IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.412 OF 2023

Bipin Shashikant Kudtarkar
Age : 51 Years, Occu. : Business,
R/o. : Zion "B" Wing, Ajmera Lands
Near Imax Cinema Bhakti Park, ...Applicant
Wadala (East), Mumbai – 37. (Original Accused No.2)

Versus

1. **The State of Maharashtra**
Through Police Inspector
Satara City Police Station
District : Satara. ...Respondent No.1

2. **Sanjay Chandrakant More**
Age : 63 Years, Occu. : Business,
R/o. : Plot No. C-3, N1, ...Respondent No.2
Town Centre, Aurangabad. (Original Complainant)

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO.557 OF 2023

Hanmant Narayan Bodake
Age : 50 Years, Occu. : Service,
Manager, Rajwada Branch Satara
The Sahebrao Deshmukh Co-operative ...Applicant
Bank Ltd., Satara. (Original Accused No.5)

Versus

1. **The State of Maharashtra**
Through Police Inspector
Satara City Police Station
District : Satara. ...Respondent No.1

2. **Sanjay Chandrakant More**
Age : 63 Years, Occu. : Business,
R/o. : Plot No. C-3, N1, ...Respondent No.2
Town Centre, Aurangabad. (Original Complainant)

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO.561 OF 2023

Sadhana Sanjay Jadhav
Age : 40 Years, Occu. : Service,
Manager, Rajwada Branch Satara
The Sahebrao Deshmukh Co-operative ...Applicant
Bank Ltd., Satara. (Original Accused No.8)

Versus

1. **The State of Maharashtra**
Through Police Inspector
Satara City Police Station
District : Satara. ...Respondent No.1

2. **Sanjay Chandrakant More**
Age : 63 Years, Occu. : Business,
R/o. : Plot No. C-3, N1, ...Respondent No.2
Town Centre, Aurangabad. (Original Complainant)

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO.562 OF 2023

Arvind Vitthal Dhanawade
Age : 59 Years, Occu. : Farmer,
Residing at : 432, Ganesh Col, ...Applicant
Near Old RTO Office, Satara. (Original Accused No.7)

Versus

1. **The State of Maharashtra**
Through Police Inspector
Satara City Police Station
District : Satara. ...Respondent No.1

2. **Sanjay Chandrakant More**
Age : 63 Years, Occu. : Business,
R/o. : Plot No. C-3, N1, ...Respondent No.2
Town Centre, Aurangabad. (Original Complainant)

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Mr.Vishwajeet Sawant – Senior Advocate i/b. Mr.Vishal Ghosalkar:-	Advocates for Applicants.
Ms.Anamika Malhotra:-	APP for Respondent –State.
Mr.Anoop U.Patil a/w Mr.Diptendu Bose:-	Advocates for Ori.Complainant/ Respondent No.2.
Mr.M.K.Abnave – PSI:-	Satara City Police Station.

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ANTICIPATORY BAIL APPLICATION NO.430 OF 2023

Sahebrao Dinkar Jadhav
Age : 57 Years, Occu. : Advocate,
R/o. : 177/12B, Saniya Apartment, ...Applicant
Budhwar Peth, Satara, Dist. : Satara. (Original Accused No.9)

Versus

1. **The State of Maharashtra**
At the instance of Satara City
Police Station, Dist. : Satara.
(C.R. No. 70 of 2023). ...Respondent No.1

2. **Sanjay Chandrakant More**
Age : 63 Years, Occu. : Business,
R/o. : Plot No. C-3, N1, ...Respondent No.2
Town Centre, Aurangabad. (Original Complainant)

*****

Mr.Dilip Bodake:–	Advocate for Applicant.

Ms.Anamika Malhotra:-	APP for Respondent No.1–State.
Mr.Anoop U.Patil a/w Mr.Diptendu Bose:-	Advocates for Ori.Complainant/ Respondent No.2.
Mr.M.K.Abnave – PSI:-	Satara City Police Station.

