

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1784 OF 2019

Bala Murgan Ganaraj Nadar and others	Applicants
V/s.	
The State of Maharashtra	Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1583 OF 2019

Shamsher Balram Talwar and others	Applicants
V/s.	
The State of Maharashtra	Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1656 OF 2019

Prahladchand G. Oberoi and others	Applicants
V/s.	
The State of Maharashtra	Respondent

WITH
CRIMINAL APPLICATION NO.1096 OF 2019
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1656 OF 2019

Harish Uppal	Applicant
V/s.	
The State of Maharashtra	Respondent

Mr. Sham Marwadi with Prashant Aher with Ms. Rekha Musale for applicant in ABA No. 1656 of 2019.

Mr. A. M. Saraogi for applicant in ABA No.1784 of 2019.

Mr. Niranjan Mundargi i/by A. M. Saraogi in ABA No. 1583 of 2019.

Mr. Nilesh Tribhuvan with Alisha Pinto i/by White and Brief Advocates and Solicitors for respondent No.2 in all ABAs.

Mr. H. J. Dedhia, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 05th December, 2019

P.C.:

1. The Applicants in these applications are seeking Anticipatory Bail apprehending arrest in C.R No. 198 of 2019, registered with Antop Hill Police Station, Mumbai for the offences punishable under Sections 395, 458 and 342 of the Indian Penal Code ('IPC' for short). The first information report was lodged on 15th June 2019.

2. The prosecution case in nutshell is that, since January 2018, the informant is the General Secretary of Kolwada Sanatan Dharma Sabha's Education Society situated at Sion Koliwada. Mr. Sanjiv Sudan is President and Veena Sudan is Director of the said Educational Trust. They were appointed by eleven elected members of Education Society. The aforesaid Trust conducts Shree Sanatan Dharm Sabha High School and Junior College Educational

Institution. Primary, secondary and higher secondary education is provided through the said institute. There is another trust at Sion Koliwada named Shree Sanatan Dharm Sabha, Geeta Bhavan Hari Mandir conducting affairs of Geeta Bhavan Hari Mandir Temple. The informant was appointed as General Secretary of the said Trust from 2014 to 2019. Elections of said trust were conducted in February 2019. Twenty one persons were elected. Manmohan Lamba, Samsheer Talwar, Kishor Sehagal, Gulshan Vijan and others were elected. Manmohan Lamba was unanimously appointed as General Secretary from February 2019 and since then he is looking after affairs of said Trust. Pursuant to that the elected members of said Trust intended to take over affairs of Sanatan Dharam High School and Junior College conducted by Kolwada Sanatan Dharma Sabha's Education Society. They were intending to take over the said institution and there were disputes. Suit is pending in the High Court. On 28th May, 2019 the informant learnt that member of Shree Sanatan Dharma Sabha, Geeta Bhawan Hari Mandir, Shri Samsheer Talwar had assured other members about taking over Kolwada Sanatan Dharma Sabha's Education Society and that he would become General Secretary and take over possession of trust and

school. Apprehending that, he would take over the Trust and Educational Institution, the informant forwarded complaint to Antop Hill Police Station. On 02nd June, 2019 meeting of members of Sanatan Dharma Sabha, Geeta Bhawan Hari Mandir Trust was held. Mr. Samsher Talwar was appointed as General Secretary. In response to complaint filed by informant, the Inquiry Officer attached to Antop Hill Police Station had called Samsher Talwar for inquiry and advised him not to commit any unlawful activity. To secure the Educational Institute, security guards were deputed during day and night time from 04th June 2019. They were discharging duty on the gate of school. On 09th June 2019 at about 07:15 a.m., the informant received phone call from Jayraj Mudliyar, who informed him that 20 to 25 new security guards are present near the gate of Sanatan Dharma Sabha's High School and they have closed the gate. The security guards posted on night duty are missing and several persons have gathered on the school ground. The informant informed the said fact to Sanjiv Sudan and Chandan Sharma on Phone. The informant then approached the Police Station for lodging complaint. The security guards posted in the school had also approached the Police Station for lodging complaint. The

