

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 161 OF 2021

1. Vikash s/o Manilal Bahadursingh Parihar,
Age : 32 years, Occu. Teacher,
R/o Ganesh Colony, Jalgaon,
Tq. and District Jalgaon

2. Sanjay s/o manilal Bahadursingh Prihar,
Age : 36 years, Occu. Agriculture,
R/o Satna, Tq. and District Satna (MP)

APPLICANTS

VERSUS

The State of Maharashtra,
through Police Inspector,
MIDC Police Station,
Jalgaon, Dist. Jalgaon

RESPONDENT

Mr. V.D. Salunke, Advocate holding for Mr. M.V. Salunke,
Advocate for the applicants
Mr. S.W. Mundhe, A.P.P. for the respondent/State

CORAM : MANGESH S. PATIL, J.

DATE : 05.05.2021

PER COURT :

Heard both the sides.

2. This is an application under Section 438 of the Code of Criminal Procedure as the applicants apprehend their arrest in connection with Crime No.31/2021 registered with MIDC Police Station, Jalgaon for

the offences punishable under Sections 327, 143, 147, 452, 323, 506 of the Indian Penal Code.

3. The sum and substance of the allegations are to the effect that the applicants allegedly committed criminal trespass by entering into the premises of a school which was allegedly being run by the informant. It is alleged that he had started the school which he got registered as a Trust. He stays on the upper floor of the building whereas the two lower floors thereof are being used for running the school. After it is registered as a Trust, he was appointed as a Chairman of the Trust. He then alleges that on 04.01.2021, the applicants alongwith the other accused committed criminal trespass by entering into the school premises, ransacked the CCTV cameras, assaulted him with kick and fist blows and took away the CCTV cameras and the other paraphernalia. It is also alleged that the applicants also took away cash from the drawer of the school office. Even he was made to forcibly put his signatures on blank cheques. He went to the police in the same evening and the FIR has been registered on 22.01.2021.

4. Heard Mr. V.D. Salunke, learned Advocate for the applicants. He would take me through the papers to point out that in fact, by accepting a huge sum, the informant agreed to handover the school to the applicants and a notarized agreement was entered into. The applicants and five other persons were duly enrolled as members of the Trust in the meeting dated 15.04.2018. By a separate resolution dated 30.04.2018, the new Managing

Committee consisting of the applicants and the other newly inducted members were resolved to step in as a new Managing Committee. A change report was submitted with the office of the Charity Commissioner. Even the informant and the other members of the erstwhile Managing Committee gave a consent in writing.

5. The learned Advocate would then submit that for whatever reason, the informant and the other members backed off and started obstructing the applicants and the new body in running the school. The learned Advocate would also point out that even a Committee enquired into and found that the school that was being run by the applicants in a new premises ought to function from the premises wherefrom it was originally functioning. Even the Education Officer issued necessary directions to the applicants. It is pursuant thereto that the applicants were legally entitled and authorized to run the school from the same premises. Obviously the informant was having a grudge and has falsely implicated the applicants. Even the FIR has been lodged belatedly. There is nothing to be recovered or discovered. The applicants are not criminals. They are ready to cooperate the Investigating Officer. Their custodial interrogation is not necessary and the application may be allowed.

6. The learned A.P.P. would oppose the application. He would submit that it is not that there is unexplained delay in lodging the FIR. He would point out that the informant had approached the police in the same

evening with a complaint in writing regarding which there is a specific entry recorded in the station diary.

7. The learned A.P.P would then submit that there are independent witnesses. The applicants had the motive and had forcibly entered into the premises of the school and have removed the cash, CCTV cameras and other infrastructure. They have also forcibly made the informant to sign blank cheques. All these articles have to be recovered which cannot happen without resorting to custodial interrogation of the applicants.

8. I have carefully gone through the papers of the investigation, as also the papers filed alongwith the application. There is enough material to demonstrate as to how a new Managing Committee comprising of the applicants had taken over the charge of the Trust, which has been running the school. Not only this, but even there is a finding of a three member Committee comprising inter alia, Education Officer (Primary) of Zilla Parishad, which submitted its report dated 14.10.2020 stating that the act of shifting the school from the original premises was illegal. There is also a consequent direction by the Education Officer to the applicants to see to it that the school is run from the original premises.

9. Again, there is a prima facie record to show that a new Managing Committee comprising of the applicants had taken over the charge of the Trust. A change report was submitted and even the informant and the

other members of the earlier Managing Committee had given no objection for recording the change. It is, therefore, prima facie apparent that the applicants were the persons who were authorized to run the school from the original premises.

10. Needless to state that even according to the informant, two lower floors of the same building are being used to conduct the school. Since it is a matter touching a Public Trust, obviously, the premises would vest in the charities. The applicants being the members of the Managing Committee running the Trust and the school, cannot be said to be unauthorized persons prima facie. If this is so, there is a serious doubt as to if the provisions of Sections 452 and 327 of the IPC would legitimately be invoked.

11. Apart from the above state-of-affairs, though apparently it seems that the informant did go to the Police Station making a grievance in writing in the same evening i.e. 04.01.2021, it is not clear as to why it took him further time of 16 to 17 days in lodging the FIR.

12. Be that as it may, considering all the above mentioned facts and circumstances, in my considered view, merely because the informant attributed the allegations covering Sections 452 and 327 of the IPC, this is not a fit case where the applicants can be allowed to be arrested without guaranteeing them bail.

13. The application is allowed. In the event of arrest of the

applicants in connection with Crime No.31/2021 registered with MIDC Police Station, Jalgaon for the offences punishable under Sections 327, 143, 147, 452, 323, 506 of the Indian Penal Code, they shall be released on bail on their executing personal recognizance for an amount of Rs.15,000/- (Rupees Fifteen Thousand) each and furnishing a solvent surety each in the like amount on following conditions :

- a] They shall attend the concerned Police Station as and when called by the Investigating Officer and shall cooperate him.
- b] They shall not tamper the evidence or influence the witnesses.
- c] They shall not try to contact the informant.

[MANGESH S. PATIL]
JUDGE

npj/ABA161-2021