IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2353 OF 2016

Dr. Shaikh Saleem S/O Shaikh Chand,
Age 57 years, Occu. Service,
R/o Plot No.16, Maulana Azad
Housing Society, Rouza Baug,
Aurangabad, District Aurangabad ..APPLICANT

VERSUS

The State of Maharashtra,
Through City Chowk Police Station,
Aurangabad ..RESPONDENT

Mr V.D. Sapkal, Advocate holding for Mr Sayyed Tauseef Yaseen,
Advocate for applicant;
Mr S.D. Ghayal, Addl. Public Prosecutor for respondent;
Mr Amol N. Kakade, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 15th June, 2016

ORAL ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicant is seeking pre-arrest bail in connection with C.R. No.173 of 2016, registered with City Chowk police station, Aurangabad, for offences punishable under sections 420, 467, 468, 471, 409 read with section 34 of the Indian Penal Code.

2. It is the case of the prosecution that the applicant, while working as a Director of Millennium Institute of Management, which is managed by Maulana Azad Education Trust, in connivance with the Accountant of the institution has committed defalcation. It is claimed in the first information report that so as to destroy the evidence, the applicant along with concerned Accountant has deleted the accounts for last ten years from the software of the Computer, so that the defalcations committed by them go un-noticed and no evidence to that effect is available. It is also claimed that though the amounts were collected from the students towards fees, no appropriate receipts to that effect were issued and in fact, such amounts were shown to be recoverable from the students. Amongst others, it is also claimed that the applicant being Director of the institution has took away certain amounts from the institution, which are not accounted for by him.

3. In the above background, while trying to make out a case for grant of pre-arrest bail, Mr Sapkal, learned Counsel appearing on behalf of the applicant would strenuously urge that since last about two years, the management is acting against the applicant as his services were terminated and he was required to approach this Court in Writ Petition No.3058 of 2014. By virtue of the interim order, the applicant was continued in service. In addition to above, he would submit that the applicant had lodged a complaint against the present complainant, who is also a faculty with the same institution, alleging that he had submitted bogus caste certificate in securing employment. According to him, it is the

basis for lodging false complaint against the applicant.

4. The next limb of submission of the applicant is that though the applicant had taken loan from the institution for construction of his house, the same was repaid pursuant to a memorandum issued by the Head of the Institution and he would rely upon the entries to that effect taken in the bank account of the applicant. Apart therefrom, the applicant submits that the alleged confession as has been placed on record accepting the guilt by the present applicant is a forged document as it does not contain any acknowledgment of the receiver or any out-ward number. Learned Counsel then would invite my attention to the audit report and submit that though the audit report is signed by the applicant, it does not mean that he has accepted short-falls as are noticed by the institution in the audit report as the same is signed by him as in-charge Director. According to him, the applicant, who is an academician and a man of national repute is entitled to be protected.

5. Learned Additional Public Prosecutor, who is assisted by the complainant, submits that there is ample material available on record so as to depict *prima facie* involvement of the applicant in the crime in question. He has taken me through statements of the students, who have in clear terms, stated about deposit of fees, however, appropriate receipts were not issued and they were detained for non payment of fees. He relied upon the observations made by the Auditor in the audit report so as to demonstrate that certain entries in relation to the amounts that were

withdrawn by the applicant are un-accounted for and according to him, since the applicant has acted hand in glove with the Accountant, both are responsible for the crime in question, i.e. financial defalcation. He then would submit that apart from destroying data of accounts available in the computer, the Accountant-co-accused is absconding and the applicant is also not co-operating in the investigation.

6. Mr Kakade, learned Counsel appearing on behalf of the complainant submits that the complainant has no personal grudge against the applicant and he has lodged the complaint only upon the instructions of the management, as the management has suffered financial loss because of fraudulent act of the applicant. He would submit that because of fraudulent act of the applicant, the institution has suffered a lot including that of its goodwill and future of the students was at stake.

7. Having bestowed my thoughts to the submissions made, at the outset it is noted that the alleged fraud as is attributed pertains to the year 2013-14. Perusal of the balance-sheet for the year 2013-14 shows that the applicant has signed the said document in the capacity of in-charge Director. It is not in dispute that the applicant was in-charge Director of the institution and the audit report depicts certain short-falls and un-accounted withdrawals by the present applicant from the account of the educational institution. Though the applicant was having sufficient time to over-come the said financial defaults as stated in audit report which is signed by him, still till date there is no compliance from him nor any explanation is

furnished before this Court. Apart therefrom, it is required to be noted that the applicant has admitted in categorical terms that he has committed such act of defalcation, as is apparent from a statement issued by him to the Chairman of the trust with whom he was employed, as reflected in the communication dated 30th April, 2014. Though the applicant claims that the said document is forged one, upon bare perusal and comparison of the signature on the said document with that of the signatures on admitted documents, it could be inferred that the said document has been signed by the applicant.

8. Apart from above, what is required to be noted is that the applicant has taken benefits from the institution in the matter of certain loan for construction of house. The applicant has relied upon the entries in his bank account so as to depict that the said amount was refunded by him. The said entries pertain to the year 2015. However, the short-falls in the audit report of 2014 and thereafter the admissions given by the applicant that he has committed defaults, speak volumes about his conduct.

9. The Apex Court, time and again, has observed that in an offence involving financial implications, the Court should be slow in granting protection to accused.

10. In the above background, having noted that there is sufficient material to infer that the applicant is *prima facie* involved in the crime in

question, no case for grant of pre-arrest bail is made out. Criminal Application, therefore, fails and stands rejected.

(N.W. SAMBRE, J.)

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