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ANTICIPATORY BAIL APPLICATION NO.431 OF 2023

Arun Gulabrao Nalawade
Age : 64 Years, Occu. : Farmer,
R/o. : At-Post : Wadhe, ...Applicant
Taluka and District : Satara. (Original Accused No.10)

Versus

1. **The State of Maharashtra**
At the instance of Satara City
Police Station, Dist. : Satara.
(C.R. No. 70 of 2023). ...Respondent No.1

2. **Sanjay Chandrakant More**
Age : 63 Years, Occu. : Business,
R/o. : Plot No. C-3, N1, ...Respondent No.2
Town Centre, Aurangabad. (Original Complainant)

*****

Mr.A.S.Khandeparkar–Senior Advocate i/b. Mr.Dilip Bodake:–	Advocates for Applicant.
Ms.Anamika Malhotra:-	APP for Respondent No.1–State.
Mr.Anoop U.Patil a/w Mr.Diptendu Bose:-	Advocates for Ori.Complainant/ Respondent No.2.
Mr.M.K.Abnave – PSI:-	Satara City Police Station.

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ALONG WITH

ANTICIPATORY BAIL APPLICATION NO.463 OF 2023

Rajeshwar Hemchandra Kasar
Age : 36 Years, Occu. : Chartered Accountant,
Residing at : CTS No. 176, ...Applicant
Budhawar Peth, Satara. (Original Accused No.18)

Versus

The State of Maharashtra
Through Police Inspector
Satara City Police Station,
Taluka & District Satara. ...Respondent

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Mr.Manoj Mohite–Senior Advocate a/w Mr.Atharva R. Bhingardave, Mr.Yash M. Naik i/b. Mr.Vaibhav Gaikwad:-	Advocates for Applicant.
Ms.Anamika Malhotra:-	APP for Respondent No.1–State.
Mr.Anoop U.Patil a/w Mr.Diptendu Bose:-	Advocates for Respondent No.2.
Mr.M.K.Abnave – PSI:-	Satara City Police Station.

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ANTICIPATORY BAIL APPLICATION NO.777 OF 2023

1. **Swati Bhanudas Kanase**
Age : 42 Years, Occu. : House wife,
Krishnamrut CHS, Room No.1105,
Crick Road, Mahagiri, Thane (W), ...Applicant No.1
400 601. (Original Accused No.11)

2. **Sunita Prakash Junghare**
Age : 40 Years, Occu. : House wife,
R/o. : 804/I, Jimmy Tower, CHS Ltd.
Sector 18, Koparkhairane, ...Applicant No.2
Navi Mumbai : 400 709. (Original Accused No.12)

Versus

1. **The State of Maharashtra**
Through Police Inspector,
Satara City Police Station,
District : Satara. ...Respondent No.1

2. **Mr.Sanjay Chandrakant More**
Motibaug, Wai, Taluka : Wai, ...Respondent No.2
District : Satara. (Original Complainant)

*****

Mr.Ashok Mundargi–Sr.Advocate i/b.Mr.Mohd.Moin Khan:-	Advocates for Applicant.
Ms.Anamika Malhotra:-	APP for Respondent No.1–State.
Mr.Anoop U.Patil a/w Mr.Diptendu Bose:-	Advocates for Ori.Complainant/ Respondent No.2.
Mr.M.K.Abnave – PSI:-	Satara City Police Station.

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ALONG WITH
INTERIM APPLICATION NO. 755 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.463 OF 2023

Sanjay Chandrakant More
Age : 63 Years, Occu. : Business,
R/o. : Plot No. C-3, N1,
Town Centre, Aurangabad. ...Complainant

In the matter between

Rajeshwar Hemchandra Kasar
Age : 36 Years, Occu. : Chartered Accountant,
Residing at : CTS No. 176, ...Applicant
Budhawar Peth, Satara. (Original Accused No.18)

Versus

The State of Maharashtra
Through Police Inspector
Satara City Police Station,
Taluka & District Satara. ...Respondent

*****

Mr.Anoop U. Patil a/w Mr.Puneet B. Fonia i/b. Mr.Diptendu Bose:-	Advocates for Ori.Complainant.
Mr.Manoj Mohite–Senior Advocate a/w Mr.Atharva R. Bhingardave, Mr.Yash M. Naik i/b. Mr.Vaibhav Gaikwad:-	Advocates for Applicant.
Ms.Anamika Malhotra:-	APP for Respondent No.1–State.
Mr.Anoop U.Patil a/w Mr.Diptendu Bose:-	Advocates for Respondent No.2.
Mr.M.K.Abnave – PSI:-	Satara City Police Station.

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CORAM : S. M. MODAK, J.

