IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

CRIMINAL APL NO.757 OF 2021

Prem R. Kogta ... Applicant
Vs
The State of Maharashtra ... Respondents

WITH
CRIMINAL APL NO.187 OF 2021

Santosh Rajan Nair ...Applicant
Vs
Smitha S. Nair and Anr. ...Respondents

WITH
CRIMINAL APPLICATION NO.192 OF 2021

Jayshree A. Totla ..Applicant
Vs
The State of Maharashtra ..Respondents

WITH
WRIT PETITION NO.3304 OF 2021

Jitendra Ramesh Patil ...Petitioner
Vs
The State of Maharashtra and Anr. ...Respondents

WITH
WRIT PETITION NO.3306 OF 2021

Chhagan S. Zalte ...Petitioner

Vs
The State of Maharashtra & Anr. ..Respondents

WITH
WRIT PETITION NO.3824 OF 2021

Mr. Pritesh Champalal Jain ...Petitioner
Vs
State of Maharashtra & Anr. ...Respondents.

WITH
CRIMINAL APL NO.759 OF 2021

Sanjay B. Totala ..Applicant
Vs
The State of Maharashtra ..Respondent

WITH
CRIMINAL APL NO.803 OF 2021

Asif Munna Teli ..Applicant
Vs
The State of Maharashtra ..Respondent

WITH
CRIMINAL APL NO.883 OF 2021

Rajesh S. Lodha ...Applicant
Vs
The State of Maharashtra ..Respondent

...

Mr. Rajiv Chavan, Senior Advocate with Mr. Amit Icham i/by Mr. Aashish Pawar for the Applicant in APL 757/21 and APL 759/21.

Mr. S.R.Mithare for applicant in APPLN 192/2021.

Mr. Akshay Naik with Mr. Pralhad Paranjape with Ms. Druti Datar i/by Mr. Manish Kelkar in WP 3304/2021 and WP 3306/21.

Mr. Piyush Toshnival i/by Mr. Aashish Satpute for applicant in APL 803/21 and APL 883/21.

Mr. Ranvir Shekhawat with Mr. Jagdish Choudhary i/by M/s Raj Legal for petitioner in WP 3824/21.

Mr. Pravin Chavan, Spl.P.P. with Mr. Y.M.Nakhawa, APP for the State.

CORAM : SANDEEP K. SHINDE J.
DATE : OCTOBER 28, 2021.

ORDER:

These petitions under Article 227 of the Constitution of India and Criminal Applications under the Code of Criminal Procedure, 1973 challenge Clause (iii) and (iv), being conditions imposed by the Additional Sessions Judge, Pune, while granting interim bail to the petitioners and applicants. Conditions were;

> *"iii] The applicants shall make reconciliation of their amount of loan account from new liquidator. They shall produce evidence including copies of Income Tax Return before liquidator to show exactly how much amount was actually paid by them to each deposit holder while doing matching of deposits against their loan account.*
>
> *iv] After reconciliation of their loan account in view of evidence of payment to the depositors produced by them if it is observed that they have not paid or partially paid the amount of deposit of fixed deposit holders the amount deposited as per this order shall be adjusted against that payment. Thereafter they have to deposit remaining amount payable to the depositors (if any) in the Court within a period of three months after reconciliation of loan account will be completed. The liquidator is directed to take help of C.A. Smt. Neha Phadake-forensic auditor of this case for that calculation.*

2 Briefly stated, it is petitioners-applicants case, that they were directed, to be released on temporary bail till 14th October, 2021 in Crime No.673 of 2020, registered with Deccan Police Station for the offences punishable under Sections 406, 409, 420, 464, 465, 467, 468, 471, 474, 477(A), 225 and 120(B) read with Section 34 of the Indian Penal Code, 1860 and under Section 3 of the

Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

3 Background facts, in brief, are that the, Central Registrar of Co-operative Societies in exercise of the powers under Section 85 of the Maharashtra Co-operative Societies Act, 1960 vide order dated 27th October, 2015 appointed Jitendra Kandare, District Deputy Registrar Co-operative Societies, as a liquidator for the Bhaichand Hirachand Raisoni Multi-State Co-operative Society Ltd., Jalgaon (‘Said Society’ for short). Petitioners and the applicants herein had borrowed huge loan amount from the said society, which remain unpaid till the society went into the liquidation and the liquidator was appointed. Applicants and the liquidator with ulterior motive deliberately projected gloomy financial position of the said society and spread rumors amongst the depositors/investors that they would not get back their deposits/investments amount due to weak financial position of the said society. Whereafter as a part of the conspiracy,

applicants allured and convinced depositors personally or through agents to accept 30% to 40% of their investments against affidavit stating to have received full amount of deposits/investment. Many agents were appointed by the applicants, who collected large number of fixed deposit receipts from the depositors and secured affidavit from them stating that they had received full amount of investment. Whereafter applicants in connivance with the liquidator matched/adjusted fixed deposit amount against their outstanding loan. For example, one of the applicants/borrowers, Bhagwat Bhangale, had collected 60 deposit receipts from depositors amounting to Rs.1,05,39,896/- and adjusted it against his outstanding loan of Rs.1,28,40,396; Sanjay Totala another applicant/borrower had adjusted/matched twenty-one fixed deposit receipts amounting to Rs.91,41,172/- against outstanding loan of Rs.1,02,93,672/-. Likewise, petitioners-applicants had collected 1306 fixed deposits receipts, from the depositors and adjusted/matched against their outstanding loan. When this fact was revealed, First Information Report was lodged by Smt. Ranjana Ghorpade, one of the investors/depositors. Whereafter crime in question was registered against the applicants and the liquidator. They were arrested on 17th June, 2019.

