IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 821 OF 2019

1. Dhanesh Navalchand Shah	]	
2. Ajit Ramanlal Doshi	]	
3. Bhushan Kantilal Doshi	]	
4. Ajay Arvind Shah &	]	
5. Pradip Bapuchand Gandhi	]	… Applicants
V/s.		
The State of Maharashtra	]	
Through Phaltan City Police Station	]	
C.R. No.47 of 2019	]	… Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 822 OF 2019

Surekha Virchand Mehta	]	… Applicant
V/s.		
The State of Maharashtra	]	
Through Phaltan City Police Station	]	
C.R. No.47 of 2019	]	… Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1062 OF 2019

1. Nitin Shantilal Kothari &	]	
2. Javed Papabhai Maner	]	… Applicants
V/s.		
The State of Maharashtra	]	
Through Phaltan City Police Station	]	
C.R. No.47 of 2019	]	… Respondent

WITH
CRIMINAL APPLICATION (APPP) NO. 740 OF 2019
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 821 OF 2019

Rajesh Mohanlal Doshi	]	… Intervenor

In the matter beween :-

Dhanesh Navalchand Shah & Ors.	]	… Applicants
V/s.		
The State of Maharashtra	]	… Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 820 OF 2019

1. Dhanesh Navalchand Shah	]	
2. Ajit Ramanlal Doshi	]	
3. Bhushan Kantilal Doshi	]	
4. Ajay Arvind Shah &	]	
5. Pradip Bapuchand Gandhi	]	… Applicants
V/s.		
The State of Maharashtra	]	
Through Phaltan City Police Station	]	
C.R. No.48 of 2019	]	… Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 823 OF 2019

Surekha Virchand Mehta	]	… Applicant
V/s.		
The State of Maharashtra	]	
Through Phaltan City Police Station	]	
C.R. No.48 of 2019	]	… Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1061 OF 2019

1. Nitin Shantilal Kothari &	]	
2. Javed Papabhai Maner	]	… Applicants
V/s.		
The State of Maharashtra	]	
Through Phaltan City Police Station	]	
C.R. No.48 of 2019	]	… Respondent

Mr.Kuldeep Patil i/b. Mr. Pankaj Deokar for Applicants in A.B.A. Nos.820 of 2019, 821 of 2019, 822 of 2019 and 823 of 2019.
Mr.Rajiv Patil, Senior Advocate i/b. Mr.Randhir Kale, Mr.Vishal Kolekar and Mr.Shubham Kadam for Applicants in A.B.A. Nos.1061 of 2019 and 1062 of 2019.
Mrs.Veera Shinde, A.P.P. for Respondent-State.
Mr.Ajit Savagave for Intervenor in A.P.P.P. No.740 of 2019.
Mr.R.N. Vaidande, H.C. 1444 along with Mr.P.K. Jadhav, P.C. 668, EOW, Satara.

CORAM : A.S. GADKARI, J.
DATE : 30th October 2021.

P.C. :

1. Anticipatory Bail Application Nos.821, 822 and 1062 of 2019 are filed by the Applicants/Accused for pre-arrest bail in connection with C.R. No.47 of 2019 dated 31st January 2019 registered with Phaltan City Police Station, (E.O.W., Satara) District Satara, for the offence punishable under Sections 420, 406, 409 read with 34 of Indian Penal Code and Sections 3 & 4 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (For short 'M.P.I.D. Act'). Said crime is lodged by Shri Rajesh M. Doshi.

Anticipatory Bail Application Nos.820, 823 and 1061 of 2019 are filed by the Applicants/Accused for pre-arrest bail in connection with C.R. No.48 of 2019 dated 31st January 2019 registered with Phaltan City Police Station, (E.O.W., Satara) District Satara, for the offence punishable under Sections 420, 406, 409 read with 34 of Indian Penal Code and Sections 3 & 4 of MPID Act. Said crime is lodged by Smt. Bhagyashri K. Bhat.

2. Heard Mr.Kuldeep Patil, learned Counsel for the Applicants in A.B.A. Nos.820 of 2019, 821 of 2019, 822 of 2019 and 823 of 2019, Mr.Rajiv Patil, learned Senior Counsel for the Applicants in A.B.A. Nos.1061 of 2019 and 1062 of 2019, Mr.Ajit Savagave, learned Counsel for Intervenor in Criminal Application No.740 of 2019 and Mrs.Veera Shinde, learned A.P.P. for State. Perused record of investigation.

3. As the allegations against the Applicants in both the crimes are similar in nature and the Investigating Agency is investigating both the crimes simultaneously by recording common statements of witnesses, this Court considered it proper to decide all Anticipatory Bail Applications together to avoid multiplicity of pleadings.

