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

ANTICIPATORY BAIL APPLICATION NO.12 OF 2016

Abdul Rashid Fakir Mohammed Patel & Ors. .. Applicants
Vs.
The State of Maharashtra & Anr. .. Respondents

Mr. Ganesh Gole i/b. Mr. Ritesh Ratnam for the Applicants.
Ms. Jyoti S. Lohokare, APP for the State/Respondent No.1.
Mr. Pankaj J. Das for Respondent No.2.
Mr. Laxman L. Tambe, PI (Crime), Bazar Peth Police Station, Kalyan present.

CORAM : A.S. GADKARI, J.
DATE : 30th MARCH, 2017.

P. C. :

1. The applicant are apprehending arrest in C. R. No. I-320 of 2013 registered in Bazar Peth Police Station, Kalyan under Section 406, 420, 468 read with 34 of the Indian Penal Code.
2. The complainant/intervener Shri Madar Challa Majjid and Qabrastan Trust through Shri Nasir Yusuf Khan has lodged a private complaint in the Court of Judicial Magistrate First Class at Kalyan. Learned Magistrate by its order dated 09.12.2016 has directed the police to investigate the said complaint in accordance with law. The Anticipatory Bail Application No. 986 of 2015 preferred by the applicant was rejected by the learned Additional Sessions Judge, Kalyan vide its order dated 19.12.2015. The present application is filed on 05.01.2016.
3. It is the specific allegation in the complaint that the applicants

are the trustees of the said trust and in their capacity as trustees have defalcated certain amount of the trust and therefore, said complaint was lodged.

4. The learned counsel appearing for the respondent No.2/ original complainant submitted that the report from the Wakf Board is yet to be received, about the audit carried out for the years 2008 to 2010 and the said report from the Wakf Board is awaited till date. The Investigating Officer, who is present in the Court, through the learned APP submitted that the said report is yet not received from the Wakf Board. The record discloses that the present application was adjourned from time to time with a view to facilitate the Investigating Officer to get the report from the Wakf Board. As on several occasions, it was mentioned that the report from the Wakf Board is still awaited and in the circumstance the present application was listed today for hearing. Today, the learned APP, on instructions from the Investigating Officer who is present in the Court, submitted that the said report from Wakf Board is not yet received.

Mr. Gole, learned counsel appearing for the applicants contradicted the said statement and produced for my perusal the report addressed by the Wakf Board to the Police Inspector, Bazar Peth Police Station, Kalyan (West) dated 27.02.2017. Thus, it is clear that the Investigating Officer has made a wrong statement in the Court and the practice adopted by the Investigating Officer is hereby deprecated.

5. The record reveals that the IO had issued a questionnaire of

17 questions to the Chief Executive Officer, Maharashtra State Board of Wakf, Paanchakki, Aurangabad and in response thereto the said authority has answered the questions asked to it. In answer to question No.1 itself the said authority has categorically stated that during the course of audit of the years 2008-09 and 2009-10 no defalcation or misappropriation of funds has been noticed. Thus the basic contention of the complainant that there was misappropriation of the funds of the said trust has no substance in it and which is now certified by the Wakf Board.

6. In view of the above, I am of the considered opinion that the applicants deserve to be protected by a pre-arrest bail.

- (i) In the event of arrest in C. R. No. I-320 of 2013 registered with Bazar Peth Police Station, Kalyan, the applicants shall be released on bail on their furnishing PR bond of Rs.15,000/- each with one or two separate local sureties in the like amount.
- (ii) The applicants shall not tamper with evidence and/or influence the prosecution witnesses.
- (iii) The application is allowed in the aforesaid terms.

[A. S. GADKARI, J.]