IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1351 OF 2021

Mangaldas Nandalal Bhavare
Age : 60 years, occ : agri.,
R/o Malgaon, Po. Varsa,
Taluka Sakri, District Dhule. Applicant

Versus

The State of Maharashtra. Respondent

WITH

CRIMINAL APPLICATION NO. 2713 OF 2021

Trambak Maharu Sonawane Applicant

Versus

Mangaldas Nandlal Bhavare & another Respondents

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Mr. B.R. Waramma, Advocates for the applicant.
Mr. A.S. Shinde, A.P.P. for respondent – State.
Mr. S.P. Brahme, Advocate for complainant (assist to PP).
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CORAM : **PRAKASH D. NAIK, J.**

DATE : 23-11-2021.

ORDER :

1. The applicant is seeking pre-arrest bail in connection with Crime No. 213/2021 registered with Pimpalner Police Station, Taluka Sakri, District Dhule for the offence punishable under Section 420 of the Indian Penal Code. The First Information Report (for short "F.I.R.") was registered by Tryambak Maharu Sonawane, Trustee of Sakri Taluka Adiwasi Seva Mandal.

2. The complainant had filed private complaint before the Court of learned J.M.F.C. at Sakri, seeking directions to Pimpalner Police Station for investigation in accordance with Section 156 (3) of the Code of Criminal Procedure (for short "Cr.P.C."). The complaint was filed on 23.07.2018. By order dated 20.08.2021, learned J.M.F.C., Sakri, directed Pimpalner Police Station to conduct investigation and submit report. In pursuant to directions issued by the Court under Section 156 (3) of the Cr.P.C., the F.I.R. was registered against the accused on 05.09.2021.

3. The complainant has alleged that he is Trustee of Sakri Taluka Adiwasi Seva Mandal, Pimpalner. The trust conducts Ashram Schools, Hostel, Boarding, etc. The complainant was authorized to initiate prosecution against the applicant vide resolution dated 16.07.2018. There was dispute between the complainant and accused. Inquiry proceedings were pending before the Charity Commissioner vide Application Nos. 440/2018, 441/2018 and 442/2018. The said applications were decided on merits vide order dated 10th May 2018. The accused was looking after the economic affairs of the trust. The powers / authority of the applicant was withdrawn vide order dated 27.04.2018 passed by the Court and complainant was authorized to exercise such powers by order dated 10.05.2018 passed by Assistant Charity Commissioner. The applicant was aware about the said order. Inspite of that, the applicant had dis-obeyed the order of the Court and cheated the trust and the Government. Without obtaining permission from the

Charity Commissioner, the amounts of Rs. 8,44,889/-, Rs.9,00,000/-, Rs.9,00,000/- and Rs. 39,000/- were transferred to the account bearing No. 11369237655 from State Bank to Dhule District Central Co-operative Bank, Branch Pimpalner with dishonest intention and the said amount was withdrawn by him. The applicant had no authority to exercise such powers from 27th April 2018 in accordance with orders passed by the Court. Complaint was lodged with Pimpalner Police Station. Police did not take action against the acused.

4. The applicant had preferred application for anticipatory bail before the Court of Session. Interim protection was granted to the applicant by order dated 4th September 2021. The application was subsequently rejected by the Sessions Court vide order dated 28th October 2021.

5. Learned Advocate for the applicant submitted that the offence under Section 420 of I.P.C. is not made out. Considering the nature of allegations, the police did not take cognizance of the complaint. The complainant filed private complaint and in view of directions of the Court, F.I.R. was registered. There is no violation of order of the Court. The complaint was lodged out of vendetta. There is no wrongful gain to applicant nor wrongful loss is caused to the trust. Custodial interrogation of the applicant is not necessary. There is no misappropriation of amount. No amount from the account of trust has been transferred to the account of the applicant. The trust is registered under the provisions of Bombay Public Trust

