IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 13.07.2020

1. CRM-M-16847-2020 (O&M)

Kamal Masih Khokhar

….Petitioner

Versus

State of Punjab

….Respondent

2. CRM-M-16502-2020 (O&M)

Juliet Rocky Dean and another

….Petitioners

Versus

State of Punjab

….Respondent

3. CRM-M-17844-2020 (O&M)

Sober Daud Daniel @ Sobar Danial

….Petitioner

Versus

State of Punjab

….Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Veneet Sharma, Advocate
for the petitioner (in CRM-M-16847 & 17844-2020).

Mr. Dheeraj Mahajan, Advocate
for the petitioners (in CRM-M-16502-2020).

Mr. Sidakmeet Sandhu, AAG, Punjab.

Mr. Shekhar Verma, Advocate
for the complainant (in all cases).

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ARVIND SINGH SANGWAN, J.

This order shall dispose of aforementioned three petitions praying for grant of anticipatory bail to petitioners Kamal Masih Khokhar in CRM-M-16847-2020, Juliet Rocky Dean and Jagdish Dean in CRM-M-16502-2020 and Sober Daud Daniel @ Sobar Danial in CRM-M-17844-2020, in FIR No.2 dated 15.06.2020 under Sections 177, 198, 406, 420, 424, 465, 467, 468, 471, 477-A, 120-B of the Indian Penal Code (for short 'IPC'), registered at Police Station NRI, Gurdaspur, District Gurdaspur.

Learned counsel for the petitioners submit that in fact, the present FIR has been registered as a counter-blast to the earlier FIR No.74 dated 18.07.2018 under Sections 419, 420, 465, 467, 471, 120-B IPC, registered at Police Station Sadar Batala against William Dean, who is complainant in the present FIR.

As per allegations in the FIR, William Dean belongs to Village Sunaiya and in 1985-1986, he left for Germany and settled there. His aunt Ms. Fanina Dean was running a Memorial School for the primary education of the children and after her death, Nathaniel Dean started looking after affairs of the school. It is further stated that he has contributed crores of rupees for construction of school, which started on purchasing of 64 kanals 16 marlas of land. On 14.03.1998, Nathaniel Dean came to Germany to raise funds and the complainant along with his brother and other relatives including Shanti Chaudhary and Emmanual Chaudhary collected the donations for the noble cause. Later on, a trust deed was registered on

22.02.1999 in the name of Allen Memorial School and construction of the school started in 1999-2000. It is further stated that none of the accused in the present FIR has donated a single penny, whereas the complainant has details of the donations given by him. In the year 2005, complainant and his brother Victor Dean, Wilson Dean and Shanti Chaudhary were appointed as ambassadors of the school and Daniel Sadhu Masih was appointed a new trustee. Nathaniel Dean died in the year 2006 and then Principal Juliet Dean was also financially helped by the complainant. In 2011, Rocky Dean, administrator of the memorial school died and in 2013, in a trust meeting, new trustees were inducted and complainant and his cousin Lily Patrick were inducted as trusted and on 11.12.2013, an amended trust was submitted before the I.T.O. Another supplementary trust deed was registered on 26.10.2015 with the help of accused persons. Later on, it was proposed to sell the school and when the complainant contacted his lawyer, he informed that trust deed is not valid and another supplementary deed was registered in 2017 and when certified copy was applied from office of Registrar, it was found that there are two trusts and funds of the donations were siphoned off to accounts of the trustees and Samuel Chaudhary, on a letter indirectly written to Nathaniel Dean, though he was in USA in 2002. It was also stated that for the last 20 years, no renovation of the school was done and the complainant himself paid the bills for PF, income tax, after his appointment as Chairman. With the poor performance of the accused persons, school was left only with 30 children and accordingly, it was decided to sell land outside school. It was also found that the amount received for free school uniform and books for the children was mis-utilized. After the board resolution, the land outside the school premises was sold for overhauling of the school facility and a sum of Rs.70 lacs was received, which was used for its renovation, providing mid-day meal to children, free uniform, books, fixing of ROs for clean drinking water, construction of septic tanks, removal of roof leaking, new electric fitting including plaster and painting of the entire school and thus, the strength of the school again increased to 600. It is further stated that motive of Denial Sadhu Masih was to extort money from the complainant on account of expenditure, which was never utilized for the purpose it was taken. When accused Daniel Sadhu Masih started interfering in the work of Allen Memorial School, a civil suit was filed in the year 2017 to the effect that the complainant is not a trustee or office-bearer of the school. The Civil Court directed the parties to maintain status quo. It is further stated in the FIR that all the accused persons, by hatching a conspiracy and getting a new trust deed dated 25.03.1999, without cancelling the original deed dated 22.02.1999 and by not taking the members of the trust in confidence, have committed an act of fraud and forgery, therefore, the present FIR has been registered.

