

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 201/2023

RADHESHYAM TOLAJI RAHANGDALE AND ANOTHER
 VS
 STATE OF MAH. THR. PSO ANDALGAON, TAH. MOHADI,
 DIST. BHANDARA.

Office Notes, Office Memoranda of
 Coram, appearances, Court's Orders
 or directions and Registrar's order

Court's or Judge's Order

Mr A.S. Mardikar, Senior Advocate assisted by Mr P.S. Tidke, Advocate for
 the applicants

Mr M.J. Khan, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/06/2023.

1. The present applicants are apprehending arrest at the hands of Police in respect of Crime No. 28/2023 registered at Andalgaon Police Station, Tq. Mohadi, District Bhandara for the offences punishable under Sections 406, 409, 420, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860.

2. The applicants are apprehending arrest at the hands of Police as the crime is lodged against them, on the allegations that the Maharashtra State Co-operative Marketing Federation Limited, Mumbai had appointed the Vividh Karyakari Seva Sahakari Sanstha Maryadit, Ambagarh to run the center for purchase of paddy. The Vivedh Karyakari Seva Sahakari Sanstha Maryadit was

appointed to run the said center on commission basis, for purchase of paddy for harvesting for the year 2021-2023. Accordingly, the agreement was executed between the Maharashtra State Co-operative Marketing Federation and Vivedh Karyakari Seva Sahakari Sanstha Maryadit. Thus, as per the allegations the present Vivedh Karyakari Seva Sahakari Sanstha Maryadit purchased the 34494 quintal of paddy and only 25727.23 quintal was supplied to the miller for processing and had not supplied the 8766.77 quintal of paddy. Though notice was issued by the informant to the Managing Committee of the Vivedh Karyakari Seva Sahakari Sanstha Maryadit for the said shortfall, however, no response was received by the informant and therefore, he lodged the report against the office bearers of the said Vivedh Karyakari Seva Sahakari Sanstha Maryadit. On the basis of said report, Police have registered the offence against the present applicants and other Directors.

3. As per the contention of the present applicants, they are President and Secretary of the said Cooperative Society, already other directors are released on bail. There are similar allegations against the present applicants as well as other Directors. In fact, the society entered into an agreement with the Grader and Grader was appointed. He accepted the entire responsibility of

management of the said paddy. He has given the undertaking that if any shortfall arises, he would be responsible for the same. The said Grader is also released on bail.

It is further contention of the applicants that even as per the argument and the terms and conditions, if any dispute arises regarding the said issue, the dispute is to be referred to the Arbitrator.

It is further contended by the applicants that the action is already initiated against the Grader for the said shortfall. So, no offence is made out against the present applicants, their physical custody is not at all required. They are also entitled to release on bail on the ground of party, and considering the similar type of allegations is made against them.

4. The said application is strongly opposed by the State on the ground that the custodial interrogation of the applicants is required, as they are the responsible persons, they have to control the activity.

It is further contention of the State that the office bearers were under obligation to maintain the required documents, in respect of purchase of paddy and in respect of payment thereof. The office bearer failed to maintain the said stock as well as maintained the record. It reveals during the investigation that the society should

have the stock of paddy to the extent that 8766.77 quintal at its Godown. However, on the inspection of the Go-down, no stock was found.

It is further contention of the investigating agency that not only the stock was found but there was forgery of the documents, and several agriculturist were duped in the said incident. If the applicants are released on bail, the investigation would be hampered, and investigating agency would not be in a position to ascertain who has forged the said documents and prays for rejection of the application.

5. Heard Senior Advocate Mr A. S. Mardikar. He submitted that other Directors are already released on bail against whom, the same types of allegations are made by the prosecution agency.

He further submitted that there are separate provisions under the Maharashtra State Cooperative Societies Act, and accordingly action is already initiated against the Grader.

He further invited the attention towards the agreement which is executed between the Maharashtra State Cooperative Marketing Federation and Vividh Karyakari Seva Sahakari Sanstha Maryadit, and submitted that in view of the said agreement, clause-46 if any dispute arises, it is to be referred to the Arbitrator.

The Grader has already accepted the responsibility and issued the undertaking in favour of the society. The said Grader is already released on bail. There is no allegation against the present applicants that they have forged the said documents. He submitted that considering the same physical custody of the applicants is not at all required. They are ready to cooperate to the Investigating Agency and prays for bail.

