAIL APPLICATION NO.1227 OF 2020

1] Mr.Bhimrao S/o Bhikaji Pandav
Age 67 years, Occu-Business & Agri
R/o Sawangi, Tq. Gangapur,
Dist.Aurangabad

2] Mr.Narayan S/o Vishwanath Wakale
Age 46 years, Occu-Agri.,

R/o Lasur Station, Tq. Gangapur
Dist.Aurangabad.

3] Mr.Krishnakant S/o Bhagwan Vyavhare
Age 46 years, Occu-Agri.,
R/o Katepimpalgaon, Tq.Gangapur
Dist.Aurangabad. .. APPLICANTS

VERSUS

The State of Maharashtra through
Superintendent of Police (Rural)
Aurangabad. .. RESPONDENT

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Shri Shirish Gupte,Senior Advocate and
Shri S.G.Ladda,Advocate for the applicants.
Shri D.R.Kale, Public Prosecutor for respondent.
Shri V.D.Sapkal,Senior Advocate to assist the Public Prosecutor.

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CORAM : MANGESH S. PATIL, J.
DATE : 20.01.2021

ORAL ORDER :-

These are applications under Section 438 of the Cr.P.C. as the applicants are apprehending their arrest in connection with Crime No.263/2020 registered with Police Station Gangapur for the offences punishable under Sections 120B, 406, 420,467,468,469,471,472,474 read with Section 34 of the I.P.C.

2] As can be discerned from the allegations in the F.I.R. the sum and substance of the allegations are to the effect that there is a sugar factory by name Gangapur Sahakari Sakhar Karkhana registered under the Maharashtra

Cooperative Societies Act. It was indebted to the Maharashtra State Central Cooperative Bank. Its property was put to sale for recovery of the debt. To avoid sale, amount of Rs.9 Crore was collected by the Directors and it was deposited with the Debt Recovery Appellate Tribunal. It appears that the amount was deposited with a bank. The amount of Rs.9 Crore with accrued interest aggregating Rs.15,75,33,338/- was received by the sugar factory by a demand draft on 7/11/2020.

3] It is alleged that with a view to misappropriate the amount the Chairman and the Managing Director alongwith the present applicants hatched a conspiracy to siphon the money. A new account of the sugar factory was opened with a different banker by showing the Chairman and the Managing Director as partners and by showing the establishment to be a partnership firm. It is then alleged that different amounts were then paid to each of the present applicants running into lakhs and crores of rupees. None of these applicants were entitled to recover anything from the sugar factory and all the accused including the present applicants have misappropriated the amount.

4] It is alleged that the applicants in Anticipatory Bail Application No.1227/2020 also indulged in forgery and fabricated a false Power of Attorney purportedly showing that 244 members have appointed them as Power of Attorney to receive the money from the sugar factory. Some of them have also made grievance denying to have given any such GPA.

5] On the basis of the F.I.R. lodged by one Krisha Sahebrao Patil Dongaonkar on 18/1/2020 the offence was registered as mentioned hereinabove.

6] The learned Senior Advocate Shri Shirish Gupte for the applicants in ABA No.1221/2020 and learned advocate Shri Ladda for the applicants in ABA No.1227/2020 would submit that the applicants are being victimized due to a political rivalry between the existing Chairman of the sugar factory who happens to be the local M.L.A. and the informant. The sugar factory had incurred huge losses. Its property was about to be sold in execution in order to recover a debt which was due to the Maharashtra Central Cooperative Bank. In order to save the property when the present Chairman was not even a member of the sugar factory he had taken initiative to which even the informant was a party. Resolutions were passed to collect the money from the members and well-wishers to raise the amount of Rs.9 crore. They would point out copies of the resolutions passed from time to time, on 29/6/2011, 9/12/2012, 13/4/2013 and 30/9/2013. Pursuant to these resolutions, huge amount of Rs.9 crore was collected and the property of the sugar factory could be saved. Since the monies were raised in the form of deposits and loans from various persons including the present applicants, by a resolution dated 12/9/2020 in a *bona fide* attempt to pay off these creditors, it was resolved to repay their legitimate dues.

7] The learned senior advocate Shri Gupte and the learned advocate Shri Ladda would further demonstrate from the extracts of accounts as to how for all these years the amounts were shown in the Returns of the applicants in ABA No.1221/20 as the loan/deposits with the sugar factory. They would further submit that it is only to facilitate disbursement of money to save other beneficiaries who were owing similar amounts, GPA was executed by these

244 persons in favour of the applicants in ABA No.1227/20. All the money was duly counted for and reflected in the accounts of the sugar factory and the account of the applicants therefore, there was no question of any siphoning of the money. They would therefore submit that there is no misappropriation or fabrication. The applicants in ABA 1221/20 have merely recovered their legitimate dues with interest at a meager rate, whereas the applicant in ABA 1227/20 have only acted as agents to facilitate paying off other depositors.

8] Lastly, the learned senior advocate would submit that custodial interrogation of the applicants is not necessary, they are ready to cooperate the Investigating Officer. The investigation can very well be completed by examining the record which is available to the Investigating Officer. The principles laid down by the Apex Court in the case of Sushila Aggarwal V/s State (NCT of Delhi) and another; (2020) 5 S.C.C. 1 be followed and the applicants may be granted anticipatory bail.

9] The learned Public Prosecutor would sternly oppose the applications. He would submit that it is a matter of systematic misappropriation of huge money. An auditor was appointed to audit the accounts of the sugar factory and has *prima facie* recorded his opinion about there being rampant misdeeds and flagrant violations. Since number of persons are involved and its a case of conspiracy, Investigating Officer is entitled to have custodial interrogation of the applicants.

