

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**ANTICIPATORY BAIL APPLICATION NO.1607 OF 2021**

HIRASING S/O KALYANSING CHANDELTHAKUR AND ANOTHER  
VERSUS  
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. M. R. Jadhav and Mr. D. S. Patil  
APP for Respondent-State : Mr. A. M. Phule.  
Advocate for Assist to APP : Mr. Akshay Kulkarni

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**WITH  
ANTICIPATORY BAIL APPLICATION NO.1609 OF 2021**

SAVITA W/O BHARAT CHAVAN AND ANOTHER  
VERSUS  
THE STATE OF MAHARASHTRA

.....

Advocate for Applicants : Mr. M. R. Jadhav and Mr. D. S. Patil  
APP for Respondent-State : Mr. A. M. Phule.  
Advocate for Assist to APP : Mr. Akshay Kulkarni

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**WITH  
ANTICIPATORY BAIL APPLICATION NO.1619 OF 2021**

LALSING S/O UMA CHAVAN AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. M. R. Jadhav and Mr. D. S. Patil  
APP for Respondent-State : Mr. A. M. Phule.  
Advocate for Assist to APP : Mr. Akshay Kulkarni

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**WITH  
CRIMINAL APPLICATION NO.65 OF 2022  
IN ABA/1619/2021**

SANJAY S/O BAPURAO ZIRPE  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for Applicant : Mr. Akshay Kulkarni  
APP for Respondents No.1 & 2-State : Mr. A. M. Phule.  
Advocate for Respondents No.3 to 5 : Mr. M. R. Jadhav and Mr. D. S.  
Patil

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**CORAM : SMT.VIBHA KANKANWADI, J.**

**Date of Reserving the Order :  
06-01-2022**

**Date of Pronouncing the Order :  
18-01-2022**

**ORDER :**

1. Criminal Application No.65 of 2022 has been filed for assist to learned APP. Said application stands allowed and disposed of.
2. The applicants in all the anticipatory bail applications apprehending their arrest in connection with Crime No.384 of 2021, registered with Pachod Police Station, District Aurangabad, for the offence punishable under Section 406, 409, 420 read with 34 of the Indian Penal Code.
3. Applicants in Anticipatory Bail Application No.1607 of 2021 were the public servants i.e. applicant No.1 was the Talathi of village

Kadethan Tq.Paithan Dist.Aurangabad around 2020. Applicant No.2 is serving as Tahsildar at Paithan. Applicant in ABA No.1609 of 2021 are the ladies in whose name the lands have been transferred by original accused No.1. Applicant No.2 in this application is the wife of applicant No.2 in Anticipatory Bail Application No.1619 of 2021. The applicants in 1619 of 2021 are the father and sons.

4. It has been vehemently submitted on behalf of the applicants that the offence alleged by the informant depends on the documents which are already in possession of either the police officer or available with the government office and, therefore, physical custody of the applicants is not required for the purpose of investigation. First Information Report has been lodged by one Sanjay Bapurao Zirpe and in his First Information Report itself he has stated that he was the member of Meherkrupa Umasons Magarvargiya Sahakari Gruhanirman Sanstha Kadethan Budruk Tq. Paithan Dist.Aurangabad. The said institution was established around 11-11-1987 and it is registered. It is then stated that at the time of establishment, the chairman was Lalsing Uma Chavan i.e. applicant No.1 in ABA No.1619 of 2021. He along with other office bearers have received various grants from the government and

misappropriated amount around Rs.10,38,000/- as well as amount of Rs.3,50,000/- from Zilla Parishad, Aurangabad. It is then stated that with the help of Talathi, two false mutation entries bearing No.7516 and 8438 in the name of the daughters-in-law of Lalsing have been mutated. The institution was in fact established for procuring land for construction of houses of members, however, instead of fulfilling that object, even after receipt of grants, said Lalsing along with other accused persons is cultivating the land which has been procured by way of sale in the name of institution.

