

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.368 OF 2022

KUNAL S/O DNYANESHWAR SAPKAL
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S. P. Brahme
APP for Respondent-State : Mr. A. M Phule

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**WITH
ANTICIPATORY BAIL APPLICATION NO.306 OF 2022**

JYOTISING KALUSING NIMROTH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Senior Counsel for Applicants : Mr. R. S. Deshmukh i/b Mr. D. R.
Deshmukh

APP for Respondent No.1-State : Mr. A. M. Phule
Advocate for Respondent No.2 : Ms. R. S. Kulkarni

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**WITH
CRIMINAL APPLICATION NO.1294 OF 2022
IN ABA/368/2022**

ASHOK MUKUNDA SONAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Ms. R. S. Kulkarni
APP for Respondent No.1-State : Mr. A. M. Phule
Advocate for Respondent No.2 : Mr. S. P. Brahme

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**WITH
CRIMINAL APPLICATION NO.1427 OF 2022
IN ABA/306/2022**

JYOTISING KALUSING NIMROTH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Senior Counsel for Applicants : Mr. R. S. Deshmukh i/b Mr. D. R.
Deshmukh

APP for Respondent No.1-State : Mr. A. M. Phule
Advocate for Respondent No.2 : Ms. R. S. Kulkarni
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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
27-04-2022**

**Date of Pronouncing the Order :
06-05-2022**

ORDER :

1. Criminal Application No.1427 of 2022 has been filed to produce the documents by the applicant in ABA No.306 of 2022. Said application is allowed and stands disposed of.
2. Criminal Application No.1294 of 2022 has been filed for assist to learned APP in ABA No.368 of 2022. Said application is allowed and stands disposed of.
3. In ABA No.368 of 2022 and ABA No.306 of 2022, all the applicants are apprehending their arrest in connection with Crime No.46 of 2022, registered at Mohadi Police Station, District Dhule, for the offence punishable under Sections 420, 406, 408 r.w.34 of

the Indian Penal Code.

4. Heard learned Senior Counsel Mr. R. S. Deshmukh instructed by Mr. D. R. Deshmukh for applicants in ABA No.306 of 2022, learned Advocate Mr. S. P. Brahme for applicant in ABA No.368 of 2022 and learned APP Mr. A. M. Phule for respondent-State well assisted by learned Advocate Ms. Rashmi S. Kulkarni for original informant.

5. It has been submitted on behalf of the applicants that the applicants have been falsely implicated. The FIR has been lodged by Manager Ashok Mukund Sonar of Deesan Agro Tech Pvt. Ltd., MIDC, Dhule, contending that the offence has been committed since 14-01-2018 to 31-12-2020, however, the FIR came to be registered on 15-02-2022. The delay for lodging the FIR has not been explained at all. He states that his company purchases Soybean through agents. There are two weighbridges in the premises of the company, one is of 100 ton capacity and another is 40 ton capacity. One Kunal Dnyaneshwar Sapkal and Keshav Patil were serving as the Clerk on the weighbridge from 2017 and 2009 respectively. During 2018 to 2020 the company had purchased Soybean and sold DOC, deflated flake and greets etc. The company could notice that they are getting loses and meeting was held in which suspicion was raised on

the employees on the weighbridge. Thereafter, one Kailas Ganesh Wagh and Shivnath Gangaram Shinde, who were serving as driver on the trucks of Dilip Rajput and Jyotising Rajput told Directors of the company that applicant Kunal Sapkal and Keshav Patil used to make discussion, and after the material is sold, the amounts so received by the agents are distributed by these persons amongst each other, thereby they have cheated as well as misappropriated the amount. The informant also says that the *modus operandi* of the accused persons was to get weight of that truck which is having high weight and then to show the same to the other trucks also. With these allegations, the FIR has been lodged. In fact, the CCTV Cameras are installed in the company premises which are running 24 hours of 7 days. Under such circumstance, if there would have been a misappropriation or cheating, it could have been noticed much earlier. One employee by name Sharad Madhukar Joshi was the Supervisor of the weighbridge and he has done illegal activities as well as financial fraud, and thereafter, said Sharad Joshi has transferred some landed properties in the name of other employees of the company namely Manish Patil and Ashok Wagh. In fact, they are the Benami transactions. Those properties are purchased by Deesan Company. No fraud has ever been committed by the

applicants. Custodial interrogation of the applicants is not necessary because all those documents which are in possession of the company can be made available by the company to the Investigating Officer. Applicants Kunal being the employee of the company is not having any independent documentary evidence with them. The applicants are ready to abide by the terms of the bail.

