IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1578 OF 2015

Dr. Subir Kumar Banerjee … Applicant
Versus
The State of Maharashtra and Another … Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO.1583 OF 2015

Suvra Banerjee @ Bhatacharya and Others … Applicant
Versus
The State of Maharashtra and Another ... Respondents

Mr. Amit Desai, Senior Advocate a/w. Mr. Vishal Bhanushali, Mr. Sandeep Patil, Mr. Sachin Deokar, for the Applicant in ABA. No. 1578 of 2015.
Mr. A.A. Kumbhakoni, Senior Advocate a/w. Mr. V.V. Purwant, Mr. Sagar Kadam, for the Applicant in ABA.1583 of 2015.
Mrs. P.P. Shinde and Mrs. Rutuja Ambekar, APP for the Respondent- State.
Mr. A.H. H. Ponda i/b. Mr. Hrishikesh Mundargi a/w. Mr. Subir Sarkar, Advocate for Respondent No. 2 In ABA. 1578 of 2015.
Mr. S.B. Kotwal (A.P.I.), Rabale police station, Navi Mumbai.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **12th APRIL, 2016**

P.C.:

. The applications are moved for pre arrest bail as the applicants/accused are facing charges for the offences punishable under Sections 420, 465, 467, 468 and 471 read with 34 of the

Indian Penal Code in C.R. No. 323 of 2015 registered with Rabale police station, Thane. The offence is registered at the instance of one Avinash Singh on 22nd September, 2015.

2. It is the case of the prosecution that on 25th November, 1994 a trust namely *"Nagar Yuwak Shikshan Santha"* was established. It was registered with the office of Charity Commissioner, Thane vide registration No. F-3745. Initially some other persons were the trustees of the trust till 2001. Thereafter, the family members of the complainant's family (Singh) and the persons from the family of applicants/accused (Banerjee) were appointed as trustees. The object of the trust was to run educational institution. The father of the complainant was the active member of the trust. He died in the year 2013. Thereafter, the trustees of opposite group i.e. members from Banerjee family group started working surreptitiously against the interest of the trust. In the year 2014, it was found by the complainant and his family members that in the election of 2009, the 'treasurer' Nitu Singh who is from the family of the complainant, though did not resign from the said post, she was shown only as a 'member' in the nomination form. It is the case of the prosecution that

the name of Nitu Singh was removed fraudulently with bogus signatures of Karuna Singh and Preeti Singh. On inquiry made by the complainant, he found that for the purpose of pulling down Nitu Singh from the post of 'treasurer', the nomination form was fraudulently signed by the applicants/ accused in the name of Karuna Singh and Preeti Singh. He also found that the applicants/accused passed various resolutions illegally. They have mortgaged the properties of the trusts with Abhyudaya bank without permission of the Charity Commissioner and siphoned huge money of the trust for the use of other institutions which are owned by them. They used money of the trust and all the money from mortgaged properties for enriching themselves and for the benefit of their personal companies and money was paid from the account of the trust. It is the case of the prosecution that the applicants/accused mainly Subir Kumar Banerjee established different educational institutions of Banerjee family by using money of the trust. It is the case of the prosecution that these applicants/accused have prepared forged and bogus documents, mortgaged the properties with various banks, obtained loan from Abhudaya Co-Op. Bank, Airoli and have cheated the trust for 200 Crores.

3. Mr. Amit Desai and Mr. Kumbhakoni, Senior Advocates for the applicants/accused have submitted that the applicants/accused are innocent. The applicant/accused have not committed any offence or misappropriation as claimed by the complainant. The alleged forgery is regarding the resolution of the election of the trust of 2009. It was not the election for the post of the 'Treasurer'. It is not correct that no objection certificate and consent letter dated 1st February, 2007 were forged. It was further argued that there was mutual understanding between Singh family and Banerjee family that Singh family will withdraw from the institution and take over the establishment and there was transfer of the management of trust by mutual agreement and as per this agreement, Singh family was to withdraw from *Nagar Yuwak Shikshan Santha*. However, first information report is filed. It is submitted that election was held in March, 2009 only for the post of the 'Member' and not for the post of the 'Treasurer' and so there was no question of changing of name of earlier Treasurer or substituting the name of Preeti Singh instead of Nitu Singh.

4. Both the learned senior counsel further submitted that the

fact of loan and mortgage is not disputed. However, it is not correct that they have misused the property of the trust for their own benefit causing financial loss to the trust. He submitted that immovable properties of the trust were mortgaged with Abhudaya Co-Operative Bank, Airoli at different times and the loan amounts were raised. However, the money was ultimately used for the construction of the new building for the trust only. Whenever some amount was used for the personal benefits by the applicants/accused, they made good of it by depositing the amount. Thus, there are no losses to the public trust. There is no single default in the installment or E.M.I. in repayment of these loans to the Bank. He submitted that Rs. 10.17 Crores were withdrawn from time to time but the accounts are audited and there is no objection raised by the Auditor.

5. Mr. A.H. Ponda for the Intervener - Respondent No. 2 has submitted that the criteria under Section 438 of Code of Criminal Procedure for granting anticipatory bail are to be taken into account and on this point he relied on the ratio laid down in the judgment of "***Siddharam Satlingappa Mhetre vs. State of Maharashtra and***

Others"[1] wherein the parameters are laid down by the Apex Court while dealing with anticipatory bail. He submitted that in this case huge amount of 200 Crores is involved. So also the applicants/ accused are prosecuted for the white collar offence punishable under Section 467 of the Indian Penal Code wherein the punishment is upto life imprisonment. The applicants/accused are likely to commit the similar offence if bail is granted to them. The impact of giving pre arrest bail on the public at large will be serious and will give wrong signal. He also relied on the judgment in the case of "***Nimmagadda Prasad vs. Central Bureau of Investigation***"[2].