4. The prosecution case in brief is that, Applicant Nitin Shantilal Kothari is the Chairman and other Applicants are Directors of 'Shri 1008 Chintamani Parshwanath Gramin Bigar Sheti Sahakari Patsanstha Maryadit', Kolki, Tal.Phaltan, District Satara (herein after referred to as 'the said Credit Society'). The informants and other investors had invested certain amounts with the said Credit Society for a particular period. After the period of investment came to an end, upon demand by the investors, the Applicants did not return their invested amount along with interest accrued thereon and gave evasive replies to them. It was also informed to the informants that, the

said Credit Society is in financial difficulty and therefore the amounts cannot be returned to the investors. Upon enquiry with other investors, both the informants came to know that various other investors have also invested substantial amounts with the said Credit Society and their amounts have also not been returned to them after the date of maturity of deposits and infact the said amounts have been defalcated by the Applicants in connivance with each other for their personal benefit thereby causing wrongful loss to the investors and wrongful gain to the Applicants. In this brief premise both the crimes are registered. As the amounts of investors/depositors have not been returned by the Applicants being the Chairman and Directors of the said Credit Society, the provisions of Sections 3 and 4 of the M.P.I.D. Act are also applied to the crimes.

5. Mr.Rajiv Patil, learned Senior Counsel for the Applicants in A.B.A. Nos.1061 of 2019 and 1062 of 2019 tendered across the bar a letter dated 19th October 2021 forwarded by the said Credit Society to Shri Anant Adhari, Special Auditor Class II, Satara and submitted that, as per the said letter, the financial condition of the said Credit Society is sound. The allegations that, the Applicants in connivance with each other have committed defalcation of around Rs.24 crores is baseless. He further, on instructions, submitted that, the said Credit Society has already initiated various proceedings against defaulters to whom loans were advanced by the Society. That, cases under

Section 138 of the Negotiable Instruments Act have also been instituted against the account holders whose cheques have been dishonoured on presentation. That the said cheques were given to the said Credit Society towards repayment of loan amounts and towards its EMI's. He further submitted that, the Deputy District Registrar, Satara has already initiated proceedings under Section 83 read with 88 of the Maharashtra Co-operative Societies Act for ascertaining and fixing liability on the Applicants being Directors of the said Credit Society. He submitted that, the loans were sanctioned to the persons as per the provisions of law and within the conformity of the guidelines issued by the Reserve Bank of India from time to time in that behalf. He submitted that, the Applicants have been protected by interim relief since April 2019. That the Applicants have attended the Investigating Officer on various occasions and have cooperated in the process of investigation and therefore their custodial interrogation is not necessary. He therefore prayed that, the Applicants may be protected by pre-arrest bail by allowing the present Anticipatory Bail Applications.

6. Mr.Kuldeep Patil, learned Counsel for the Applicants in A.B.A. Nos.820 of 2019, 821 of 2019, 822 of 2019 and 823 of 2019, adopted the arguments of learned Senior Counsel Mr.Rajiv Patil and also prayed that, the Anticipatory Bail Applications filed by his clients may be allowed.

7. Perusal of record of investigation indicates that, the Applicants have sanctioned loans of higher amounts in favour of their very close relatives without accepting necessary security in that behalf. During the course of audit conducted by Special Auditor Class II, Satara, it was revealed that, the Applicants by passing resolutions had advanced loans to their very close relatives, i.e. father and brother of Applicant Nitin Kothari, namely, Shantilal Kothari and Milind Kothari and other relatives. That, subsequently by passing a separate resolution they decided to give rebate/concession to them and accordingly concession was given to four persons to the tune of Rs.47,65,669/-, who are close relatives of the Applicants. The Investigating Officer has recorded statements of about 160 investors, who are supporting the case of prosecution. It is revealed during the course of investigation that, as of today the Applicants have defalcated a sum of approximately Rs.24 crores. Record of investigation further reveals that, Applicant Nitin Kothari through his person of confidence, pressurized staff of the said Credit Society to put 'Loan clear/Nil loan' endorsement on 10 to 12 forms, to which the concerned witness had at initially refused to oblige. However at the insistence of Applicant Nitin Kothari, though she was not having authority to do it, she put those endorsements subsequently.

8. The amounts which were deposited by the depositors with faith with the said Credit Society have been laundered by the Applicants for their

personal benefit ostensibly by passing resolutions under the Maharashtra Co-operative Societies Act. As and by way of an example, as to how the Applicants have laundered the amount and subsequently defalcated it for their personal wrongful gain can be enumerated here.