informant made inquiry with the security guards and the informant informed him that on 09th June 2019 at about 03:45 a.m., several persons came near the school. Some of them had covered their faces with handkerchief, some of them were armed with sticks and one of them abused the security guards. They pushed the security guards and took them inside the school building. Security guard Raju Kunchikorve was assaulted and the mobile, wallet, Identification Card of security guard were taken forcibly by the accused. They closed the door of basement. After 2-3 hours the door was opened and four persons were taken to dressing room of the hall and there articles were returned. 30 to 40 persons had gathered on the school ground. They came near the main gate of the school. The bouncers were deputed. The complainant noticed that Kishor Sehagal, Lalit Chopra, Samsheer Talwar, Jitendra Obhan and others were squatting on the ground. On 10th June 2019 Shri. Vasant Gangan had visited Kolwada Sanatan Dharam Sabha's Education Society office, he noticed that several persons namely Madan Malhotra, Mahendrakumar Thapar, Kishor Sehagal, Pankaj Dodi, Raju Dhal and other persons were sitting on chairs. The lock of iron grill of the office was broken. Three self cheques of

Rs.40,000/- and cheques relating to water bill and Swastik Electric were found missing. The files of the Trust were missing from the cupboard. The First Information Report (FIR) was lodged for the aforesaid offences.

3. The applicants had preferred an application for Anticipatory Bail before the learned Sessions Court. By order dated 17th July 2019, the applications were rejected.

4. Interim protection was granted by this Court by order dated 19th July 2019 in Anticipatory Bail Application No.1583 of 2019. The complainant had challenged the said order before the Hon'ble Apex Court. Vide order dated 09th August 2019 the Hon'ble Supreme Court did not interfere in the impugned order and the Special Leave Petition was dismissed. However, this Court was requested to finally dispose of the application as expeditiously as possible.

5. Heard Mr. S. V. Marwadi, Mr. A. M. Saraogi and Mr. Niranjan Mundargi Advocates representing applicants, learned APP Mr. Dedhia appearing for the Respondent - State and learned Advocate Mr. Nilesh Tribhuvan appearing for the Respondent No.2 /

complainant.

6. Learned counsel representing applicants submitted that the applicants are falsely implicated in this case. The offences under Sections 395, 458, and 342 of the Indian Penal Code ('IPC' for short) are not attracted. The custodial interrogation of the applicants is not necessary. There are two different charitable Trusts. Viz. Sanatan Dharma Sabha and Kolwada Sanatan Dharam Sabha's Education Society. The first Trust was looking after the temple and religious activities whereas the second Trust was looking after educational institute. Sanatan Dharma Sabha is a parent Trust. Member of both Trusts are common. There are civil disputes and litigations pending between parties. It is submitted that Writ Petition 1846 of 2017 was filed before the High Court in which orders were invited by virtue of which, it was sought to be suggested that the Trust which is controlling the temple activity is also the parent body of the educational trust and as such the said parental body is looking after activities pertaining to the school as well. The informant was party to the petition. He is signatory to minutes of order / consent terms. Elections were held and applicant samsher Talwar was appointed as a General Secretary of the Trust looking

