

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
ANTICIPATORY BAIL APPLICATION NO. 1348 OF 2021

1] Gajanan Madhukar Mawal
2] Gopal Jagannath Jadhav
3] Vinod Murlidhar Rathod

... APPLICANTS

VERSUS

The State of Maharashtra

.. RESPONDENT.

. . .

Mr. S.J. Salunke, Advocate for applicants,
Mr. V.S. Badakh, APP for State,
Mr. Sachin B. Munde, Advocate to assist APP.

CORAM : PRAKASH D. NAIK J.

DATE : 17th NOVEMBER, 2021.

PER COURT:

1] The applicants are apprehending arrest in Crime No., 332 of 2021 registered with Chandanzeera Police station, Dist. Jalna for the offence under section 406 r/w. 34 of IPC. The FIR was registered on 21.10.2021 at the instance of Shriram Savairam Rathod.

2] The case of the prosecution is that the informant is President of Tuljabhavani Shikshan Prasarak Mandal, Jalna which runs handicap residential school. The said school receives grants since 2008. The applicant No.1 is serving as In-charge Head Master since 2010 and looks after the administration of the school. The applicant No.2 is working as a Peon and applicant No.3 is a watchman in the said school. The articles like LCD TV set, Computer, Water Filter, Sports equipment and documents like cheque book, pass book etc. with donation of Rs. 30,000/- were assigned to applicant No.2. Whenver informant enquired about the articles, he gave evasive answers. On 10th October, 2020, the informant did not find the

articles in the school. The applicant No.1 could not give proper explanation nor returned the articles. The applicant Nos. 2 and 3 also showed ignorance. On 11.10.2021, notice was issued to applicant No.1 but he did not return the articles. Hence, it was alleged that accused in collusion committed breach of trust, took away the articles from the school and misappropriated the same. The applicants moved application for anticipatory bail before the court of Sessions. The application was rejected by order dated 30.10.2021.

3] The learned advocate for the applicants submitted that the FIR is false. The applicants have not committed breach of trust. The registration of FIR is motivated. The informant is the President of Tuljabhanwani Shikshan Prasarak Mandal. The trust conducts two schools, namely, Handicap Residential Primary school and Handicap residential secondary school. The applicants are employees of Secondary school. The applicant No.1 is in service since 1996 and rendered unblemished service to the school. He is permanent employee. The applicant Nos. 2 and 3 are also in service since 2016. They are permanent employees. The informant had ill-treated employees of the school. The applicants and other employees were forced to pay certain amount each month. They were harassed and for not satisfying demands of President, some of them were removed from service. The employees and the students had suffered at the instance of the informant. The applicant No.3 had lodged complaint for offence under Section 7 of the Prevention of Corruption Act against the informant. The informant had made unlawful demand with applicant No.3 for releasing his salary. The informant was caught accepting bribe amount of Rs. 34,500/-. Crime No. 517 of 2021 was registered on 3.11.2020 with Kadim Police Station, District Jalna under section 7 of the Prevention of Corruption Act. The applicants and other employees had made grievance before the

District Social Welfare Officer, Zilla Parishad, Jalna against complainant and his son for alleged harassment. The cupboard in the office were locked by the informant. There was no payment to the employees. The office of the school was locked by the informant. Applicant No.1 informed the informant to hand over TC book, medical certificates of students, Administration extract register and muster roll. The record was also handed over to applicant No.1 for preparing proposal of renewal of licence/permission of the school for the year 2021 onwards. The muster roll is taken by the informant on 19.10.2021 through Hostel Superintendent. The informant himself handed over the documents to applicant No.1 for preparation of proposal of renewal of licence of the school. Except the above documents, none of the articles, documents, or cash amount is in possession of the applicants. The allegations of taking away school articles, documents and cash amount are false. The applicant No.1 prepared the proposal of renewal of licence/permission of the school. The informant demanded money from the employees for submission of the proposal. He made unlawful demand from the employees. The other employees made grievance to Superintendent of Police, Jalna against the informant and family members. Those employees were removed from service. News articles were published about non receipt of salary by the employees. The custodial interrogation of the employees is not necessary.

4] The learned APP submitted that the custodial interrogation of the applicant is necessary. They are the employees of the school. Articles were entrusted to applicant No.1. Said articles are missing from the school. They are required to be recovered from the applicants. The investigation is in progress. Applicant No.1 is the Head Master. Applicant No.2 is the Peon and applicant No.3 is the Security Guard. Notice under Section 41-1A of Cr.P.C. was issued to the applicants and they were called for enquiry. They did not appear

for enquiry. Articles like LCD TV, Computer, Water filter, sports equipment etc. as well as documents as well as cheque book and pass book, certificates of students and cash of Rs. 30,000/- is required to be recovered from the accused. The applicants are likely to tamper with the evidence. They did not cooperate with the investigation. The supplementary statement of the complainant was recorded on 16.11.2021. In the said statement, details of missing articles and source of the said article is mentioned. Hence, this application may be rejected.

5] The learned counsel for the complainant submitted that the custody of the applicant is necessary. The articles belong to the school. The articles are required for the students of the school. The offence is of serious nature. For recovery of the said articles, custodial interrogation of the applicants is necessary. The applicants have made false representation to the police authorities and they have approached media by making false allegations.

6] The first informant is President of the Tulja Bhavani Shikshan Prasarak Mandal, Jalna. The grievance of the complainant is that the articles reported hereinabove including equipment and documents are missing from the school. The applicants who are employees of the school had allegedly taken away said articles and committed criminal breach of trust. The applicants have contended that the FIR is registered with mala fide intentions. They were subjected to harassment by the complainant and others. It is also contended that the FIR was registered in the past against the informant under section 7 of the Prevention of Corruption Act on 3.11.2020. Copy of the FIR has been annexed to these application. The said complaint was lodged by one of the employees of school alleging that the informant herein had demanded bribe and that he was caught while accepting the amount of Rs. 34,500/- The

applicants have relied upon the representations made by them to the authorities as well as the newspapers cuttings relating to the grievance against the complainant. The said documents are in existence prior to registration of this FIR. The complainant in his supplementary statement has stated that the articles mentioned therein were gifted to the school by some persons. It is also stated that the reference of the said articles were made in rough book and the receipts, bills are in possession of the Head Master. The version appears to be after-thought since it is not reflected in the FIR. Prima facie, it appears that the applicants who are employees of the school since last several years have no reason to take away the equipment, sports articles, cheque book, pass book etc. Looking at the nature of allegations, the applicants need not be subjected to custodial interrogation. Hence I pass the following order.

O R D E R

- [i] ABA No. 1348 of 2021 is allowed.
- [ii] In the event of arrest of the applicants in connection with Crime No. 332 of 2021 registered with Chandanzeera Police Station, District Jalna, the applicants be enlarged on bail on furnishing PR Bond in the sum of Rs. 20,000/-, each with one or two sureties in the like amount.
- [iii] The applicants shall appear before the I.O. on 23rd, 24th and 25th November 2021 during 11.00 a.m. and 1.00 p.m. and thereafter as and when called for.
- [iv] The Application stands disposed of.
- [v] Criminal Application No. 2720 of 2021 stands disposed of.

[PRAKASH D. NAIK]
JUDGE

GRT/-