6. The learned counsel for the intervener further submitted that the custody of the applicants/accused is required for interrogation for the purpose of investigation but the offence committed by the applicants/accused is very serious and harmful to the society at large. The Court while granting pre arrest bail and using powers has to keep in mind that though it is a discretionary power, it is to be used sparingly and in extra ordinary circumstances. The gravity has to be taken into account at the time of considering

1. (2011) 1 Supreme Court Cases 694.
2. (2013) 7 Supreme Court Cases 466.

anticipatory bail. He submitted that it is a economic offence and in such cases of economic offences, the Hon'ble Supreme Court has taken a very strong view that in such cases the Court should not use the powers to grant pre arrest bail. In support of his submissions, he relied on the following case laws :

(1) (1997) 7 Supreme Court Cases 187, State vs. Anil Sharma.

(2) (1994) 1 Supreme Court Cases 1, S.P. Chengalvaraya Naidu vs. Jagannath and Others.

(3) (1994) 1 Supreme Court Cases 6, Central Board of Secondary Education vs. Vineeta Mahajan (Ms) and Another.

(4) (2012) 1 Supreme Court Cases 476, Union of India and Others vs. Ramesh Gandhi.

(5) 2003 Supreme Court Cases (Cri) 628, M.C. Abraham and Another vs. State of Maharashtra and Others.

(6) 2014 ALL MR (Cri) 1197, Digambar Rambhau Jadhavar vs. The State of Maharashtra and Another.

(7) (1997) 8 Supreme Court Cases 104, State of A.P. vs. Bimal Krishna Kundu and Another.

(8) (2014) 2 Supreme Court Cases 171, State of Madhya Pradesh vs. Pradeep Sharma.

7. The learned prosecutor opposed the anticipatory bail applications. She submitted that permission of the Charity Commissioner is not obtained for mortgage or for use of the loan. She submitted that police have collected the documents showing forgery. Huge amounts are siphoned by the applicant/accused in their interest by the accused. Hence, their custody is required.

8. Heard the submissions of both the parties. The charts are provided by both the parties in respect of purchase of the properties by *Nagar Yuwak Shikshan Santha* or by the partnership or companies of the applicants/accused. It appears from the record that the applicants/accused especially Dr. Subir Banerjee has obtained loan in the name of *Nagar Yuwak Shikshan Santha* from Abhudaya Cooperative Bank. The loan amounts were used for the purpose of purchasing either lands or money was used in the construction of buildings. All the E.M.I. of these loans were regularly paid to bank and not a single account is declared as non performing Account (N.P.A.). It is the case of complainant that payment of the interest was made out of the income of *Nagar Yuwak Shikshan Santha.* The money in fact was used for the personal benefit of the applicants/accused.

These allegations may be true, however it pertains to the documentary evidence and particularly to the accounts of the trust. No report of the accountant or auditor is placed before the Court disclosing that *Nagar Yuwak Shikshan Santha* has suffered substantial financial losses and facing economic crises. If such report would have been placed before the Court then that could have been considered a ground to refuse protection to the applicants /accused. Moreover, the proceeding before the Charity Commissioner are pending. Both the parties have filed proceeding under Section 41(d) of the Bombay Public Trust Act before the Charity Commissioner. In this case, it appears both the families are having enmity and became hostile against each other as each one wants to come in the power of the trust. The allegations are also made in respect of forgery and removal of the names of some trustees at the time of meeting. If it is so then the Charity Commissioner is a proper forum.

9. I have gone through the cases which are cited by the learned counsel for the Intervener. The ratio laid down by the Hon'ble Supreme Court is binding on this Court. It is true that while applying criteria under Section 438 of Code of Criminal Procedure, the Court

has to take into account the guidelines laid down in the "*Siddharam Mhetre*" and "*Nimmagadda Prasad*" (supra). So also the requirement of custodial interrogation cannot be considered as the only criterion in the cases of economic offences. If an offence has pervasive effect on the Indian economy or if it has adverse impact on the public money at large then, it is the duty of the Court to reject the bail and deny protection to such criminals. However, in the present case, *prima facie* I understand that it is a dispute between two families who are fighting for the power.

10. In the case of "**Nimmagadda Prasad**" (supra) the Hon'ble Supreme Court has made observations in respect of white collar offences as under:

> *"Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

The ratio laid down by the Supreme Court is a guiding principles while dealing with the economic offences. However, it is necessary to see that the nature of the offence and its magnitude on public while dealing with anticipatory bail application. In the case of "**Nimmagadda Prasad**" (supra) a fraud was in respect of the Government land wherein the Government land of crores of rupees was sold in throwaway price. It is a matter of money of the trust and no such Government money is involved.

11. In view of above circumstances, I am inclined to grant pre arrest bail to the applicants/accused on the following terms and conditions:

a) The applications are allowed;

b) In the event of arrest, the applicants/accused be enlarged on bail upon furnishing P. R. Bond in the sum of Rs. 30,000/- (Thirty Thousand) each with one or two solvent sureties in the like amount;

c) The applicants shall not contact the complainant or the witnesses of this case and shall not pressurize them;

d) The applicants shall not tamper with the evidence;

e) The applicants shall not indulge into any other criminal activity.

f) The applicants shall cooperate with the Investigating Officer and shall attend concerned police station on three Saturdays i.e. 16^{th}, 23^{rd} and 30^{th} April, 2016 between 11.00 am to 1.00 pm.

g) The applicants shall not leave India without prior permission of the Court.

(MRS.MRIDULA BHATKAR, J.)