

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1108 OF 2015

Akhlaque Ahmed S/o. Abdul Razzak
Shaikh & Anr.

...Applicants

Versus

The State of Maharashtra

...Respondent

.....

Ms Shraddha Sawant for the Applicants.

Ms Veera Shinde, APP for the Respondent -State.

Mr. Sudhir I. Nandode for the Intervenor.

Mr. D.B. Bajgire, PSI, Rajgad police station, Pune, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 13th JANUARY, 2016.

P. C. :

This is an application for anticipatory bail filed by the aforesaid Applicants in apprehension of their arrest in Crime No.126 of 2015 registered at Rajgad Police Station, District-Pune, for offences punishable under sections 406, and 420 r/w. 34 of the IPC.

2. The case of the prosecution, in brief is that the Applicants are the members of the Committee of Peer Qamar Darvesh Durgah, Khedshivapur, Taluka- Haveli, District- Pune. It is alleged that the Applicants alongwith others had misappropriated the amount of said Dargah.

3. Ms Shraddha Sawant, the learned counsel for the Applicants has submitted that there is no prima facie material to show that the Applicants have misappropriated the amount or have committed any other offences in respect of the said Dargah. She has placed on record order dated 30.7.2015 passed by the District Judge/ Presiding Officer of Maharashtra State Waqf Tribunal, Aurangabad, whereby the application filed by the Applicant under section 83 Sub section (2) of the Waqf Act, 1995 was allowed and order dated 6.4.2015 passed by the Chief Executive Officer, Maharashtra State Board of Wakf, Aurangabad, dissolving the ad-hoc committee of the said Dargah was set aside. She has further submitted that audit reports for the years 2012 to 2015 have been filed and no irregularities had been noticed. She has stated that all the documents have been furnished to the Investigating Officer and the presence of the Applicants is not required for the purpose of custodial interrogation.

4. Ms Veera Shinde, the learned APP has submitted that the amount of Rs.52 lakhs has been misappropriated. She has further submitted that there is prima facie material to show that the Applicants herein had opened the donation box and had also got printed the

receipt books and collected funds through one Dhiraj Bhosale and another and misappropriated the same. She has further submitted that the offence is of a serious nature and presence of the Applicant is required for custodial interrogation.

5. I have perused the records and considered the submissions advanced by the learned counsel for the Applicants and the learned APP for the Respondent -State. The present crime was registered pursuant to the FIR lodged by one Abdul Ateeque Khan alleging that the Applicants herein, who were the members of the Ad-hoc Committee of Peer Kamarali Darvesh Durgah, had misappropriated the amount to the tune of Rs.52, 62, 533.59/- The said complaint which was lodged on 6.6.2015 indicates that the said amount was being misappropriated since the year 2012. The delay in filing the complaint would itself not justify the custodial interrogation. It is also pertinent to note that the application was filed before the Chief Executive Officer Maharashtra Wakf Board in respect of the dissolution of the said Ad-hoc committee, to enquire into mis management and audit report, etc., against the trustees of said Dargah. Proceedings had also been initiated by said Trustees being Suit No.25 of 2007 seeking injunction against the Wakf Boad and CEO from continuing with the enquiry. The

Trustees also filed a Suit No.97 of 2009 against the Wakf Board and others seeking injunction against the enquiry. The records, more particularly the order dated 30.7.2015 reveals that it has been a long standing dispute between the members of the said Dargah and that by order dated 6.4.2015 CEO of the Wakf Board had dissolved the Ad-hoc committee. The said order has been set aside by the Presiding Officer of Maharashtra State Waqf Tribunal.

6. It is also to be noted that the Applicants have placed on record the audit reports of the years 2012 to 2015. The said reports prima facie do not indicate that the Applicants are involved in committing any offence or irregularity. It is stated that the Applicants have submitted all the documents before the Investigating Officer and in my considered view the past history and the long standing dispute between the parties and the delay in lodging the complaint, would not justify custodial interrogation of the Applicants.

7. Under the facts and circumstances and in view of discussion supra, the application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the Applicants in Crime No.126 of 2015 registered at Rajgad Police Station,

District-Pune, the Applicants shall be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one surety each to the like amount to the satisfaction of the Judicial Magistrate, First Class, Shivajinagar, Pune.

- (ii) The Applicants shall report to the Investigating Officer for seven days from 10.00 a.m. to 1.00 p.m. from the date of receipt of the order and further as and when required by the Investigating Officer for the purpose of investigation and interrogation.

(ANUJA PRABHUDESSAI, J.)