after temple. Applicant Kishor Sehgal filed a suit before this Court bearing suit No. 5643 of 2019. In the said suit it was prayed that, permanent order and injunction restraining the defendants. There in from acting contrary to the order dated 18th August, 2017 passed in Writ Petition No. 1846 of 2017. The defendant No.1 in the said suit was Kolwada Sanatan Dharam Sabha's Education Society, Defendant No.2 was Shree Sanatan Dharam Sabha, Geeta Bhawan Hari Mandir, and defendant No.3 was Samsher Balram Talwar. Kishor Sehgal had filed a suit before the City Civil Court, Mumbai, bearing suit No. 1532 of 2019 and the defendant No. 2 and 3 therein have made a statement that the consent terms filed before the High Court unless set aside are binding upon the parties. The complainant has also filed a suit before this Court. The contents of which are contradictory to the consent terms filed before this Court. The police have no authority to interfere in the dispute relating to Trust. There is no element of dacoity or lurking house trespass in the present case. The applicants have co-operated with investigations. The dispute relates to possession. The complainant lost the election of Managing Committee member of Shree Sanatan Dharam Sabha in February, 2019. Statement of Mr. Thapar has

been recorded. He had attended the police station. There is delay in lodging the first information report (FIR). Most of the applicants are senior citizens. They can not be incarcerated in custody. Samsheer Talwar and Sanatan Dharma Sabha filed S.C suit No. 6150 of 2019 before City Civil Court at Bombay. The applicants had approached Charity Commissioner and by order dated 29th June 2018 Inspector was directed to conduct elections in view of exiting Rules and Regulations of Trust. Kolwada Sanatan Dharma Education Society filed suit No. 21193 of 2019.

7. It is further submitted that Samsheer Talwar had lodged complaint on 09th June, 2019 with Antop Hill Police Station stating that, he is the General Secretary of Sanatan Dharma Sabha, Sion Koliwada and looking after the affairs of the said Trust. At about 07:30 a.m, 30 to 40 persons were creating ruckus in front of the main gate of the school. When he went to the gate, he questioned one person who was present at the said place namely Sattu Shetty. The said person informed his associates to find out who are inside and to attack Samsheer Talwar, Pankaj Dodi etc. He also instigated his associates to self inflect injuries on their person. He gave a call to police on 100 number and sought police help. He was called by

police. Hence, He informed the police that complainant Harish Uppal, Chandan Sharma, Anil Kataria, Sanjiv Sudan must be behind the incident and there is danger to his life. The statement of Samsheer Talwar was recorded on 09th June, 2019.

8. Learned APP submitted that, the offence is of serious nature. There is dispute between two groups. The security guards posted at the school premises were assaulted, displaced and by entering into premises the accused had committed criminal trespass and took over the custody of institution. The funds of school are also in their custody. Statement of several persons recorded shows the involvement of the applicants in the crime. The evidence on record disclosed that, the accused were trying to deploy C.C.T.V footage prior to the incident which indicates that they were planning to take over the institution. Several accused had gathered and used criminal force which can not be permitted. They need to be subjected to police custody for the purpose of custodial interrogation. Assuming that, there are disputes between two groups the accused have no rights to take law into their hands.

9. The learned counsel for the intervener submitted that the

offence is of serious nature. The applicants have no right to take over education institution. The institution is in jeopardy. The applicant have committed trespass and they continue to do so. They destroyed the evidence. The cheques and other articles are missing. He also pointed out the police report stressing upon the grounds for custodial interrogation reflected in the said report. The registers, minutes books, files are forcibly taken away by the accused. The employees of the Hari Mandir were called in Sanatan Dharam Sabha School and told to deposit Rs 23,48,093/- the amount of Sanatan Dharma Sabha school. On 16th August, 2009, applicant Samsher Talwar had threatened witnesses. The accused were advised to follow due process of law. The school teachers, students and parents are under fear. In support of his submissions, learned counsel pointed out the documents such as reports of charge, correspondence, complaint forwarded by principal of school about damages caused in the office of the school. Text message about not to deposit the money without permission etc. It therefore submitted that, this is not a simple dispute relating to the Trust. The accused have committed breach of law. The FIR makes out the offences.