RESERVED ON : 17th APRIL 2024

PRONOUNCED ON : 8th MAY 2024

P. C. :

1. In all these matters, I have heard initially learned Advocate Shri.Vishal Ghosalkar in Anticipatory Bail Application Nos.412 of 2023, 557 of 2023, 561 of 2023 and 562 of 2023 at great length. I have granted an *'interim protection'* from arrest. At that time, the then learned APP had also advanced arguments. Later on, Co-accused have

also filed separate Anticipatory Bail Applications. I have also heard the respective Counsel in those Applications. Then learned APP Ms.Anamika Malhotra was entrusted with all these matters. I have also heard her. The First-Informant Sanjay More appointed an Advocate Shri.Anoop Patil. I have also heard him in all these matters. He has also filed a note showing the involvement of every Applicant and why interim bail should not be confirmed. So, now the issue is, whether to confirm the *'interim protection'* or to vacate them.

2. When one may look at the averments in the FIR which involve: (a) the Directors, Managers of the Sahebrao Deshmukh Co-operative Bank Ltd., Mumbai, having its Head Office at Mumbai and the Regional Office at Satara,

(b) some of the purchasers of the property mortgaged to the Bank and

(c) their professionals like Chartered Accountant and the Advocate.

3. It is true that the First-Informant Sanjay More purchased the lands in the public auction. He has paid the sale consideration either from his own funds or from the money raised by taking finance from the said Bank. Even, the land was mutated in his name on revenue record. The issue does not rest there.

4. When he has decided to raise further funds for new development

on those lands, his new banker Saraswat Co-operative Bank pointed out defect in the title of those lands. That is to say, some of the lands from bigger land purchased by the First-Informant was also sold to other persons. The First-Informant was shocked and in turn, he followed up with the officials of the Bank for removal of the defect in title. When the problem was not resolved, he took legal steps by way of issuance of a notice and even by filing Suit before the Co-operative Court. However, he could not get a result as desired by him. Finally, he decided to file a Complaint with Police and accordingly, the Satara City Police Station registered an offence bearing C.R. No. 70 of 2023 dated 22nd January 2023 for the offences under Sections 406, 468, 467, 471, 420, 120-B read with 34 of Indian Penal Code, 1860 ("IPC") against in all 19 persons.

Allegations in FIR

5. The sum and substance of the allegations in the FIR is as follows. (The chronology of events is stated not as per the narration in the FIR but as per the happenings of the events):-

(a) One **Vijay Hanmantrao Shinde** (Accused No.16 as per the FIR) owns a land bearing Survey No.34/1, 34/2 admeasuring 10.5 acres. He has raised a finance of Rs.3,00,00,000/- (Rupees Three Crore Only) from

Sahebrao Deshmukh Bank (hereinafter referred to as the said Bank) by mortgaging the said land in the year 2010.

(b) Even though the land is mortgaged in favour of the Bank, the said Vijay Shinde sold the land vide sale-deed dated 22nd February 2011 for Rs.85,00,000/- (Rupees Eighty Five Lakhs Only) to a Partnership Firm by name **M/s.Crystal Builders and Developers**.

(c) The Applicant **Swati Bhanudas Kanase** (Accused No.11 – wife of the Chairman Subhash Deshmukh), **Sunita Prakash Junghare** (Accused No.12 – sister of the Chairman Subhash Deshmukh) and Anil Shantilal Mehta and Dina Anil Mehta were the partners in the said Firm. (Purchase of land by persons connected to the Bank directly or indirectly was one of the points for fingering the suspicion towards the Bank officials).

(d) Even though the name of the Partnership Firm was entered on 7x12 extract, the Talathi Sajja Kodoli removed the name on the objection of the Manager of the Bank.

(e) The Applicant Vijay Shinde – original owner in the year 2013 got permission for using the land for non agricultural purpose.

(f) The said Vijay Shinde also plotted the land into 75 plots.

(g) Even though M/s.Crystal Builders and Developers was not lawful owner (as the land is already mortgaged to the Bank), Bank permitted the Firm to sell five (5) N.A., plots to several persons.

(h) Out of them, Plot No.9 was sold by M/s.Crystal Builders and Developers as per the sale-deed dated 25th March 2014 in favour of the Applicant – **Arun Gulabrao Nalavade**. (Accused No.10) for Rs.60,00,000/- (Rupees Sixty Lakh Only).

(i) The Bank had gone to the extent of sanctioning the loan of Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakh Only) in favour of the said Arun.

(j) Now, the role of the professionals start even though said Arun is not the owner of the land, his **valuer Ashok Gaikwad** (Accused No.17) gave a valuation report valuing incorrect valuation of Rs.4,97,76,960/- (Rupees Four Crore Ninety Seven Lakh Seventy Six Thousand Nine Hundred Sixty Only). Even the valuer has issued the valuation report much earlier to the sale-deed, even though the title is defective, the Applicant (Accused No.9) **Sahebrao Jadhav** being the legal advisor, gave false title report.

6. In a nutshell, the allegation of the First-Informant is part of the land was sold by the original owner Vijay Shinde to M/s.Crystal Builders and Developers unauthorisedly. The name of M/s.Crystal Builders and Developers is removed from 7x12 extract, still he sold part of the land to Arun Nalavade and his professionals i.e. the Chartered Accountant and Legal Consultant gave false and incorrect report. Even though the officials of the Bank including the Directors

and the Managers are aware of all these transactions, they persuaded the First-Informant to give a consent for part of the land by coming to Aurangabad. The amount of the bid and amount paid by the First-Informant is as follows:-

(a) First bid was for Rs.1,26,11,000/- for sale of part of land (Rupees One Crore Twenty Six Lakh Eleven Thousand Only) and EMD of Rs.31,27,750/- (Rupees Thirty One Lakh Twenty Seven Thousand Seven Hundred and Fifty Only) paid immediately.

(b) Second bid of Accused Vijay Shinde for different land was accepted. In fact, the Recovery Officer ought not to have allowed him to bid as a prospective purchaser because due to his default in payment of loan, the public auction was organised. Though his bid was accepted, he could not fulfill his commitments and that is why, the Chairman, Recovery Officer, Manager met the First-Informant at Aurangabad and convinced him to purchase that land and even assured to give him loan.

(c) Due to their request only, he decided to purchase that land and even offered the shops as a mortgage.

7. This bid was conducted on 26th September 2016 at the Office of Talathi Kodoli – Satara. The sale-deeds were also executed and registered on 30th March 2017 in the Sub-Registrar Office – Satara.

8. There are separate allegations against all these Applicants and

they have come into picture at different levels. <u>Predominantly, there are two sale transactions executed prior to public auction for which the First-Informant has objected and they are</u>:-

(a) Sale of the part of the land by original owner / Accused Vijay Shinde in favour of M/s.Crystal Builders and Developers

And

(b) Sale of part of the land by M/s.Crystal Builders and Developers in favour of Arun Nalavade.

9. So, even though it is true that the person who is aggrieved and cheated is the First-Informant but the entire transaction consists of various events. Even though a subsequent transaction is dependent upon the earlier transaction, **the Investigating Agency has not pointed out to me about the materials to show conspiracy** <u>amongst the persons involved in the first transaction and persons involved in the second transaction</u>. <u>On this background, the Applications need to be decided on the basis of materials pointed out towards them individually</u>.

<u>Filing of charge-sheet</u>

10. Another facet of all these Applications is the Investigating Agency has filed a charge-sheet against all these Applicants. They were asked to give attendance to the concerned Police Station, they were

never taken into custody in view of interim protection. The Investigating Agency has chosen to file a charge-sheet against them and they have not found it necessary to interrogate them in the custody. This is the main factor which leans in favour of all these Applicants while confirming the *'interim protection'*.

11. Though the First-Informant is having a different version and according to him, considering the involvement of the Bank officials, private persons and the Recovery Officer, all of them have joined hands to protect the interest of private persons and they had gone to the extent of even betraying the fidelity in favour of the Bank. According to him, the First-Informant is a greater loser because he paid huge amount by way of consideration but did not get a clear title. On the other hand, there is a loan on his head sanctioned by the Bank for financing the sale consideration. There is a request to keep all these factors into consideration while deciding all these Applications.

12. It is true that now, law recognises a right of audience to the First-Informant not only at the stage of trial but even at the bail stage. There is a purpose behind it. It may happen that for some reason or other, the Investigating Agency may fail (accidentally or intentionally) to point out certain materials to the Court and in such an eventuality, the Court

will prejudice in considering those materials and such decision is not justifiable decision. By keeping this view in mind, I have heard learned Advocate Shri.Patil for the First-Informant and also gone through the contents of individual note submitted by him.

Conduct of informant

13. All of them have harped upon the conduct of the First-Informant in approaching the Police belatedly. To buttress this point, they quoted following two instances. They are as follows:-

(a) Filing of Suit (Page No.181 of ABA no.431 of 2023) by the First-Informant before the Co-operative Court – Satara involving the Chairman of the Bank, Bank and Branch Manager–Arvind Dhanawade. The reliefs claimed includes issuing mandatory injunction to give a clear and marketable title.