Act. The trust is having it's own scheme approved by Assistant Charity Commissioner. The trust had received funds vide order dated 26th March 2018, on 21st April 2018. Considering the urgency to cater basic needs of the students, the Management had issued cheque to the schools on 26th April 2018. The Superintendent of respective schools and authorized signatory had issued cheques to the suppliers. The applicant was authorized to operate bank accounts alongwith Inspector of office of Assistant Charity Commissioner. Tribal Development Department had issued order for disbursement of grant-in-aid to schools on 26th March 2018. The demand letters were issued by Headmaster of School and demonstrated dire need of monetary funds to cater basic needs of the students. The cheques were issued with the signature of Vilas Patil, Inspector Assistant Charity Commissioner Office and the applicant. However, the F.I.R. is registered only against the applicant. Investigation does not reveal offence of cheating. Statements of officers of school and the suppliers are recorded. There is no foul play.

6. Learned A.P.P. submitted that in violation of the order of Court, the applicant had exercised powers of disbursement of the amount. The applicant's authority has ceased pursuant to the order of this Court. The cheques were back-dated. The intention of the applicant was to deceive the trust. Statements of various persons were recorded. Custodial interrogation of the applicant is necessary. The traders, who were supplying material to the trust, were

interrogated and their statements are recorded. The bank statements are recovered. The powers were assigned to complainant Trimbak Sonwane. The applicant was restrained from operating the bank account vide order dated 27th April 2018 passed by the Division Bench of this Court in Writ Petition No. 13149 of 2017. Inspite of that, the applicant had issued cheques and disbursed the amount. Hence, this application may be rejected.

7. Learned Counsel for the complainant submitted that custodial interrogation is necessary. Proceedings were initiated against applicant under Section 41-D of the Maharashtra Public Trust Act. Charge was framed against him. The complainant and others filed Writ Petition No. 13149 of 2017 before this Court challenging the order dated 20.04.2017 passed by Assistant Charity Commissioner. The applicant was restrained from operating bank account by order dated 27.04.2018. The writ petition was posted for hearing. The applicant sought time. Hence, petition was kept on 27.04.2018. The applicant dishonestly issued cheques on 26.04.2018. There was no urgency to issue cheques. Pursuant to order dated 27.04.2018, he did not instruct concerned bank not to honour cheque. Cheques were encashed. The applicant intends to embezzle funds of grant in aid. He created record to show that there was urgency to disburse amount. When the matter had appeared before the Court on 27th April 2018, the applicant did not point out that he has already issued the cheques before the order was passed by this Court. The conduct of the applicant is dishonest. He has

flouted the order of the Court. The complainant had initiated proceedings under the Contempt of Courts Act. Applicant was never elected as Office Bearer of Sakri Taluka Adiwasi Seva Mandal. The trust conducts Ashram Schools aided by Tribal Development Department and hostels aided by Social Development Department. The trust receives grants. The applicant had colluded with others and sold plot No. 2, Gut No. 1214/2 of Pimpalner belonging to trust. Proceedings under Section 41-D of the Maharashtra Public Trust Act were initiated against him. The Division Bench of this Court, by order dated 27th April 2018, directed that the applicant be restrained from operating the bank accounts. The applicant dishonestly issued cheques on 26th April 2018 when the matter was pending in the High Court and posted on 27th April 2018.

8. Perused documents. Sakri Taluka Adiwasi Seva Sangh is registered Trust. It is running Ashram Schools, boys hostels. Facilities of education, hostel, food are provided to students. From the documents, it appears that inquiry proceedings were initiated before the Assistant Charity Commissioner under Section 41-A of the Maharashtra Public Trust Act. The applications were decided by order dated 20th April 2017 by directing that the bank accounts of Sakri Taluka Adiwasi Seva Mendal, Pimpalner be operated by the applicant and Sandip Jadhav, Inspector from the office of Assistant Charity Commissioner, Dhule. Since Sandip Jadhav was transferred, Vilas Patil, Inspector was permitted to operate bank accounts. Order dated 20.04.2017 was challenged by preferring

Writ Petition No. 13149 of 2017. High Court directed the office of Assistant Charity Commissioner, Dhule that the bank account be permitted to be operated by the Inspector and one member against whom no charges are framed. It was submitted at the instance of the petitioners therein that the applicant is facing criminal prosecution and charges are framed against him under Section 41-D of the Maharashtra Public Trust Act. This Court had observed that charges under Section 41-D of the said Act have been framed against both the parties. The Change Reports filed by both the parties are pending before the Assistant Charity Commissioner. When the charges are framed against a particular party, it would not be appropriate to allow such party to operate the account. Hence it was directed that the Assistant Charity Commissioner, Dhule shall direct operation of the account of trust by Inspector of the office of Assistant Charity Commissioner, Dhule and one member / trustee of the trust against whom no charges are framed and pending. The same shall be done within a period of 15 days from the date of the order. The order to the extent of authorizing the applicant to operate the account of the trust was set aside, and the petition was disposed of. Thus from 27th April 2018, the applicant had no authority to operate Bank acount.

9. The Assistant Charity Commissioner, by order dated 10th May 2018, directed that the authority to operate the account of the trust is assigned to Trimbak Maharu Sonawane in compliance with the order passed by this court in writ petition. The applicant has

contended that, by letter dated 22.04.2018 issued by Superintendent, Primary Ashram School, addressed to the President of the trust it was stated that the trust has received grants for Primary Ashram School in the sum of Rs.26,44,899/-. Dues of the traders since 1 ½ year are pending and they are not willing to provide essential articles to school. The issue of providing articles and food to students has to be taken seriously. Hence immediate payment to traders is necessary. The grant amountbe transferred to bank account of aided Ashram School, so that there would be supply of essential articles to students. According to the applicant, considering pressing urgency to cater basic needs of the students, the cheques were issued by the Management to schools run by Management on 26.04.2018 and in accordance with order dated 26.03.2018, funds were transferred to respective establishment by cheques signed by the applicant and the Inspector, who was authorized by the Assistant Charity Commissioner, Dhule. The Superintendent of respective schools and authorized signatories had issued cheques to the suppliers. None of the transaction is made by cash. All the transactions are made through bank. The schools could get supply of basic needs of students. None of the transaction is by cash. The complainant had initiated proceedings under Contempt of Courts Act against the applicant. It appears that writ petition was listed before the Division Bench of this Court initially on 23.04.2015 and it was posted on 27.04.2018. According to complainant, amount of Rs. 26,44,889/- was withdrawn on

05.05.2018. The cheques were dated 26.04.2018. Contempt proceedings initiated by the complainant are pending in this Court. It is also pertinent to note that prior to the order of this Court, the applicant and the Inspector from the office of Assistant Charity Commissioner were authorized to operate the bank account. Cheques were signed by both the authorized persons. Investigation does not indicate that the amount has been misappropriated by the applicant or the amount has been transferred to the personal account of the applicant. During investigation statement of Philip Gavit, President of Dangshirvade Ashram School is recorded. He has stated that dues of traders were pending since last one and half year. He received cheques on 26.04.2018 for amount of Rs.8,44,889/-, Rs. 9,00,000/-, Rs. 9,00,000/- in the name of aided Primary Ashram Shala, Dangshirvade. The dues of traders were cleared by cheques and receipts were obtained. The details of cheques, names of traders, amount, date of cheques have been provided by him which furnishes account for Rs. 26,41,280/-. Statements of various witnesses including the suppliers of material were recorded and apparently they have stated that they have received due amount. Without expressing any view on the issue relating to contempt of the Court since the proceedings are pending before this Court, the factual aspects of this matter do not warrant custodial interrogation of the applicant. Hence, I pass the following order.

ORDER

(i) ABA No. 1351 of 2021 is partly allowed.

(ii) In the event of his arrest in connection with Crime No. 213 of 2021 registered with Pimpalner Police Station, District Dhule, the complainant be released on executing P.R. bond in the sum of Rs. 50,000/- with one or more sureties in the like amount

(iii) The applicant shall appear before the Investigating Officer on 1st, 2nd and 3rd December 2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called.

(iv) The applicant shall not tamper with the evidence.

(v) The application stands disposed of.

(vi) Criminal Application No. 2713 of 2021 stands disposed of.

(PRAKASH D. NAIK, J.)

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