

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1271 OF 2019

- 1) Vyankatrao s/o Sitaram Jogdand,
Age 73 years, Occupation Agri.,
R/o Yevta Tq. Kaij Dist. Beed.
- 2) Vishwas s/o Tatyasaheb Aakhade,
Age 47 years, Occupation Agri.,
R/o Pimpalgaon Mochi Tq. And
Dist. Beed.

...Applicants

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Peth Beed.
Tq. And Dist. Beed.

...Respondent

.....
Advocate for Applicants : Mr. S. S. Thombre h/f
Mr. M. S. Karad.
APP for Respondent-State : Mr. S. Y. Mahajan.
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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
18-12-2020**

**Date of Pronouncing The Order :
05-01-2021**

ORDER :

1. Present application has been filed for pre-arrest bail as the applicants are apprehending their arrest in connection with Crime

No.109 of 2019, registered with Police Station Peth Beed Tq. Dist. Beed, for the offences punishable under Section 420, 409, 302 read with 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. S. S. Thombre holding for Mr. M. S. Karad for applicants and learned Additional Public Prosecutor Mr. S. Y. Mahajan for respondent-State.

3. It has been vehemently submitted on behalf of the applicants that the applicants are innocent and they have not committed any offence as alleged. In fact, the District Deputy Registrar, Co-operative Societies, Beed had passed an order on 27-02-2018 and thereby dissolved the Managing Committee of the Beed District Krushi Avdyogik Sarvaseva Co-Operative Society Ltd., Beed and appointed authorized officer by name Amar Shinde to conduct the day to day affairs of the society. As per the direction issued by the society, the crops were required to be purchased during the period from 01-02-2018 to 15-05-2018 and for the purchase of Gram it was till 13-06-2018. During the said period the authorized officer was looking after the administration of the society and not the Managing committee. The applicants were the members of the Managing Committee but as aforesaid not during the said period.

Even the charge was taken by said authorized officer in the absence of the Manager of the Society, therefore there is no question of any misappropriation by the present applicants. Further it can be seen that the earlier Head of Centre Mr. Vikas Khande had shown his inability to perform the work, and therefore, Manager of the Society had issued a letter dated 21-05-2018 to one Mr. Javed Bagwan thereby appointing him as the Head of the Centre at Georai. Further the District Deputy Registrar, Co-operative Societies, Beed had appointed one Mr. Sachin Mali in place of Mr. B. D. Phalke as authorized officer of the Society, and thereafter, he had taken charge on 17-07-2018. Resolution in respect of purchase of crops and depositing the same with the ware houses was passed in the meeting held on 21-07-2018, thereafter the process has been completed. It can also be seen that the administrator had issued letter dated 21-08-2018 to the District Deputy Registrar, Co-operative Societies, Beed stating that the Head of the Centres were responsible for the losses caused to the society. Hon'ble the Minister by its order dated 21-08-2018 had stayed the order of District Deputy Registrar till 25-09-2018 and in view of the said order the administrator had given the charge of the society to the Chairman of the society. Therefore during the entire period in which it is stated

that the misappropriation has been committed, none of the applicants were part of the society, and under such circumstance their physical custody is absolutely not required for the purpose of investigation. Learned Advocate for the applicants, therefore, prayed for release of the applicants on anticipatory bail.

4. Per contra, the learned Additional Public Prosecutor strongly opposed the application and submitted that investigation is still in progress though the crop of Toor was required to be purchased between 01-02-2018 to 15-05-2018, yet it appears that it continued later on. Some agents were engaged vide letters dated 30-01-2018 and 01-03-2018. The directions have not been followed. Whatever crops were purchased i.e. 35,384.43 quintal of Gram and 77,494.80 quintal of Toor at four centres through the society, it has not been deposited with the ware houses of the Government to the extent of 2343.50 quintal Gram and 614.63 quintal Toor worth Rs.1,43,61,402/-. This amounts to cheating to the Government. The District Marketing Officer, Beed had given notice to the society on 10-01-2019, 22-03-2019 and 25-03-2019, however the society has absolutely not replied to those letters nor deposited the deficit of the purchased Gram and Toor. As the misappropriated amount is

huge, the applicants do not deserve any sympathy.

5. At the outset, the crux of the matter is that as per the FIR Gram was required to be purchased from the farmers through NAPHED which is the nodal agency between 01-03-2018 to 29-05-2018, however the said deadline was extended till 13-06-2018. The Government had given letter on 28-02-2018 in respect of purchase of Gram to all the District Marketing Officers. It was specifically instructed that the Gram which is purchased of 50 kilos or more, should be kept in the Government ware house on the same day in the name of NAPHED and the receipts of the purchased crop should be immediately sent to the head office. It also appears that some agents were thereafter appointed for the purchase. In Beed District at four centres under Beed District Agricultural Industrial all Services Co-operative Society Ltd., Beed had purchased the above said quintal of Gram and Toor. However, crop of Gram to the extent of 2367.43 quintals amounting to Rs.1,04,16,692/- and 723.80 quintal Toor worth Rs.39,44,710/- was not deposited by the society to the ware house. Now the question is and in view of the documents those have been produced by the applicant as well as it is in the investigation papers that by order dated 27-02-2018 the body

governing the society at Beed was terminated and administrator Mr. Amar Shinde who was then Sub-Registrar Co-operative Societies was appointed. It appears that in spite of giving notices when the society members did not come to hand over charge, Mr. Amar Shinde the administrator, took deemed charge on 28-02-2018. Further if we perused the statement of Mr. Amar Shinde taken by the Investigating Officer on 27-06-2019, he says that prior to his taking charge already the process of purchasing Toor had started from 01-02-2018 under the guidance of Manager C.H.Bagwaan and Chairmant Dattatraya Dhat. At that time the society was run through its members / directors. He says that though the time to purchase was extended, crop of Gram was not purchased during his tenure, however he left the charge of administrator on 21-04-2018, and thereafter, the crop of Gram has been purchased by the society from 15-05-2018. Further he has given a chart in respect of purchase of Toor at four centres in Beed District during his tenure and it comes to 38901 quintal. That means, apart from the tenure of Mr. Shinde, there was tenure for the another administrator or the directors of the society in whose duration the purchases appears to have been made. The learned Advocate appearing for the applicants is pointing out letter given on 21-08-2018 by the authorized officer

Sachin Mali to District Sub-Registrar who has held all the four Heads of Centres for the irregularities those have been caused which is also including responsibility on Manager of the society Mr. C. H. Bagwaan. According to the learned Advocate for the applicants the applicants have not been held responsible by the administrator. Important point to be noted that only Manager cannot be so held responsible under whose directions he was acting is definitely required to be considered. Further the said report dated 21-08-2018 is inclusive of the year 2016-2017 and 2017-2018 it cannot absolve prima facie the present applicants from their responsibility.

6. When huge loss has been caused to the Government, then definitely case cannot be said to have been made to exercise the extra-ordinary jurisdiction of this Court to enlarge the applicants on anticipatory bail. Whether the applicants were actively participating in the process of the society and the role played by them would be the matter of investigation, and therefore, the application deserves to be rejected, accordingly it is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-