(b) Issuance of notice dated 23rd October 2017 to the Accused Subhash Deshmukh (Page No.116 of ABA No.777 of 2023) who is not the Applicant herein, his wife Swati, one of the Applicants, Prakash Junghare and Sunita Junghare demanding the balance agreed amount. This was in compliance with the agreement dated 30th June 2017 executed at Mumbai thereby the addressees have agreed to repay Rs.4,25,00,000/- (Rupees Four Crore Twenty Five Lakh Only) to the First-Informant and Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakh Only) is already paid and remaining amount is yet to be paid.

14. They have put emphasis on these two instances also to show that the dispute is a civil dispute.

Analysis

15. This is not the stage to decide whether this is a civil dispute or not. Suffice to say that the First-Informant was asked to purchase the land in a bid which failed due to inaction on the part of the first bidder. There is also emphasis on filing of private complaint by way of Criminal Misc. Application No.25 of 2023 (Page No.207 of ABA No.431 of 2023). It is true that the Complainant through his Advocate had given a purshis for withdrawal of the complaint for the reason that the Police have registered an offence.

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ANTICIPATORY BAIL APPLICATION NO. 412 OF 2023

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16. The Applicant – Bipin Kudtarkar was member of the Managing Committee of the Bank from 2015 to 2020. He was the Chairman in the year 2023. He resigned in the month of March-2022, however, it was not accepted by the Committee. Due to poor performance of the Bank in recovery of over dues, RBI has put certain restrictions on the

functioning of the Bank. He claims that the offence pertains to the events that took place during the period 2010 to 2014 and at that time, he was not concerned with the Bank.

17. Further, he claims that an auction was conducted by the Special Recovery Officer and he has no role to play. Just because he was a Chairman, he was roped in in this transaction. Furthermore, he has pleaded that five different credit facilities were sanctioned to the First-Informant in different names in the year 2016 and the sale during auction was also confirmed by the Deputy Registrar and even possession was handed over to the First-Informant. Further, it is contended that the First-Informant has defaulted and Bank has initiated an action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against him and certain orders are also obtained from the Court of Chief Judicial Magistrate on 7th November 2022 in respect of three mortgaged shops.

18. This action was subject matter of Writ Petition No.595 of 2023. Considering these events, the Bank has filed a civil suit for cancellation of sale-deed by the owner / Accused Vijay Shinde in favour of M/s.Crystal Builders and Developers and the Suit is pending. The

possession of three mortgaged shops was also taken.

19. As against this, the First-Informant contends that from 2008 to 2015, Suvarna Kudtarkar being mother of the Applicant was one of the directors of the Bank and the present Applicant being a Director for 5 years, was fully aware about the fraud played on the First-Informant. On all the material dates, i.e. auction, issuance of sale-certificate, execution of sale-deed, the Applicant was one of the Directors. Further contention is, few of the Directors have protested against some of the decisions by the Board of Directors in sanctioning loan and other irregularities *vide* their letter dated 14th June 2017 addressed to the Chairman of the Bank. It is on Page No.115 of the Intervention Application. The contention is, the present Applicant has not signed on that letter and this fact indicates that he is that Director who was responsible for all these irregularities. There is also a reference of the transaction with the First-Informant.

20. Further contention is, the Applicant cannot disown his responsibility being a Director of the Bank because he was Director when two agreements / sale-deeds were executed with the First-Informant, firstly on 18th June 2017 and secondly on 30th June 2017. (Defective titles were transferred). There is a legal notice dated 16th

June 2017 issued by the First-Informant through his Advocate addressed to the Chairman asking him to cancel the illegal sale-deeds executed with the connivance of the Directors of the Bank. (Page No.109 of Interim Application). According to him, it is a collective responsibility of the Directors and it is their inaction and lapses, the RBI has put restrictions in exercise of power under Section 35A of the Banking Regulation Act, 1949.

21. The allegations and counter allegations made against each other is part of events that are documented, either it may be in the form of correspondence by party or through Advocate. It may be by way of agreements / sale-deeds, it may be by way of auction notice and auction conducted by Special Recovery Officer. These documents could be collected and now, even the charge-sheet is filed.

22. <u>All these contentions need to be looked into from two perspectives</u>. One, <u>custodial interrogation</u> and second, <u>proving the case by way of evidence during trial</u>. Once, the RBI has issued certain restrictions, it implies that everything is not normal in the functioning of the Bank. Majority of the decisions and events have taken place prior to the bid was finalised on 26th September 2016. It is no doubt true that the present Applicant was not one of the persons who had

gone to Aurangabad for convincing the First-Informant also to accept the proposal in the second bid. Those Accused are different.

