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

20 ANTICIPATORY BAIL APPLICATION NO.695/2022

**KAILAS TUKARAM GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA**

**WITH
ABA/641 OF 2022**

**MANIK S/O MADHAV MOTE
VERSUS
THE STATE OF MAHARASHTRA**

**WITH
ABA/648/2022**

**MEERABAI @ MEERA W/O SUNIL MOTE
VERSUS
THE STATE OF MAHARASHTRA**

Mr. S.J. Salunke, Advocate for applicant in ABA No.695/2022
Mr. R.R. Karpe, Advocate for applicants in ABA No.641/2022 and
648/2022;
Ms. V.S. Choudhari, A.P.P. for respondent - State

CORAM : S. G. MEHARE, J.

DATE : 13th June, 2022

P.C.

1. The applicants in all these applications are the members of the managing committee of Bhairavnath Gramin Bigar Sheti Sahakari Pat Sanstha Ltd., Wadala Bahiroba, Taluka Newasa, District Ahmednagar,

(2)

registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short “the society”). It has been alleged against them that they had invited depositors to deposit money with the society with a promise that their amount would be returned with interest. Believing in the promise made by the management of the society, various depositors have deposited the amount in the said society. However, when the deposits were matured, the money with interest was not returned to the depositors. Time and again the depositors made request to the management of the society to repay their money with interest, but the management failed to repay the money. Therefore, private complaints were filed before the learned Magistrate. The learned Magistrate was pleased to order an inquiry under Section 156 (3) of the Code of Criminal Procedure and thereafter the crimes have been registered against the applicants.

2. It has been specifically submitted by the learned Counsel for the applicants that for the same nature of allegations, the Directors are facing number of first information reports as have been alleged by the different depositors at different police stations. He would point out that the audit of the society was done. In the audit report, it has

(3)

been revealed that there is no misappropriation of the funds but there was mismanagement. He also added that the proceedings under Section 101 of the Maharashtra Co-operative Societies Act have been initiated against the defaulters and the certificates have been obtained and an inquiry under Section 88 of the said Act has also been initiated against the management including the applicants and action is likely to be commenced towards their personal property. The personal property of the applicants is at stake, which may be attached for the recovery of the amount to be paid to the depositors. He made a statement that around Rs.40,00,000/- have been returned to the different investors.

3. He would refer to the earlier orders passed by this Court in the similarly situated cases and would submit that the protection was granted to the employees of the Bank also. In the absence of any misappropriation, there may not be a sufficient ground to the Investigation to have the custodial interrogation of the applicants. The applicants are from the respected families having no antecedents at their discredit. The applicants are making every endeavour to recover the loan advanced to the borrowers and to repay the amount

(4)

to the depositors. The applicants are not the beneficiaries of the amount deposited by the depositors. The applicants are ready to abide by the conditions if imposed while enlarging them on anticipatory bail. He would submit that these are the fit cases to release the applicants on anticipatory bail.

4. Per contra, the learned A.P.P. would submit that though the audit report is in favour of the applicants, investigation in regard to various aspects like receiving the forged documents from the borrowers and borrowing loan to the other personal staff is to be made. Therefore, the custodial interrogation of the applicants is necessary. He, therefore, prayed to dismiss the applications.

5. Perused the first information report and relevant papers. Various orders have been passed by this Court in similarly situated cases regarding the same society. It has been consistently observed in those orders that there is a clear finding of no misappropriation of the funds in the audit report. The Auditor has recorded a finding that there is mismanagement of the affairs of the society at the hands of the Board of Directors for which necessary action is being taken

(5)

against them. No doubt, the Investigating Officer has to collect the documents to prove whether any fraud has been played or money is misappropriated. The society maintains the records and that must have been available. The applicants are not the custodian of the said records and it is still available with the Auditor or the office of the society. The applicants have not denied the deposits received from various investors. Prima facie, there appears no evidence of intention on the part of the applicants to cheat the depositors. There appears no evidence of the benefits received by the applicants, but there is sheer mismanagement of the affairs of the society at the hands of the Board of Directors.

6. In view of the facts of the case and material placed along with the applications, this Court is of the view that these are the fit cases to grant anticipatory bail to the applicants. Hence, the following order:-

- 1) All Criminal Applications stand allowed
- 2) In the event of arrest of applicants (1) Kailas Tukaram Gaikwad, (2) Manik s/o Madhav Mote and (3) Meerabai @ Meera

(6)

w/o Sunil Mote, in connection with C.R. No.10/2021, registered with Police Station, Shanishingnapur, Taluka Newasa, Dist. Ahmednagar, for offences punishable under Sections 3, 4, 5, 6, 7, 8 and 13 of the Maharashtra Protection of Interest of the Depositors (In Financial Establishments) Act, 1999 and Sections 402, 406, 408, 409, 417 to 427, 465, 466, 468, 471, 474, 477, 477-A, 120-B, 107, 108, 110, 111, 504, 506 read with Section 34 & 109 of the Indian Penal Code, they be enlarged on bail on furnishing P.B. and S.B. of Rs.25,000/- each with one solvent surety in the like amount.

3) The applicants shall attend the police station as and when called on written notice by the Investigating Officer and shall not tamper with the prosecution evidence.

4) Hamdust allowed.

(S. G. MEHARE, J.)

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