IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.58 OF 2022

Sanjay S/o Prithiraj Falak

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Hemantkumar F. Pawar Advocate for Applicant.
Mr.A.M. Phule , A.P.P. for Respondent-State.
...

<u>WITH</u>

ANTICIPATORY BAIL APPLICATION NO.23 OF 2022

Chetana W/o Sanjay Falak

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Abasaheb D. Shinde Advocate for Applicant.
Mr.A.M. Phule , A.P.P. for Respondent-State.
...

<u>WITH</u>

ANTICIPATORY BAIL APPLICATION NO.95 OF 2022

Mahesh S/o Devidas Falak
...APPLICANT

VERSUS

The State of Maharashtra
...RESPONDENT

...

Mr.V.D. Hon, Senior Advocate i/b. Mr. Kailas B. Jadhav Advocate for Applicant.
Mr.A.M. Phule , A.P.P. for Respondent-State.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 28th FEBRUARY, 2022

ORDER :

1. The Applicants in all these three applications are apprehending their arrest in one crime and therefore the same are taken together for decision.

2. All the applicants are apprehending their arrest in connection with Crime No.116 of 2016 registered with Bazar Peth Police Station, Bhusawal, Taluka-Bhusawal, District-Jalgaon for the offence punishable under Sections 420, 460, 465, 466, 467, 120-B, 199 read with Section 34 of the Indian Penal Code.

3. Heard learned Advocates for the applicants in respective Applications and learned APP for the respondent – State.

4. It has been vehemently submitted on behalf of the applicants that applicant in Anticipatory Bail Application (for short "ABA") No.58 of 2022 is the Chairman and Director of Vitthal Rukhmani Urban Credit Society, Bhusawal, District-Jalgaon (for short "said credit society") and applicants in ABA No.23 of 2022 and ABA No.95 of 2022 are the ex-directors of said credit society. It has been submitted that perusal of the First Information Report (for short "FIR") that has been lodged by chartered accountant Mr. Rajesh Kalantri would show that he has audited the accounts of said co-operative society for the period from 1st April 2011 to 31st March 2012, however, the FIR has been lodged on 18th June 2016 and thus there is an inordinate delay in lodging the FIR. The informant has stated that during the said period accused persons have committed misappropriation of the amount of Rs.11,64,97,583/- and initially the FIR has been lodged against 185 persons out of which most of them are the borrowers and guarantors and it is alleged that the said borrowers had obtained loan from the said credit society but thereafter they have not repaid the said loan amount. Even if the contents of the FIR are taken as it is, the

same did not make out any offence of any criminal nature. Merely because the borrowers and guarantors have failed to repay the loan amount, the criminal offence is not made out. There are no allegations against the chairman and/or directors of the credit society and only allegations made are against the borrowers and guarantors.

5. Learned Advocates for the applicants further submitted that so far as the borrowers and guarantors against whom the said crime has been lodged are concerned, almost all the accused persons have been released on anticipatory bail either by learned Sessions Court or by this Court or by the Hon'ble Apex Court. In support of their submissions, learned Advocates of the applicants placed reliance on the orders passed by this Court in ***Criminal Application No.4075 of 2016 (Sau. Mirabai Hari Mahajan and others vs. the State of Maharashtra) dated 11th August 2016***, ***Anticipatory Bail Application No.208 of 2018 (Gopinath Devidas Zambre vs the State of Maharashtra), dated 4th April 2018***, ***Anticipatory Bail Application No.890 of 2018 (Sau. Mangala W/o Liladhar Sapkare and another vs. the State of Maharashtra) and other companion matters, dated 12th September 2018***. It has been submitted that on the ground of

parity the applicants also deserve the same treatment and they are ready to abide by the terms of the bail.

6. Per contra, the learned APP strongly opposed the applications on the ground that the offence is very serious nature. The informant has stated that during the said period accused persons who are the borrowers and guarantors have committed misappropriation of the huge amount to the tune of Rs.11,64,97,583/-. The present applicants are the Chairman and the directors of the said credit society and without their consent such huge amount could not have been misappropriated. It has been further submitted that regarding the misappropriation and modus operandi for the same, every knowledge is with the applicants and therefore, their custodial interrogation is necessary.

7. It is to be noted that all the applicants are directors and/or ex-directors of the said credit society. The FIR arrayed the borrowers and sureties as accused and not the directors. No doubt, the FIR states that there were irregularities committed by the directors or the managing committee, but whether those irregularities per-se would amount to an offence is a question. Evidence has been produced to show that present applicants had

made every efforts, by taking legal recourse, to recover the dues of the said credit society. Even otherwise, taking into consideration the nature of dispute between the credit society its borrowers and sureties to them, the dispute appears to be purely of civil nature. Considering the earlier orders passed by this Court in the cases filed by the borrowers and guarantors in respect of the same crime, relied on behalf of the applicants, referred to above, on the ground of parity also the applications deserve to be allowed. Hence the following order is passed:-

O R D E R

i) All the Applications are allowed.

ii) In the event of arrest of applicant – Sanjay S/o Prithiraj Falak in Anticipatory Bail Application No.58 of 2022 and also applicant – Mahesh S/o Devidas Falak in Anticipatory Bail Application No.95 of 2022, in connection with Crime No.116 of 2016 registered with Bazar Peth Police Station, Bhusawal, Taluka-Bhusawal, District-Jalgaon for the offence punishable under Sections 420, 460, 465, 466, 467, 120-B, 199 read with Section 34 of the Indian Penal Code, they be released on bail on PR Bond of Rs.1,00,000/- (Rupees One Lakh) each with two solvent sureties of Rs.50,000/- (Rupees Fifty Thousand) each.

iii) The interim protection granted to the applicant in Anticipatory Bail Application No.23 of 2022 by this Court by order dated 11th January 2022 stands confirmed. It is thus clarified that in the event of arrest of applicant – Chetana W/o Sanjay Falak in connection with Crime No.116 of 2016 registered with Bazar Peth Police Station, Bhusawal, Taluka-Bhusawal, District-Jalgaon for the offence punishable under Sections 420, 460, 465, 466, 467, 120-B, 199 read with Section 34 of the Indian Penal Code, she be released on bail on PR Bond of Rs.1,00,000/- (Rupees One Lakh) with two solvent sureties of Rs.50,000/- (Rupees Fifty Thousand) each, if not already released.

iv) All the applicants shall co-operate with the investigation and shall attend the Economic Wing of Crimes, Jalgaon, as and when directed, till filing of the charge-sheet, for which the Investigating Officer to give prior notice of 48 hours.

v) Applicants shall not tamper with the evidence of the prosecution in any manner.

[SMT. VIBHA KANKANWADI , J.]

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