10] The original informant has also filed applications for intervention and the learned senior advocate Mr.Sapkal on his behalf relying upon the decision of this Court in the case of Vinay Poddar V/s State of Maharashtra; 2009 All M.R. (Cri) 687, which subsequently has been relied upon in the case of a Division Bench judgment of this Court in the case of Kashinath Jairam Shetye Versus Ramakant Mahadev Sawant and others; 2013 All M.R. (Cri) 861 would submit that even the informant is entitled to make oral submissions while opposing these applications for anticipatory bail.

11] The learned advocate Mr.Ladda for the applicants would oppose the request. In view of the observations and conclusions of this Court in the aforementioned two decisions, I allow the learned senior advocate for the original informant to make submissions in the light of the observation in paragraph no.13 in the case of Vinay Poddar (supra). The applications (Criminal Application Nos.101 of 2021 and 175 of 2021) are allowed.

12] The learned senior advocate Mr. Sapkal for the informant would submit that there is enough material to *prima facie* show that all the applicants and the other accused have indulged in rampant misappropriation which could not have happened except with a systematic pre-meditation. He would submit that the sugar factory is a cooperative society having its own bye-laws. Giving a complete go bye to the bye-laws which require the cooperative society to obtain a previous permission of the authorities before accepting any deposit or loan from non-members, resolutions have been passed, huge amounts have been collected, without entering into any agreement the amounts are also now sought to be repaid together with interest keeping the authorities in dark. Without there being any agreement to repay the monies with interest, the applicants have been paid interest. Even the resolutions being relied upon by the applicants passed in the years 2011, 2012 and 2013 speak about raising of money with due permission of the authorities but no such permission has ever been solicited and obtained. Even now under the guise of repaying the creditors like the applicants in ABA No.1221/20, huge amounts have been paid as interest without there being any agreement. He would further point out that there is apparently a nexus between the present Chairman and the applicants from ABA No.1221/20. The extracts of accounts of these applicants clearly demonstrate that even they have paid some amount to the present Chairman. Such a deep rooted conspiracy to siphon money of the sugar factory operating in cooperative sector needs to be investigated thoroughly which cannot happen except by resorting to custodial interrogation of all the applicants.

13] The learned senior advocate Mr.Sapkal would also point out that the applicants in ABA No.1221/20 are not even members of the sugar factory still without any previous sanction according to the bye-laws, monies are shown to have been received from them and now it is being shown to have been repaid to them with interest.

14] The learned senior advocate would further point out that the applicants in ABA No.1227/20 are simultaneously shown as persons giving GPA amongst those 244 persons unto themselves. He would further point out that some of these individual GPA even do not bear signature and thumb impression of the persons shown to be the executants. He would therefore submit that the enormity of the crime requires its threadbare investigation even by resorting to custodial interrogation of the applicants.

15] I have carefully gone through the papers and considered the rival submissions of the senior advocates and the Public Prosecutor. Admittedly it is a matter pertaining to a sugar factory which operates and is governed by the provisions of the Maharashtra Cooperative Societies Act. Obviously it has its own Rules and Regulations, which *inter alia* makes a provision as regards raising of capital by various sources as per Clauses 4 and 5. In respect of receiving deposits, raising loans, Over Drafts and floating debentures. It has been specifically provided that money can be raised from these sources with the permission of the Sugar Commissionerate and the other authorities under the Maharashtra Cooperative Societies Act. It specifically prohibits raising of money from the sources except with such a sanction. If this is so, passing resolutions pointed out on behalf of the applicants *inter alia* resolving to raise money in these forms even without there being any previous approval or sanction as contemplated in these Rules and Regulations speak in volumes about the manner in which the decisions were taken and implemented in flagrant disobedience of the Rules and Regulation governing the sugar factory.

16] There is no dispute about the fact that the applicants in ABA No.1221/20 are not the members of the sugar factory, still without there being any previous permission, amounts running into lakhs of rupees are shown to have been received from them. Conspicuously there is absolutely no material to demonstrate as to if the monies received from them were in fact some loan or deposit or merely a donation. If it was a donation, there was no question of any refund. If those were deposits/loans, there was no agreement much less for its repayment, duration or payment of any interest at any specific rate.

17] Same is the case in respect of the applicants in ABA No.1227/20. Though they are members, it is not clear as to if they had contributed for raising the money by way of deposit of the money or by extending loan or merely by way of donations.

18] There is one more aspect. Apparently the applicants in ABA No.1221/20 seem to have been repaid the money with interest which could work out to be 9% p.a. however, so far as the other members who are 244 in number they do not seem to have been paid any such interest.

19] Needless to state that the motive on the part of the informant to make a grievance, whether it is political or otherwise, is utterly inconsequential. It is quite apparent that under the guise of raising money amounts have been received from members as well as non-members without following Rules and Regulations governing the cooperative sugar factory and they have been repaid the money with interest without there being any contract/agreement and without requisite approval from the authorities under the Maharashtra Cooperative Societies Act. The allegations do make out all the necessary ingredients for constituting the offence of misappropriation and forgery.

20] Considering the enormity of the crime and particularly the *modus operandi* custodial interrogation of the applicants is clearly imperative. Since it is a matter involving public money, the approach of the Court has to be different as has been laid down in the case of Nimmagadda Prasad V/s Central Bureau of Investigation; (2013) 7 S.C.C. 466.

21] Taking into consideration all the aforementioned facts and circumstances in my considered view the applicants are not entitled to the discretionary relief of anticipatory bail, the parameters of which are well set in the case of Sushila Aggarwal (supra).

22] The Anticipatory Bail Applications are rejected.

[MANGESH S. PATIL, J.]

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