23. It is a matter known to the public that property was put to auction in the light of two recovery certificates. One for default by Mr. and Mrs.Vijay Shinde and second default by Arun Nalavade. So, one can say that knowingly the First-Informant has participated in that auction. First-Informant can very well say that all this auction and purchase of mortgaged properties was for raising fund from the prospective purchaser / First Informant and to clear the dues of the erstwhile defaulter. But, unfortunately the Investigating Agency is satisfied about sufficiency of materials and to file charge-sheet and that too, without custodial interrogation. An anticipatory bail cannot be rejected just because the allegations are serious. It has to be viewed from the perspective of necessity of custodial interrogation. So, I am inclined to confirm the *'interim protection'*.

24. These are my *prima facie* observations.

25. There can be new conditions to be imposed. Hence, order:-

ORDER

(i) The *'interim protection'* granted on 15th February 2023 is confirmed subject to following conditions:-

(a) Applicant to take permission of the Court prior to travelling outside India.

(b) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.

(c) Applicant to attend the trial Court punctually.

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ANTICIPATORY BAIL APPLICATION NO.431 OF 2023

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26. According to learned Senior Advocate Shri.Khandeparkar, in fact, his client was also a victim in entire episode and that, he purchased the part of the land from M/s.Crystal Builders and Developers by taking finance from the Bank. In fact, his client has a sale-deed in his favour, it is the subject matter of challenge and on the other hand, still his over dues are not cleared from the consideration raised through the public auction and it was paid by the First-Informant. His client has taken utmost care prior to executing the sale-deed with M/s.Crystal Builders and Developers and along with loan proposal, his client has complied with the necessary documents including the project report and title report.

27. According to him, he is not concerned with the loan sanctioned to Vijay Shinde and in fact, public auction was conducted due to

default by his client along with the default by Mr. and Mrs.Shinde, how his client can influence the sale at public auction. According to him, his client was nowhere involved in convincing the First-Informant which took place at Aurangabad. It is the decision of the First-Informant to purchase in the first auction and agreed to accept the second bid at Aurangabad. His submissions are already recorded in the earlier orders. Necessary documents are annexed on Page No.160 to Page No.180. (ABA No.431 of 2023).

28. Whereas, according to Mr.Patil, when Arun Nalavade executed a sale-deed with M/s.Crystal Builders and Developers (of which, the relatives of the Directors were partners) Arun Nalavade has definitely joined hands with the Directors. Here also, I am inclined to confirm the *'interim protection'*. Ultimately, it is for the Investigating Agency to make out a case of custodial interrogation and that too, for the purpose of collecting the materials. The allegations about involvement of the Applicant has to be supported along with the materials collected during investigation. No doubt, filing of charge-sheet suggests that there are materials to submit a charge-sheet. However, the issue before the Court is about necessity of custodial interrogation. If, the purpose of investigation to collect the materials is satisfied, there is no point in

vacating the *'interim protection'* just because the allegations are serious. So, I am inclined to confirm the *'interim protection'*.

29. Hence, order:-

<u>O R D E R</u>

(i) The *'interim protection'* granted on 15th February 2023 is confirmed subject to following conditions:-

(a) Applicant to take permission of the Court prior to traveling outside India.

(b) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.

(c) Applicant to attend the trial Court punctually.

30. These are my *prima facie* observations.

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<u>ANTICIPATORY BAIL APPLICATION NO.557 OF 2023</u>

<u>AND</u>

<u>ANTICIPATORY BAIL APPLICATION NO.561 OF 2023</u>

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31. I have heard learned Advocate Shri.Vishal Ghosalkar and afterwards, learned Senior Advocate Shri.Vishwajeet Sawant for these Applicants. **The Applicant Hanmant** is the Branch Manager of Sakinaka Branch of the Sahebrao Deshmukh Bank, whereas, the **Applicant Sadhana** is the Branch Manager, Satara branch of the said

Bank.

32. The Applicant Sadhana was instrumental in sanctioning the loan for the purpose of purchase of Plot No.9 by Co-accused Arun Nalavade from M/s.Crystal Builders and Developers. The allegation is, though the Applicant Sadhana was very much aware that M/s.Crystal Builders and Developers were not owners, she sanctioned the loan to Arun Nalavade and there is one of the subject in the entire episode which has further created a situation for the sale of that land by way of public auction due to default by borrower Arun Nalavade. If this transaction had not taken place, further public auction and acceptance of bid by the First-Informant would not have been taken place.