5. Learned Advocate for the applicants first of all submitted that in view of Section 88 of the Maharashtra Co-operative Societies Act, the proper person to have audit and then take legal course is the auditor, that too with consent of/orders of the superior or the sub-registrar. Under such circumstances, the First Information Report itself is not maintainable. As regards the applicants in ABA No.1607 of 2021 is concerned, they both were acting under the orders of Naib Tahsildar, Patihan and the orders passed under Section 155 of the Maharashtra Land Revenue Code on 17-06-2020 in respect of both the lands have been produced on record. There was no *mens rea* for these two applicants to commit any offence and it cannot be said

that they had any kind of common intention with the other accused persons. As regards the ladies are concerned, their names are appearing, but there is nothing on record or it has not been pointed out by the informant that they had played any active role.

6. As regards applicants in ABA No.1619 of 2021 is concerned, applicant No.1 was the then chairman of the society. After the society was formed for construction of houses, the land was purchased and lay out was prepared. It is stated that the grants were not received at once, but they were released to the society after the utilization certificates were issued in respect of the previous grants. Those utilization certificates have been verified from time to time by the office of Social Welfare Department, Aurangabad. During the audit that was conducted for the period 01-04-1996 till 31-03-2002 through the certified auditor, the applicants have made available all the documents which were with them. The land was got measured through Taluka Inspector of Land Records and the boundaries were fixed. Everything was known to the informant, yet after so many years with ultimate motive he along with other persons filed Regular Civil Suit No.105 of 2003 and he claims that the said property which was purchased by the society in the year

1987 is in fact belonging to him and his family members. He claims it to be the ancestral property. It can be definitely then said that this intention of the informant to grab the land is there since many years and he was doing certain illegal activities and, therefore, time and again applicant No.1 had approached the police with grievances. Taking into consideration all these aspects, the physical custody of the applicants is not required, they are ready to abide by the terms of the bail.

7. Per contra, the learned APP strongly opposed the applications with the help of learned Advocate Mr. Akshay Kulkarni for the informant and submitted that when the applicants are not denying that after the formation of the society which was for construction of houses for its members who were admittedly backward class, the grants has been received, it may be from time to time, but it was since 1987. Till today no construction activity has been started. It also appears that the audit was not got conducted periodically as per the law. The sale deeds in respect of purchase of the lands would show that it was purchased by the society and definitely with the funds of the society. There was no question that out of 10 H 29 R land, 1 H 99 R each should be given to the applicants in ABA 1609 of

2021 and O H 4 R to applicant No.2 in ABA No.1619 of 2021. All of them are the family members and definitely it can be said that there is common intention on their part. The audit report would show that many documents were never produced before the auditor and, therefore, he could not give the exact opinion. Withholding of the documents by the applicants, disentitles them from seeking anticipatory bail. They have defrauded the government and the government had given the public money by way of grants to the society of applicants. Therefore, the custodial interrogation of the applicants is necessary.

8. At the outset, it is to be noted that as regards applicants in ABA No.1607 of 2021 is concerned, their role is limited to taking out the mutation entries. No doubt we cannot find any reason assigned to such kind of transfer in the ABAs No.1609 of 2021 and 1619 of 2021. It was knowledge of the Talathi and the Tahsildar that the said land belongs to the society, for transfer of lands there has to be a document. In spite of it, such kind of order has been passed effecting transfer of certain portion of the land in the name of the applicants in ABA No.1609 of 2021 and applicant No.2 in ABA No.1619 of 2021. Though there may be a *prima facie* involvement

of these persons in the case, yet their physical custody cannot be said to be required as making them available for the purpose of investigation by giving attendance would suffice. Further, it will have to be mentioned that those applicants should have had knowledge that mere entry in the mutation register will not give any kind of ownership to the applicants in whose name the lands have been transferred. Still the physical custody is not required and, therefore, they deserve to be released on anticipatory bail.

