**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

919 ANTICIPATORY BAIL APPLICATION NO. 247 OF 2021

1) Birjusinh s/o Bhikamsinh Gaherwar (Thakur)

2) Badrisingh s/o Dagdusingh Kathi (Thakur) ... **Applicants**

VERSUS

The State of Maharashtra and another ... **Respondent.**

WITH
ANTICIPATORY BAIL APPLICATION NO. 252 OF 2021

1) Jodhasinh s/o Shankarsinh Gahilot (Thakur)

2) Bhimsinh s/o Hanumansinh Kaushik (Thakur) ... **Applicants**.

VERSUS

The State of Maharashtra and another. ... **Respondents.**

...

Advocate for Applicants : Mr. Gaikwad Anil M. And Hande Avinash D.
APP for Respondent/State : Mr. S.W. Mundhe.
Advocate for Assist to APP : Mr. S.N. Janakwade.

CORAM : MANGESH S. PATIL, J.
DATE : 09.04.2021.

PER COURT :

These are the separate applications seeking anticipatory bail in connection with same crime being Crime No. 337/2020, registered with Itwara Police Station Nanded District Nanded for the offences punishable under Sections 405, 408, 409, 198, 199, 200, 420, 464, 468, 471 read with Section 34 of the Indian Penal Code.

2. The applicants are the Trustees/office bearers of a Public Charitable

Trust who were in the Office till the elections were held on 16.09.2018 for electing a new body for the next tenure of five years from 2018 to 2023. After acceptance of the Change Report by the Assistant Charity Commissioner some of the newly elected office bearers moved a proceeding before the Assistant Charity Commissioner soliciting a direction for holding an enquiry under Section 38 of the Maharashtra Public Trust Act alleging that a re-audit of the accounts of the Trust was undertaken and it was found that there were several financial misdeeds done by the earlier body of which the applicants were the members. Simultaneously, one of them also solicited a direction of the learned Magistrate under Section 156(3) of the Code of Criminal Procedure and according to the direction, the present F.I.R. has been registered and the applicants are now apprehending their arrest.

3. The learned advocate Mr. Gaikwad would submit that when the audit of the accounts of the Trust were already undertaken during the tenure of the erstwhile body and were duly approved by the office of the Assistant Charity Commissioner, no weight at this juncture can be attached to the re-audit undertaken by the new body after a lapse of considerable time. Even that re-audit has been undertaken through a private auditor. The applicants were never called upon to participate during that audit. It is a lopsided audit and no inference can be drawn based upon it.

4. The learned advocate would submit that now that the matter is seized with the office of the Assistant Charity Commissioner under Section 38 of the of the Maharashtra Public Trust Act, it would have been appropriate to wait for the out come of that enquiry. Simultaneously, in respect of the selfsame allegations and for the selfsame reasons two separate enquiries cannot be allowed to be proceeded with before different fora.

5. The learned advocate would then submit that the applicants are reputed persons, one of whom is a practising advocate of repute and the applicants would be put to unnecessary harassment and would be put to

disrepute if they are allowed to be arrested without assurance of bail.

6. The learned A.P.P. duly assisted by the learned advocate for the original informant strongly opposes the applications. He submits that the offences are serious. It is a matter of misappropriation and criminal breach of trust by the Trustees of the Trust. At this juncture, the report of the re-audit conducted by the auditor will have to be looked into, to *prima facie* draw an inference about the applicants having indulged in such misdeeds. Several instances have been quoted by the auditor which ex facie are suggestive of rampant misappropriation. There is no bar in law in proceeding with investigation and enquiry into the selfsame allegations when such enquiries are permissible and can be undertaken irrespective of the result. If it is a matter of misappropriation, certainly the criminal law will come into picture and irrespective of the fact that the enquiry being conducted by the Assistant Charity Commissioner as also its result. The Investigating Officer would be entitled to independently undertake the investigation into the allegations and to come to independent conclusion uninfluenced by the finding of the Assistant Charity Commissioner.

7. The learned A.P.P. would further point out individual items of misappropriation by referring to the papers of investigation and the report of the auditor. He would therefore submit that the applications be rejected and the Investigating Officer may be allowed to resort to custodial interrogation of the applicants, if necessary.