33. Whereas, her contention is, she has performed her duties as per the rules and only when documents were fulfilled by the borrower Arun Nalavade.

34. Whereas, the allegations against the Applicant Hanmant being Branch Manager of Sakinaka branch is about full knowledge about sale of the lands by Vijay Shinde to M/s.Crystal Builders and Developers. (Partnership Firm forming few of the relatives of the Directors as Partners). The land as per the sale-deed was kept as a collateral security

by the Accused Vijay Shinde and inspite of that, the Bank consisting of present Applicant as one of the officials was instrumental in execution of sale-deed.

35. Furthermore, this Applicant was also instrumental in execution of sale-deed in between M/s.Crystal Builders and Developers and Arun Nalavade. The said Arun Nalavade obtained loan. This Applicant Hanmant was one of the persons who went to Aurangabad along with the then Chairman Shri.Deshmukh for convincing the First-Informant to accept the bid.

36. Whereas, contention of Applicant Hanmant is otherwise. He claims protection of those decisions being taken while fulfilling the responsibilities carefully and within four corners of law. His contention is, the allegations are denied and otherwise also, according to him, there is nothing wrong in asking one of the participants to accept the bid and it is for the purpose of protection of the interest of the Bank.

37. The decisions taken by both these Applicants is part of record. However, as said above, it is for the Investigating Agency to point out participation of all these Applicants over and above the fulfillment of their duties and that too, in connivance of the Directors. At the time of both the sale-deeds, the First-Informant was never in picture. There

was a transaction in between the vendors and the purchasers and Bank officials for the purpose of sanction of loan. No doubt, the Bank has filed a Suit for cancellation of these sale-deeds, it is the subject matter of civil litigation. The concerned parties will plead their case. This is not the stage to opine that it is a civil dispute. The only consideration is about custodial interrogation of these Applicants. The purpose of investigation is already fulfilled. Otherwise, because the charge-sheet is filed. Hence, I find no reason to vacate the *'interim protection'*.

38. Hence, order:-

ORDER

(i) The *'interim protection'* granted on 23rd February 2023 is confirmed subject to following conditions:-

(a) Applicants to take permission of the Court prior to travelling outside the India.

(b) Applicants not to threaten the Prosecution witnesses or to allure them in any manner.

(c) Applicants to attend the trial Court punctually.

39. These are my *prima facie* observations.

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ANTICIPATORY BAIL APPLICATION NO.562 OF 2023

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40. No doubt, the present Applicant is the Special Recovery Officer from the Department of Co-operation. His role comes into picture when the recovery certificate is issued in favour of the Bank and when the money is not paid as certified by the necessary Authorities. Then the question of putting the property to auction for recovery of the money arises. Being part of his duty, he is bound to take all steps for recovery of dues and one of the modes is sealing the mortgaged property. About submission of the bids and for what amount and who should submit the bid is outside his prerogative. Once the public notice is issued, he is bound to complete the procedure of opening the bids and accepting the bids of highest bidder. If the First-Informant has submitted highest bid, it is his choice and for first bid, no one has persuaded him as per his own case. Whereas, for second bid, he was requested by the Chairman. He was not one of the persons who had gone to Aurangabad. The First-Informant claims that at Aurangabad, he was shown a letter signed by this Applicant recording that the cheque issued towards the EMD by the successful bidder was dishonoured. Ultimately, whether to accept that request or not is a choice of the First-Informant.

41. The contention is, the defaulter Vijay Shinde was allowed to

participate in that bid and that is against the rules. This Court is supposed to give only those observations which are necessary for deciding the Anticipatory Bail Application. The consideration is about necessity of custodial interrogation. I do not think that his custodial interrogation is required considering the fact that the charge-sheet is filed. Everything is a matter of record and the documents. So, I am inclined to confirm it. Hence, order:-

O R D E R

(i) The *'interim protection'* granted on 23rd February 2023 is confirmed subject to following conditions:-

(a) Applicant to take permission of the Court prior to travelling outside India.

(b) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.

(c) Applicant to attend the trial Court punctually.