6. Per contra, the learned APP well assisted by learned Advocate Ms. R. S. Kulkarni for the informant company has strongly opposed the applications and submitted that a designed offence has been committed by the applicants with co-accused and in order to burst the said design the custodial interrogation is necessary. Attention is drawn to the affidavit-in-reply given by respondent No.2 i.e. the informant in ABA No.306 of 2022. Again it has been reiterated the the *modus operandi* of the accused was to deceive the company by issuing weighing receipt of a higher value than the actual weight. It was then revealed to the company that the accused never weighed the trucks, which were of lesser quantity of Soybean. This could have been done only with the help of the employees of the company. The company has sustained loss of lack of rupees because of such activity of the accused persons. Four receipts were

issued by the employees and it has been revealed from the investigation done up till now that those four receipts have been got printed by the accused which were looking similar to that of the receipts of the informant company. Receipts have been checked with owners of those weighbridge which were in between the places where the trucks were got loaded till the company. Out of that, certain receipts issued by one Bhadche Way Bridge, Dhad Road, Sagwan (Buldhana). The Investigating Officer could not get duplicate of the said receipt in his bill book. Similarly certain such receipts have been found. Therefore, the magnitude of the offence appears to be more the company has undertaken audit and it will still go on for some months then only it would be revealed as to how much is the exact loss because of such activities. Under such circumstances, the custodial interrogation of the applicants is necessary.

7. It is to be noted that the informant in his FIR has stated that the period of alleged cheating as well as misappropriation is between 2018 to 2020, still why it required for about 1 ½ years to him to lodge a report, is a question. His FIR as regards the alleged disclosure by drivers Kailas Wagh and Shivnath Shinde appears to

have been intentionally kept vague. It is not stated when these two persons had made the disclosure. If that disclosure was made, then why immediately the verification was not done and immediately the FIR was not filed, is a question. Even in the affidavit-in-reply we are unable to get any such explanation. During the course of the submissions it was tried to be submitted that the complaint application was filed by the informant and some time was taken for making inquiry before lodging of the FIR. At the outset, it is to be noted that the FIR is silent on that point and even if it is necessary to have an inquiry, then in view of decision in *Lalita Kumari Vs. Government of U.P.*, reported in *A.I.R. 2014, Supreme Court 187* that period can be of one week at the most, it cannot be indefinite and at a leisure time of the police officer.

8. As per the FIR it is stated that misappropriation is of around Rs.40 lakh. The FIR is not giving complete idea as to what kind of procedure used to be adopted by the company when it used to receive the raw material. How the company could have allowed itself to rely on the receipts given by another weighbridge when it had its two weighbridges, is a question. If that truck used to get itself weighed on a different weighbridge and has a receipt with it,

after he comes within the premises of the company, it would be again weighed. For the company, the weight on its weighbridge should be binding in the normal course. No doubt it has not come on record in the police papers that there is CCTVs installed in the premises and the recording is still available, but then that angle will have to be investigated by the Investigating Officer. Which method was used by the company for finalising the payments was important. At this stage, even the FIR appears to be vague. No doubt FIR is not an encyclopedia, but still when it comes to arrest of a person on the basis of such FIR, then definitely the other factors are also required to be considered, and in the police papers except the statements of the witnesses, there is nothing. Some comparison is tried to be assessed by the Investigating Officer, however, that comparison is incomplete unless it has certain clarifications. The timing at which the trucks were weighed at different places will have to be then compared. Whatever material has been tried to be gathered from the informant company are not sufficient. The transcript panchanama is also the part of police paper and it is stated that witness Shiva @ Shivnath Shinde produced a pen drive and it was stated that there is conversation between said Shiva @ Shivnath, his brother Sainath and accused applicant Kunal. That

cannot be considered to be an evidence at this stage, because there is no further statement as to when the recording was done, whether it was stored and whether there is compliance under Section 65-B of the Indian Evidence Act. Therefore, with this kind of evidence that has been collected up till now, the custodial interrogation of the applicant is not necessary, they deserve to be released on bail. Hence, following order.

ORDER

- 1) All the applications stand allowed and disposed of.
- 2) In the event of arrest of the applicants Kunal s/o Dnyaneshwar Sapkal, Jyotising Kalusing Nimroth and Dilipsing Kalusing Nimroth, in connection with Crime No.46 of 2022, dated 15-02-2022, registered with Police Station Mohadi, District Dhule, for the offence punishable under Section 420, 406, 408 r.w.34 of the Indian Penal code, they be released on P.R.Bond of Rs.50,000/- each with two solvent sureties of Rs.25,000/- each.
- 3) They shall not tamper with the evidence of prosecution in any manner.
- 4) They shall remain present before Investigating Officer on every Monday and Thursday in between 10.00 a.m. to 02.00 p.m.

**(SMT. VIBHA KANKANWADI)
JUDGE**

vjg/-.