9. As regards the ladies who are the applicants in ABA No.1609 of 2021 is concerned, their role appears to be limited to receiving or getting the lands mutated in their name. That mutation appears to have been effected with the active participation of applicants No.1 and 2 in ABA No.1619 of 2021. Therefore, these two applicants in ABA No.1609 of 2021 also deserve to be released on anticipatory bail.

10. As regards the applicants in ABA No.1619 of 2021 are concerned, applicant No.2 is the beneficiaries of 4 R land and it can also be seen that being the son of applicant No.1, he also appears to have taken active part. What could be gathered from the inquiry report by special auditor that even administrator was appointed by

order dated 08-12-2010, however, by letter dated 15-02-2011 the said appointed administrator had informed them in writing that she had not received the charge of the institution. It appears that applicant No.2 in this case is also the member of the society. The report shows that requisite registers have not been maintained and they were not even made available. It also appears that no proper audit was conducted for many years. Much stress has been given in respect of utilization certificate. Mere submission of utilization certificate will not be sufficient. The other accounts of the society will have to be considered along with it which were not made available to the inquiry officer. As many documents were not made available to the inquiry officer, he could not give exact opinion. As regards the economic offences are concerned, which are based on the documents also, unless those documents are made available which are definitely in this case in the possession of the applicants No.1 and 2, they do not deserve to be released on anticipatory bail. However, as regards applicant No.3 is concerned, no further active role is attributed to him and it cannot be said that since he is also the son of applicant No.1, he would have also received the booty from the misappropriated amount.

11. As regards objection in respect of Section 88 of the Maharashtra Co-operative Societies Act is concerned, the applicants are at liberty to raise it before the appropriate forum. However, since now the FIR is registered, this Court cannot go into the technicalities also to say as to whether it is maintainable or not from that angle. However, at the same time it can be said that since anybody can set the law in motion, the informant was at liberty to approach the police. It will not be further to observe that definitely informant has vested interest, at one breathe he is saying that he was the member of the society since beginning i.e. 1987, then in the year 2003 he files suit contending that the lands which have been purchased by the society are in fact his ancestral lands. The applicants are at liberty to take up that defence, but certainly that cannot be looked into at this stage when the other glaring facts amounting to an offence have been pointed out.

12. For the reasons stated above, ABA No.1607 of 2021 and ABA No.1609 of 2021 deserve to be allowed. So also application for assist to learned APP deserves to be allowed.

13. ABA No.1619 of 2021 deserve to be allowed to the extant of applicant No.3 only. Hence, following order.

**ORDER**

- 1) Criminal Application No.65 of 2022 in ABA No.1619 of 2021 filed for assist to learned APP stands allowed and disposed of.
- 2) ABA No.1607 of 2021, ABA No.1609 of 2021 stand allowed. ABA No.1619 of 2021 is allowed only in respect of applicant No.3.
- 3) In the event of arrest of Applicants No.1 and 2 in ABA No.1607 of 2021 namely Hirasing s/o Kalyansing Chandelthakur, Dilip s/o Jagannath Manghare, applicants No.1 and 2 in ABA No.1609 of 2021 namely Savita w/o Bharat Chavan, Seema w/o Vinod Chavan, and applicant No.3 in ABA No.1619 of 2021 namely Indrajit s/o Lalsing Chavan, in connection with Crime No.384 of 2021, registered with Pachod Police Station, District Aurangabad, for the offence punishable under Section 406, 409, 420 read with 34 of the Indian Penal code, they be released on P.R. of Rs.50,000/- each (fifty thousand) with one or two sureties of like amount.
- 4) The applicants shall not tamper with the evidence of the prosecution and to co-operate with the investigation.
- 5) Applicants No.1 and 2 in ABA No.1607 of 2021 namely Hirasing s/o Kalyansing Chandelthakur, Dilip s/o

Jagannath Manghare, and applicant No.3 in ABA No.1619 of 2021 namely Indrajit s/o Lalsing Chavan to attend Pachod Police Station, District Aurangabad, on every Sunday in between 10.00 a.m to 01.00 p.m., till filing of charge-sheet.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

*vjg/-*