4 Applicants-Petitioners moved bail applications contending that they had paid the entire amount to the depositors in cash or by other mode and only thereafter, respective investor executed affidavit. As such they had not cheated them. Pending bail applications, accused represented the Court that ;

(I) they were willing to deposit certain amount in the Court.

(ii) they would meet liquidator to find out, amount they owe to the Society – reconcile their account and repay accordingly.

(iii) they were willing to clear dues within certain period of time.

Thus, one of the accused persons, Sanjay Totala filed pursis in the aforesaid terms, (i) (ii) and (iii) and co-accused adopted the same in verbatim. This pursis/application reads as under;

> *"….. The present applicant in order to show his bonafide intention is ready and willing to deposit certain amount before this Hon'ble Court in order to secure his bail. The applicant without admitting the prosecution case is ready to meet the bank liquidator/administrator in order to find out the exact amount, so that he can reconcile his account with the credit society and repay accordingly. As the bank had added interest, penalties, hence the applicant needs to discuss and negotiate the same with the liquidator.*
>
> *In the circumstances mentioned above the applicant may be released on bail by allowing him to deposit certain money before this Hon'ble Court without admitting the prosecution case. Further the Applicant may be permitted to sit with the bank liquidator/administrator in order to clear his dues within certain period of time.*
>
> *It is, therefore, prayed that the applicant may be released on bail by allowing him to deposit certain money before this Hon'ble Court without admitting the prosecution case in the interest of justice."*

5 Thus, on the representation by the applicants as re-produced above, the learned Court granted temporary

bail to the applicants by imposing the conditions; two of which are impugned before this Court. Accused first availed bail. Whereafter they challenged two afore-stated conditions.

6 The learned counsel for the applicants vehemently submitted that conditions impugned were self-incriminatory, unworkable and could not have been imposed while exercising the jurisdiction under Section 439 of the Cr.P.C. and, therefore, in supervisory jurisdiction, interference is called for. Further argued that since bail applications of the accused are pending before the learned Judge and until decision in the bail applications, impugned conditions may be kept in abeyance.

7 Two Writ Petition Nos.3304 and 3306 of 2021 were heard on 23rd September, 2021 and notices were directed to the respondent no.2 (Complainant) and pending

petitions, operation of the conditions (iii) and (iv) of the order dated 14th July, 2021 were directed to be stayed qua petitioners. It may be noted that on 23rd September, 2021, pursis filed by Sanjay Bhagwandas Totala on 6th July, 2021 (part of which I have re-produced above) was not brought to my notice, meaning thereby this Court was not informed either by petitioners or by the prosecution that, impugned conditions were imposed, as suggested by them.

8 Be that as it may, in consideration of the facts of the case, nature of allegations, impugned conditions were outlined in furtherance to the submissions of the applicants-accused, which in no uncertain terms suggest that they themselves were willing to match and re-concile their account with the assistance of the liquidator/administrator of the said society and pay balance dues. Thus, to facilitate the accused, to ascertain dues payable to depositors/society, the learned Judge devised, modality by drawing the conditions, to strike the balance, between the

rights of accused and victims. It was a mechanism evolved by the learned Judge, as then suggested by accused. How can they now say conditions were burdensome, self-incriminating, onerous, drawn and imposed in excess of the jurisdiction, after availing **‘bail’.**

9 The learned counsel for the prosecution correctly submitted that relying on the, representation made by the accused, the learned Court sanctioned course of action and, therefore, it cannot be faulted with. Reliance was placed on the judgment of this Court in the case of **Jamnaben wife of Harakchand Shah and Others v. Smt. Manjulaben and Others 1997(4) Bom. C.R. 65**. In the cited case Undertaking to hand over vacant possession by particular date was breached. It was held that the conduct of the contemnor who had given the Undertaking showed they did not intend to comply with the Undertaking and had put up other relatives to protract the proceedings in the name of the minor. Thus, in context of these facts in paragraph 8, it

was observed that

> *"8. An undertaking is a solemn promise made by a party to the Court and once such promise has been made to the Court and on the faith of such solemn promise the Court sanctions a particular course of action or inaction, such party is bound to observe and comply with such undertaking. When a person volunteers to give an undertaking knowing all the facts and consequences and thereunder derives the entire advantage he cannot wriggle out of the undertaking. The person giving an undertaking is bound to discharge the undertaking and so long as the undertaking subsists the person giving undertaking has not been released from the undertaking he is duty bound for its observance."*

10 In the case in hand, the accused Sanjay Bhagwandas Totala and co-accused, represented the Court, as stated above and believing the same, the learned Court sanctioned particular course of action in terms of Clauses (i), (ii), (iii), (iv), (v) and (vi) of the order dated 14th July, 2021 and released the applicants on temporary bail. Therefore, now applicants cannot wriggle out of their representation and circumvent the order, which binds them and they are bound to discharge the same. In view of these facts, no case is made out by the

petitioners/applicants either seeking relaxation of the impugned conditions or its quashment. Petitions and the applications are dismissed.

(SANDEEP K. SHINDE, J.)