6. In support of the submission, he placed reliance on the order passed by this Court in Criminal Application (ABA) No. 152/2023, wherein this Court has released the Directors on bail of another Society, wherein the similar allegations were made. He submitted that considering the observations of this Court while releasing the Directors on bail that role played by the applicants and in absence of any material to show that they are directly responsible for cultivation of paddy and storing the same in the Go-down, the allegation of misappropriation against them will have to be decided in the light of their role which appears to be supervisory in nature and not controlling in nature. Similar role is of the present applicants, they are not responsible for allegation of paddy and storing the said in the Godown. They are the only controlling authority. The Grader was appointed for the said purpose, and he accepted the liability and responsibility. In view that, present applica-

tion is deserves to be allowed by releasing the present applicants on bail.

7. Per contra, learned APP submits that the procedure which is to be adopted while collecting the paddy and payment in respect thereof is to be understood first. He submitted that by this Court, Act of office bearers of the society, the scheme of the Government itself is frustrated. In other society also, similar types of misappropriation is conducted and he further invited the attention of this Court towards the statement of the Officer of Maharashtra State Cooperative Market Federation namely Bharatbhushan Ramesh Patil, who in his statement as alleged that all the Directors along with present applicants forged the documents to show that the paddy was purchased. In fact, the paddy was not purchased and several agriculturist were duped.

8. He submitted that the society will definitely responsible for the losses. Present applicants being the Chairman and the Secretary are under obligation to control the activities of the Grader as well as have supervision over the said activities. Therefore, their custodial interrogation is required to ascertain regarding the Act of Forgery also and therefore, the criminal application deserves to be rejected.

9. Having heard both the sides and on perusal of the FIR, admittedly there is no allegation against the present applicants that they have forged the said documents. Prima-facie, it appears that the society has entered into an agreement with the Federation through the President of the Society i.e. Applicant No.1. The FIR is lodged by the District Marketing Federation against the applicants as also against the Directors, and one of the Grader. The other Directors and Grader is also already released on bail in the event of their arrest.

10. As per the allegations, the collection of the paddy and storing the same in the Godown was not definite responsibility of the present applicants. The allegation of the misappropriation against them is to be decided in the light of their role and prima-facie, it appears that their role is of supervisory nature and not in controlling nature. This Court has already considered this aspect while considering the bail application of the Directors in the other society. During the investigation, the investigating officer is at liberty to interrogate the present applicants also regarding the forgery of the documents and regarding the Stock, which the informant has not found during the visit of the Official Member to the Godown of the applicants society. Their custodial interrogation for ascertaining the forgery of the documents is not at all required.

11. It is already observed in one of the order passed by the Sessions Judge that relevant documents, registers are already seized by the Investigating Agency, reveals from the Seizure Panchanama. Considering the said observations, admittedly the custodial interrogation of the present applicants is not at all required. Considering the role of the present applicants that they were only controlling authority and direct role of the present applicants in the forgery of the documents does not reveal from the investigation papers. As far as the investigation regarding other aspects are concerned, their physical custody is not at all required. However, some conditions requires to be imposed on them, considering the allegations against the society and its office bears. Accordingly, criminal application deserves to be allowed. As the prima-facie case is made out by the applicants to release him on bail. Accordingly, I proceed to pass following order.

- a) Criminal application is allowed.
- b) In the event of their arrest in connection with Crime No. 28/2023 registered with the Andhalgaon Police Station, Tah. Tumsar, District Bhandara for the offences punishable under Sections 406, 409, 420, 467, 468 and

471 read with Section 34 of the Indian Penal Code, the applicants are released on bail on executing P.R. Bond of Rs. 25,000/- with one solvent surety of like amount each of the applicants.

- c) The applicants shall attend the concerned Police Station once in a week i.e. Monday between 10.00 am to 01.00 p.m. till filing of the charge-sheet and shall cooperate with the Investigating Agency.
- e) The applicants shall not directly or indirectly make any inducement, threat or promise to any witnesses, who are connected with the alleged offence and shall not tamper the prosecution evidence or hamper the investigation.
- f) In case of breach of any conditions, the liberty is granted to the applicants, the State can take necessary steps for cancellation of bail.

Criminal application is **disposed of**.

JUDGE