10. Both the sides have relied upon documents. The incident had occurred on 09th June, 2019 between 02:30 a.m., to 07:30 a.m., the FIR was lodged on 15th June, 2019. There are two Trusts viz Sanatan Dharma Sabha and Kolwada Sanatan Dharma Sabha Education Society, Mumbai. First Trust manages temple and the second trust manages Educational Institution. The informant has stated that he is secretary of Kolwada Sanatan Dharam Sabha's Education Society that runs Shree Sanatan Dharam Sabha High School and Junior College. Elections were held in February 2019 and twenty one persons were elected. It is stated that Manmohan Lamba was appointed Secretary of Sanatan Dharma Sabha. According to complaint on 2nd June 2019 meeting was held by said Trust and Samsheer Talwar was appointed as General Secretary. The complainant has alleged that the bouncers were deputed by the accused. They were over powered and the accused entered into premises. The property of the Trust as alleged in FIR is missing. On 23rd August 2017 consent terms in Writ Petition No. 1846 of 2017 filed by the Sushil phull were filed. The minutes of order / consent terms mentions that it is agreed, declared and confirmed between parties that shree Sanatan Dharma Sabha is the parent body of the

Kolwada Sanatan Dharma Sabha's Educational Society. It is agreed that most of the members of Kolwada Sanatan Dharma Sabha's Education Society are the member of Shree Sanatan Dharma Sabha and as such said Education Society is under supervisory observance and control of Shree Sanatan Dharma Sabha. It was agreed that irregularities in the management and affairs of Kolwada Sanatan Education Society will be referred to appropriate authority. It was agreed, declared and confirmed between parties that, Shree Sanatan Dharma Sabha being parent body of Kolwada Sanatan Dharma Sabha's Education Society, Mumbai will take steps to immediately dissolve the present Managing Committee of Kolwada Sanatan Education Society and will take steps or form new Managing Committee to look after affairs and management of Kolwada Education Trust. The complainant is party to said Writ Petition and signatory to consent terms. The learned counsel for complainant contended that Trust was not signatory to said consent terms. On 22nd May, 2019 Suit No. 1532 of 2019 was filed in City Civil Court, by Kishor Sehgal to act in accordance with consent terms. It is pointed out that on 16th January, 2019, Writ Petition No. 440 of 2019 was filed by Samsheer Talwar to set aside consent terms

dated 23rd August, 2017. The Charity Commissioner ordered elections of Sanatan Dharam Sabha on 29th June 2018. Suit No. 1641 of 2019 was filed in City Civil Court by Samsheer Talwar against police authorities of Antop Hill Police Station to restrain them interfering in the functioning of the affairs of Sanatan Dharam Sabha on 10th June, 2019. Most of the applicants are senior citizens. The dispute between two groups relates to control over the educational institution. As stated above several litigations were initiated by the parties. It is doubtful whether the ingredients to constitute offence under Section 395 or 458 of the Indian Penal Code are existing in the present case. Since investigation is pending I am not giving any finding in that regard. The investigation conducted by the police refers to several statements of witnesses being recorded. The investigation has proceeded. In the light of the nature of dispute, it is not necessary to subject the applicants to custodial interrogation. The applicant can be directed to co-operate with the investigation.

ORDER

(i) In the event of the arrest of applicants in these anticipatory bail applications in connection with C.R Nos. 198 of 2019 registered with Antop Hill Police Station-Mumbai, the applicants may be released

on bail on furnishing PR bond in the sum of Rs.20,000/- each with one or more sureties in the like amount;

(ii) The applicants shall report the Investigating Officer on 16th, 17th and 18th December 2019 between 10 a.m. and 12 noon, and thereafter as and when called by the Investigating Officer till filing of charge sheet;

(iii) The applicants shall not tamper with evidence and shall co-operate with the investigation;

(iv) It is clarified that the observations made in this order are prima facie for considering anticipatory bail applications.

(v) All anticipatory bail applications are disposed of in above terms;

(vi) Criminal Application No.1096 of 2019 for intervention is disposed off;

(PRAKASH D. NAIK, J.)