

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 61 OF 2017

Habib Yusuf Saudagar and ors.	 Applicants
v/s.	
The State of Maharashtra and ors.	 Respondents

Mr. J.M. Puranik for the Applicants.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 22nd NOVEMBER, 2021.

P. C. :-

. At the outset, learned counsel for the Applicants states that Respondent No.5, 10, 12 and 14 have expired during the pendency of this Application. He seeks leave to delete their names. Leave is granted. Amendment to be carried out forthwith.

2. By this Application, the Applicants have sought cancellation of pre-arrest bail granted to Respondent Nos.4 to 16 vide order dated 10/08/2016 passed by the Additional Sessions Judge, Kalyan in Anticipatory Bail Application No.427/2016.

3. Mr. J.M. Puranik, learned counsel for the Applicants states that

the matter relates to the public trust. The Respondents have not complied with the statutory provisions and the order being perverse, needs to be set-aside. Learned APP states that the charge was framed on 11/03/2019 and that the matter is pending for trial before JMFC, Ulhasnagar.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

5. The records indicate that pursuant to the FIR lodged by Khusro Khan Sarfaraj Khan against the Applicants herein, crime was registered against Respondent Nos.4 to 16 for offences under sections 452, 454, 380 r/w. 34 of the Indian Penal Code. The complainant who was the Regional Wakf Officer, Konkan Division, Mumbai had alleged that Ambernath Masjid Trust, Muslim Jamat, Ambernath (W) runs the day-to-day affairs of Jama Masjid, Madina Masjid, Gaiban Shaha Vila Dargah, Idgah, Kabristan, etc. The complainant who was appointed under Wakf Act has stated that the possession of the office was taken from Adhoc committee and handed over to Ayub Khan Pathan and 05 others and was temporarily handed over for the purpose of conducting elections. One Habib Yusuf Saudagar had reported that the four

persons named in the FIR, had closed the main door of Dargah and broke open the donation boxes. Accordingly, the complainant visited the premises and found that the door was broken and donation boxes were opened. He therefore lodged the complaint against Respondent Nos.4 to 16 for committing criminal house trespass and theft.

6. Pursuant to the report, C.R.No.I-274/2015 came to be registered against Respondent Nos.4 to 16 at Ambernath Police Station for offences under sections 452, 454, 380 r/w. 34 of the Indian Penal Code. Apprehending their arrest in the said crime, these Respondents filed an Application for pre-arrest bail. The learned Judge initially granted interim bail and subsequently, by order dated 10/08/2016, confirmed the interim bail subject to the compliance of terms and conditions mentioned in the interim bail.

7. The records *prima faice* indicate that there is a dispute between two rival groups who claim to be the elected members of the trust. The records *prima facie* indicate that the Respondents have been elected as the trustees and that the rival group has challenged the change report. It is further stated that the amount from donation boxes has been deposited in the account of Masjid Trust and hence, there is no prima

facie material to indicate that these Respondents have either committed theft or misappropriated the said amount. It is also on record that the charge sheet has already been filed. Furthermore, there is nothing on record to indicate that these Respondents have misused the liberty. The reasons recorded by the learned Judge are not perverse. The order does not suffer from material infirmity. Hence, in my considered view, no case is made out for cancellation of bail. Hence, the Application is dismissed.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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