Record of investigation indicates that, on 31st December 2017 all the Applicants convened a meeting of Board of Directors bearing No.9 and various resolutions were passed therein. Resolution No.7 of the said meeting mentions that, an amount of Rs.26,58,441/- be given as advance loan to a well wisher of the said Credit Society, namely, Shri Gundharnandiji Maharaj, a spiritual head for religious purposes. However, as a matter of fact the said amount of Rs.26,58,441/- was already credited in the account of Mr.Milind Kothari, real brother of Applicant Nitin Kothari on 30th December 2017. Shri Gundharnandiji Maharaj has sworn an Affidavit dated 10th July 2019 before a Notary Public at Hubli, State of Karnataka. In his Affidavit, the said Maharaj has said that, he knew Applicant Nitin Kothari well. That the said Maharaj was at Phaltan in the year 2001-02 for Chaturmass and at that time, he was living in the temple of Shri 1008 Adinath Digambar Jain Mandir, Shukrawar Peth, Phaltan. At that time, he was informed about the said Credit Society of Applicant Nitin Kothari. That Applicant Nitin Kothari thereafter took his name and entered in register advance amount of Rs.26,58,441/-. That Book keeping register (Khatavani) at page No.58 of the year 2017-18 was shown to him. He has categorically stated that, he being a Jain Guru, does not need money or keep any money with him. He never accepted the said amount from the said Credit Society. He has further stated that, he does not have any account with the said Credit Society. It is thus clear that, the Applicants in connivance with each other by ostensibly passing the said resolution No.7 on 31st December 2017 in its Board of Directors Meeting No.9 has tried to create a record that, the said amount was to be released in favour of said Jain Guru for religious purpose.

As noted earlier, the said amount was already credited in favour of Mr.Milind Kothari on 30th December 2017 itself. The facts narrated hereinabove clearly indicates the complicity of Applicants in present crime and attracts provisions of Sections 406, 409 and 420 of I.P.C..

9. The voluminous record of evidence indicates that, there are various other instances which clearly attracts the provisions of Sections 406, 409 and 420 of I.P.C.. About 160 investors/depositors have been duped by the Applicants by indulging into criminal activities and therefore Sections 3 and 4 of M.P.I.D. Act have also been applied to the crimes. There is more than sufficient material available on record to show the clear complicity of all the Applicants except Applicant Mrs.Surekha Virchand Mehta, in the present crime.

10. In view thereof, the Applicants in ABA Nos.821 of 2019 and 1062 of 2019 in C.R. No.47 of 2019 so also the Applicants in ABA Nos. 820 of 2019 and 1061 of 2019 in C.R. No. 48 of 2019 do not deserve to be protected by pre-arrest bail and accordingly their Anticipatory Bail Applications are rejected.

11. As far as Mrs.Surekha Virchand Mehta, who is Applicant in ABA Nos.822 of 2019 and 823 of 2019 is concerned, the record indicates that, she is not signatory to the resolution No.7 dated 31st December 2017. She is a woman aged about 69 years. It further appears from the record that, she never actively participated in the affairs of the said Credit Society and has no active role to play in both the crimes. In view thereof, she can be protected by pre-arrest bail and is accordingly protected.

12. Hence, the following Order :-

(A) A.B.A. Nos. 821 of 2019 and 1062 of 2019 filed in connection with CR No.47 of 2019 are rejected.

(B) A.B.A. Nos. 820 of 2019 and 1061 of 2019 filed in connection with CR No.48 of 2019 are rejected.

(C) A.B.A. Nos. 822 of 2019 and 823 of 2019 filed by Mrs.Surekha Virchand Mehta in connection with CR Nos.47 of 2019 and 48 of 2019 registered with Phaltan City Police Station, (E.O.W. Satara) respectively are allowed on the following terms and conditions.

(i) In the event of arrest in C.R. Nos.47 of 2019 and 48 of 2019 dated 31st January 2019, registered with Phaltan City Police Station (E.O.W. Satara) respectively, Applicant Mrs.Surekha Virchand Mehta be released on bail on her furnishing P.R. bond in the sum of Rs.25,000/- each in each of the crimes, with one or more separate local sureties in the like amount.

(ii) Applicant Mrs. Surekha Virchand Mehta shall not tamper with the evidence and/or influence the prosecution witnesses.

(iii) A.B.A. Nos. 822 of 2019 and 823 of 2019 are accordingly allowed.

(D) In view of disposal of A.B.A. No.821 of 2019, Criminal Application No.740 of 2019 filed for intervention therein does not survive and is accordingly disposed off.

13. At this stage, Mr.Rajiv Patil, learned Senior Counsel for the Applicants in A.B.A. Nos.1061 of 2019 and 1062 of 2019 so also Mr.Kuldeep Patil, learned Counsel for the Applicants in A.B.A. Nos.820 of 2019, 821 of 2019, 822 of 2019 and 823 of 2019 submitted that, the Applicants have been

protected by interim relief for about two years and the same may be continued for a further period of four weeks so as to enable them to challenge present Order before the Hon'ble Supreme Court.

At their request, the effect and implementation of the present Order is stayed for a period of three weeks from the date of uploading of the present Order on the High Court Website.

[A.S. GADKARI, J.]