Learned counsel for petitioners Juliet Rocky Dean and Jagdish Dean has argued that the matter is pending before the Civil Court and the petitioners remained Principal of the school and there are no direct allegations against them. It is further argued that in fact, in the earlier FIR, an inquiry was conducted by the police and thereafter, it was decided that some land of the trust be sold. It is also argued that present FIR has been registered as a counter-blast to the earlier FIR.

Learned counsel for petitioner Sober Daud Daniel @ Sobar

Danial has submitted that the petitioner, in the year 2005, was minor and the allegations pertain to the year 1999-2000 and he has nothing to do with the business of the trust. It is further argued that in fact, father of the petitioner Daniel Sadhu Masih filed a suit for declaration and on that account, the petitioner has been nominated in the present FIR.

Learned counsel for petitioner Kamal Masih Khokhar has argued that the petitioner was enrolled as Advocate in the year 2004 and the allegations pertain to 1999-2000 and he is not a trustee. It is further argued that in fact, the petitioner being an Advocate was representing the other accused and therefore, he has been nominated. It is next argued that the police conducted an inquiry before registration of FIR No.74 against the present complainant William Dean and found that without following the procedure under the Indian Trust Act, the memorandum of trust was amended and 71 kanals of land was sold by Nathaniel Dean and William Dean, in connivance with the revenue officials and the trust deeds dated 25.03.1999 and 09.03.2017 prepared by them respectively, are subject matter of the civil suit.

Both the counsel for the petitioners have thus argued that the petitioners are entitled for anticipatory bail.

Learned State counsel, assisted by learned counsel for the complainant, has, however, opposed the prayer for bail. It is submitted that even before registration of the present FIR, a detailed inquiry was conducted, in which, as per the audit report of the trust, it was found that accused persons have misutilized and misused the huge amount of the trust.

Learned counsel for the complainant has argued that petitioners

Juliet Rocky Dean and Jagdish Dean being the Principals of the school were consenting party to conspiracy in siphoning off crores of rupees by preparing fake accounts and fake documents. It is further argued that the accused persons have even opened a new school in the name of St. Timothy Public School from the funds meant for Allen Memorial School by creating fake accounts and this fact was proved in the preliminary inquiry conducted by the police. It is also argued that the allegations against petitioner Sober Daud Daniel @ Sobar Danial pertain to the year 2007 and year 2009 and he is also part of the conspiracy of embezzlement of funds. It is next argued that during the inquiry, it has come on record that petitioner Kamal Masih Khokhar was given authority to manage the account of the school in the year 2001 i.e. much prior to becoming a lawyer and he continued to hold faith of the complainant, even after he was enrolled as Advocate and there are direct allegations that he has misused and misutilized the funds of the school.

After hearing learned counsel for the parties, I find no ground to grant anticipatory bail to any of the petitioner, for the following reasons: -

(a) A perusal of the audit report and other record primarily shows that there is embezzlement of crores of rupees, which is done in the name of Allen Memorial School on the various occasions. The accused persons have even collected huge amount in the name of uplifting of the school and for making payment to the teachers, however, said amount was misutilized.

(b) There are allegations against the petitioners that they even in the name of mission, had sent people abroad by taking huge amount from them. There is nothing on record to show that any of the petitioner at the time when the school was set up in the year 1999-2000, had contributed any amount towards the trust, whereas it is categoric stand of the complainant that he donated from his own pocket as well as contributed the donations by taking it from close relatives named in the FIR and an amount of Rs.2 crore was spent for establishment of the school. There are direct allegations in the FIR that the petitioners breached the trust of the complainant, while acting on behalf of Allen Memorial School and have siphoned off the amount for setting up a new school and the amount meant for PF, books for poor children, dress etc. was misutilized. It is also stated in the FIR that when strength of the school, due to its poor performance was reduced to 30, the complainant in order to raise money and good governance, had sold some land outside school building and renovated the school, cleared outstanding dues and now the strength has again increased to 600 children.

(c) Even otherwise, the complainant and his family are residing abroad since 1985-1986 and whatever amount, they have contributed, was only for upliftment of the poor children and maintenance of the school and the accused persons from time to time holding the fiduciary relationship, had embezzled the amount.

(d) Petitioner Kamal Masih Khokhar was authorized to manage the accounts of the school since 2001 i.e. much before he became a lawyer and he continued as such and instead of maintaining the school account, he has used his legal expertise by involving the complainant and other trustees in civil and criminal litigation. Similar are serious allegations against other accused for misappropriation of school funds.

For the reasons recorded above, finding no ground to grant anticipatory bail to the petitioners, all these three petitions are dismissed.

[ARVIND SINGH SANGWAN]
13.07.2020 **JUDGE**
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No