

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 1477 of 2018

- Abdul Haider S/o Abdul Hafiz, Aged About 47 Years, R/o Nayapara Baloda Bazar, Police Station City Kotwali, Baloda Bazar, Tehsil Baloda Bazar, District Baloda Bazar-Bhatapara Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station City Kotwali, Baloda Bazar, District Baloda Bazar-Bhatapara Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh

---- Non-applicant

For Applicant – Shri Surfaraj Khan, Advocate.

For Non-applicant/State – Shri Avinash K. Mishra, Panel Lawyer.

Shri Adil Minhaj, Advocate for the objector.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

01-12-2018

1. Apprehending arrest in connection with Crime No.354/2018, registered at Police Station – City Kotwali, Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh for offence punishable under Section 420, 467, 468, 471, 406, 409, 120-B of the IPC, the applicant has preferred this application for grant of anticipatory bail. This is second application under Section 438 of the Cr.P.C. for grant of anticipatory bail filed by the applicant before this Court, his first anticipatory bail application was withdrawn with liberty to file duly constituted application.

2. It is submitted by learned counsel for the applicant that the applicant has been falsely implicated in this case. The applicant is a duly appointed Mutwalli of Muslim Jamat Jama Masjid Committee Balodabazar and his acts with respect to his functioning as Mutwalli are strictly regulated by the Waqf Act 1995. The applicant has not committed any criminal act, even then a complaint under Section 156(3) of the Cr.P.C. filed by the complainant has been entertained by the Court and directions were issued for registration of the FIR.

The applicant has challenged this registration of the FIR in CRMP No.1388/2018, in which, he has been granted interim relief by the Court order dated 31-07-2018. Clearly speaking the provision under Section 61(3) provides that no court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorised by the Board in this behalf. It is also submitted that the State Government has power to constitute tribunals for determination of any dispute or question relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act. Hence, whatever allegation that has been made by the complainant against the applicant shall be examined by the tribunal under the provisions of the Waqf Act, 1995.

It is also submitted that Mutwalli appointed under the Waqf Act is a public servant according to the provision under Section 101(2) of the Waqf Act, 1995. Hence, it is prayed that this applicant may be benefited with grant of anticipatory bail.

3. Learned counsel for the State/non-applicant opposes the application and submitted that there is charge of huge misappropriation of funds of Jama Masjid Balodabazar against the applicant which is being investigated and the investigation is at a very initial stage, hence, the application may be rejected.

4. Learned counsel of objector Mohammad Jilain submits that as stated that his application under Section 156(3) of the Cr.P.C. has been allowed by the concerned Court because of the material present in it and on that basis the FIR has been lodged against the applicant. The High Court though passed an interim order in favour of the applicant ordering that investigation may go on, however, no coercive steps shall be taken against the petitioner (applicant), till the next date of hearing, that is being challenged by the objector and he has filed application for setting aside the interim order passed in favour of the

applicant. It is submitted that soon after the interim order in favour of the applicant the applicant came with a mob to the house of the complainant and then abused, threatened and assaulted him. Because of the political influence of the applicant the police had refused to lodge the FIR, because of which, the complainant was compelled to file the application under Section 156(3) of the Cr.P.C. before Court. It is also submitted that there is allegation of huge misappropriation of funds of the Jama Masjid against the applicant and there is no protection under the provisions of the Waqf Act, 1995 for criminal acts done by any Mutwalli, further, there is no bar for registration of offences and prosecution under the provisions of the IPC. The learned Court below has observed in the order rejecting the anticipatory bail, that the order, report and other documents in the case diary show that the applicant is involved in misappropriation of funds at a big scale, hence, for these reasons, it is prayed that the application may be rejected.

5. In reply, learned counsel for the applicant submits that objector himself is an aspirant to become Mutwalli and he has resorted to such practices by implicating the applicant falsely in this case. No cognizance can be taken on the basis of the audit report because under the provisions of Section 47 and 48 of the Waqf Act, 1995, for all the alleged acts it is the Board who has to take decision in this respect. Waqf Board is a statutory body and controls the waqf property. Hence, power of the Board cannot be usurped by the Court.

6. Heard learned counsel for the parties and perused the case diary.

7. On perusal of the copy of the application under Section 156(3) of the Cr.P.C., it appears that the complainant has his own interpretation of the audit report, which he has obtained under the RTI Act. Copy of the audit report of 2012-13 to 2016-17 has been filed by the applicant, in which, it appears that there is no such observation made by the auditor making any allegation against the applicant, hence, it is a case of allegations made by the

complainant which yet to be investigated. Further, the provision under Sections 47 and 48 of the Waqf Act also cannot be overlooked. Hence, under the present circumstances, I feel inclined to allow this application.

8. Accordingly, the anticipatory bail application is allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions :

- (i) that the applicant shall make himself available for interrogation before the investigating officer as and when required;
- (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

9. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge