

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 443 OF 2021

1. Shakil Ahmad Shafiullah,
Age: 61 years, Occ. Business,
2. Faisal S/o Shakil Ahmad Ansari,
Age : 38 years, Occ : Business,
Both R/o. Sultaniya Chowk, Tasha Galli,
Dhule.
3. Farukh Abdul Raheman,
Age : 58 years, Occ. Service (Head Master),
R/o: Islampura, Galli No. 3, Deopur, Dhule. .. Applicants

Versus

The State of Maharashtra
Through Police Inspector,
Azad Nagar Police Station, Dhule .. Respondent

...

Mr. M.A. Madni and K.A. Siddiqui, Advocates for the applicants
Mr. N.T. Bhagat, APP for respondent-State.

...

CORAM : MANGESH S. PATIL, J.

DATE : 24.06.2021

PER COURT :-

This is an application under Section 438 of the Code of Criminal Procedure seeking bail in the event of arrest of the applicants, in connection with Crime No. 69 of 2021 registered with Azad Nagar Police Station, Dhule, District Dhule for the offences punishable under Sections 406, 409, 419, 420, 465, 468 and 471 read with Section 34 and Section 120-B of the Indian Penal Code.

2. The First Information Report (FIR) has been lodged by a trustee of the Public Charitable Trust running an educational institution *inter-alia* alleging that the applicants, who are Treasurer, Chairman of the School Committee and Headmaster of the School respectively have indulged in misappropriation of the amount to the tune of Rs.10,00,000/- (Rs. Ten lakhs), which was received from the Government by way of grant for specific purpose. It is also being alleged that in disregard to the Rules and Regulations governing the Trust, a resolution has been passed to procure authorization only to the extent of the applicants to sign the cheques and operate the bank account of the Trust, when it was till then being operated under joint signatures of the President, Secretary and Treasurer of the Trust.

3. Learned Advocate for the applicants would submit that the applicants are indeed the Treasurer and Chairman of the School Committee and the Headmaster of the School being run by the Trust, respectively. It is also not disputed by the applicants that there is account of the Trust with Punjab National Bank, which was earlier being operated under the signatures of President, Secretary and Treasurer. However, he would point out that a resolution was passed by the Trust authorizing only the applicant No.1 who happens to be the Treasurer to operate the bank account way-back in the year 2014 and since then he has been operating the bank account while managing affairs of the Trust

to the knowledge of the Trustees.

4. The learned Advocate would further point out that the amount received by way of grant has been duly utilized for the purpose for which it was received. He would point that completion certificate issued by the concerned Contractor regarding the utilization of the funds for leveling school ground, which was a work to the tune of Rs.5,00,000/- (Rs. Five Lakhs). He would further point out that furniture and computer were purchased and an amount of Rs.2,00,000/- (Rs. Two Lakh) each was spent out of the funds received from the Government. He would, therefore, submit that there is no misappropriation or criminal breach of trust. The informant was annoyed having been removed from the post of President of Trust and has filed false complaint with concocted version. The applicants are ready to co-operate the Investigating Officer and may be granted anticipatory bail. Refusing them bail would certainly put them to disrepute.

5. Learned APP opposes the application. He would submit that it is a matter of functioning of the Public Charitable Trust. The enquiry was going on in the office of Charity Commissioner. Number of change reports are yet to be decided. There is a statement of witness showing that the applicant No.1 has issued a cheque for an amount of Rs.1,00,000/- (Rs. One Lakh) towards payment of some hand loan

allegedly obtained from him. No such transaction could have taken place and an enquiry is necessary as to for what purpose, the money was received from him by the Trust. He would, therefore, submit that custodial interrogation of the applicants is necessary and the application may be rejected.

6. I have carefully gone through the papers of investigation. It appears that since year 2014 the applicant No. 1 alone has been operating bank account of the Trust with Punjab National Bank under his signature, which till then was being operated under joint signatures of the President, Secretary and Treasurer. However, there appears to be a copy of resolution passed by the Trust and seems to have been produced before the Bank authorities to change instructions regarding operation of the account. Had there been no such instructions in proper manner, the bank authority would not have allowed the account to be operated under the signature of applicant No. 1 alone.

7. Taking into account the fact that it is a matter concerning the Public Charitable Trust, which is under supervision of the concerned office of the Charity Commissioner, when such state-of-affair has been in existence since last more than six years before lodging the complaint, it is for the Office of Charity Commissioner to look into aspect and appropriateness or otherwise of such change. At this juncture, the fact remains that pursuant to some resolution the applicant No.1 alone has

been operating the account for last more than six years, and consequently, one cannot indulge into further discussion concerning this aspect.

8. So far as utilization of Government grant is concerned, the applicants have produced certain documents showing utilization of the funds for the purpose for which it was received. Needless to state that since the matter is concerning the function of the Public Charitable Trust, which is under the supervision of the office of Charity Commissioner, unless some conclusion is reached by that office pursuant to appropriate enquiry, no comment can be passed much less in respect of non utilization of the Government funds, more so when the concerned Government officials have also made endorsements on the documents regarding utilization of funds.

9. Pertinently, already the Investigating Officer seems to have moved the office of Charity Commissioner for requesting him to hold an enquiry.

10. Taking into account the aforesaid facts and circumstances, when the applicant No.1 has already operating the Bank account of the Trust for so many years even to the knowledge of the informant, it is a fit case where custodial interrogation of the applicants does not seem to be necessary and till then certain conditions would suffice.

11. The Application is allowed. In the event of arrest of the applicants, in connection with Crime No. 69 of 2021 registered with Azad Nagar Police Station, Dhule, District Dhule for the offences punishable under Sections 406, 409, 419, 420, 465, 468 and 471 read with Section 34 and Section 120-B of the Indian Penal Code, they shall be released on bail on their executing personal recognizance for an amount of Rs.15,000/- (Rs. Fifteen Thousands) each and furnishing a solvent surety each in the like amount subject to following conditions -

- (a) They shall attend the concerned Police Station as and when called upon by the Investigating Officer and shall co-operate him.
- (b) They shall not tamper the evidence or influence the witnesses.

(MANGESH S. PATIL)
JUDGE