42. These are my *prima facie* observations.

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ANTICIPATORY BAIL APPLICATION NO. 430 OF 2023

AND

ANTICIPATORY BAIL APPLICATION NO.463 OF 2023

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43. **The Applicant – Sahebrao is a legal Advisor** who has issued a search report on the instructions of Co-accused Arun Nalavade. It is for the purpose of certifying the title for submitting the proposal to the said Bank for availing loan. It is on Page No.66 of his Application. He claims, he has certified the title on the basis of documents. It is referred in Para No.2 of his certificate. He claims, the said act in performance of professional duty.

44. Whereas, the contention of the First-Informant is, proper search was not taken and the Applicant has not fulfilled his responsibilities and has not verified whether M/s.Crystal Builders and Developers is having title over the said land. The certificate is dated 10th March 2014. Whereas, the sale-deed in between M/s.Crystal Builders and Developers and Co-accused Arun Nalavade is dated 25th March 2014.

45. The contention of the First-Informant is how he can issue the certificate earlier to the execution of sale-deed. The contention is, even he has joined in conspiracy with Bank officials and the purchasers.

46. Whereas, the **contention of Mr.Rajeshwar** through learned Senior Advocate Shri.Manoj Mohite and Mr.Gaikwad, he is a Chartered Accountant and on the instructions of his client – Arun Nalavade, he had given the project report. The project report is on Page No.14 of his

Application. The costing of the project is on Page No.17 and valuation of the land is on Page No.18.

47. According to the contention of the First-Informant, the valuation is not correct and due to his project report, the Bank has sanctioned the loan which was not justified. I am not accepting the contention on behalf of the First-Informant. Submitting a loan proposal is the responsibility of the borrower and accepting the proposal is the prerogative of the Bank officials. The contention about the incorrect valuation can be accepted only when there are supporting materials collected during the investigation. Then only the allegation of conspiracy can be considered. It is absent. When the charge-sheet is filed, always the course of action is to confirm the *'interim protection'*. In view of that, both Applications are allowed. Hence, following order is passed:-

ORDER

(i) The *'interim protection'* granted on 15th February 2023 is confirmed subject to following conditions:-

(a) Applicants to take permission of the Court prior to travelling outside India.

(b) Applicants not to threaten the Prosecution witnesses or to allure them in any manner.

(c) Applicants to attend the trial Court punctually.

48. These are my *prima facie* observations.

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ANTICIPATORY BAIL APPLICATION NO. 777 OF 2023

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49. Learned Senior Advocate Shri.Mundargi argued that the **Applicants are the Partners** in the Partnership Firm M/s.Crystal Builders and Developers. According to him, the First-Informant is a borrower and the Bank has taken legal steps. They became the partners. According to him, the Firm M/s.Crystal Builders and Developers have purchased part of the land from Vijay Shinde and sold the land to Arun Nalavade. According to him, at both the relevant time, the Partnership Firm was having perfect title. At the time of those sale-deeds, the First-Informant was never in question and his clients were never involved in the auction process. Because, auction was conducted due to default committed by Mr. and Ms.Shinde and Arun Nalavade. Merely because his clients are the relatives of the Directors of the Bank, they cannot be held responsible for the acts not done by them. He prayed for allowing the Application as the charge-sheet is filed. The First-Informant compelled their husbands to execute an

agreement assuring to repay the amount and the dispute is a civil dispute.

50. Whereas, as per Mr.Patil, the Directors of the Bank have included their wives in the Partnership Firm and they were instrumental for selling the property to the Firm. Even, they were knowing that it is mortgaged to the Bank. According to him, that is why, further sale-deed and public auction wherein his client was compelled to bid and invest crores of rupees.

51. Ultimately, the formation of this Partnership Firm was the outcome of conspiracy needs to be substantiated by the materials. Even if there are materials along with the charge-sheet, now their custodial interrogation is not required. Hence, order:-

ORDER

(i) In case of arrest in connection with C.R. No. 70 of 2023 registered with Satara City Police Station for the offences punishable under Sections 406, 468, 467, 471, 420, 120-B read with 34 of IPC, the Applicant viz., (i) Swati Bhanudas Kanase and (ii) Sunita Prakash Junghare be released on bail on furnishing personal bond and surety bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) each.

(ii) Applicants to take permission of the Court prior to travelling outside India.

(iii) Applicants not to threaten the Prosecution witnesses or to allure them in any manner.

(iv) Applicants to attend the trial Court punctually.

52. These are my prima facie observations.

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53. In view of the above, all the Anticipatory Bail Applications are disposed of.

54. Interim Application No.755 of 2023 is disposed of.

55. Pending Interim Applications, if any, also stand disposed of.

[**S. M. MODAK, J.**]

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