8. I have carefully considered the rival submissions and have gone through the papers of investigation. As far as the feasibility and permissibility of investigating into the selfsame allegations, suffice to observe that there is no provision in any law prohibiting the Assistant Charity Commissioner in undertaking an enquiry under Section 38 of the Maharashtra Public Trust Act and simultaneously, even the Investigating Officer for investigating into the allegations regarding misappropriation

under the general law. The two enquiries may proceed independently and the Authorities are entitled to reach independent conclusions. At this juncture, the investigation into the criminality cannot be obstructed at the threshold for this reason. The Investigating Officer would be entitled to carry out the investigation independently to ascertain if really there is any misappropriation and criminal breach of trust and forgery as alleged and pendency of enquiry before the Assistant Charity Commissioner would be inconsequential.

9. True it is that logically there is a just possibility of two authorities coming to some inconsistent and incompatible conclusion. However, it would not be appropriate to comment upon such hypothetical issue at this juncture. The fact remains that the offence has been registered not solely on the basis of some oral allegations but is preceded by a fresh audit by a firm of Chartered Accountants.

10. Now turning to the facts, true it is that the incumbent body seems to have undertaken re-audit without seeking any direction of the Assistant Charity Commissioner. It is also apparent that the applicants were not called upon to participate or to explain anything during that audit and in that sense it is an ex parte report.

11. But then, it is a re-audit undertaken by a firm of Chartered Accountants submitting a report advising an explanation to be solicited from the erstwhile body on various objective findings recorded therein.

12. Some of the material and relevant observations in this re-audit can be summarized as under :

> (1) Cash has been paid against vouchers which do not have external supporting evidence like bills, receipts issued by the persons receiving the cash and in some cases even the cash vouchers do not have signatures of the recipient. Such cash

payment is to the tune of Rs. 24,67,885/-.

(2) Out of three fixed deposits with three different Nationalized Banks, only one deposit continues to be in existence and the maturity amounts of the other two deposits in aggregate to the tune of Rs. 44,36,416/- has been withdrawn in the financial year 2017-2018, 2018-2019.

(3) For settling a Court case with couple of individuals an unaccounted settlement amount of Rs. 2,00,000/- was found to have been paid to the other side.

(4) Twelve tenants have made a grievance in writing on 25.08.2020 to whom, in spite of they having paid rent and deposits receipts were not issued and a huge amount of Rs. 17,61,000/- received as a rent from tenants has not been accounted for in the accounts of the Trust.

(5) Advances to the tune of Rs. 32,900/- was paid to the employees but was not shown as receivables in the balance-sheet.

Lastly, it is concluded that the total impact of all the above items works out to the tune of Rs. 47,09,575/- and for which an explanation needs to be called and the amount needs to be accounted for in the books of the Trust.

13. As is pointed out by the learned advocate for the applicants, and as has been observed herein above, indeed, the incumbent body which is currently in the office has provided the books of accounts to the auditor for re-audit and therefore one will have to bear in mind this aspect as well while giving weightage to the observations and conclusions drawn therein.

14. Assuming that the existing body has not fairly made the entire record of the Trust available to the auditors and assuming that there could be some possibility of manipulation by acting hand in gloves with the tenants of the Trust for whom it is quite convenient now to come with a version of having paid the rent and deposits but receipts were not issued to them, still some of the aforementioned observations are *prima facie* serious.

15. Huge payments have been made in cash against vouchers. In many cases vouchers have not been signed. There are no supporting, corroborating documents like bills etc., as well. Couple of fixed deposits have been encashed but the amount is not to be found credited in the accounts of the Trust and in aggregate the misappropriation noticeable is more than Rs. 47 lakh. If such is the state of affairs, the offence of misappropriation and criminal breach of trust can certainly be discerned from the facts and circumstances obtaining on record.

16. Needless to state that if necessary the Investigating Officer may have to resort to custodial interrogation as well. It is a case of misappropriation of public money and following the principles laid down in the case of **Nimmagadda Prasad Vs. Central Bureau of Investigation; (2013) 7 SCC 466** a strict view of the matter will have to be taken.

17. In view of the facts and circumstances discussed herein above, irrespective of the position of the applicants in the society, they cannot be granted anticipatory bail.

18. The Applications are rejected.

(MANGESH S. PATIL, J.)

mkd/-