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1] Anjum Abdul Raheem Merchant
2] Mr. Fayyaz Abdul Raheem Merchant Applicants.
V/s
The State of Maharashtra Respondent.

Juma Masjid Trust Intervener

1] Anjum Abdul Raheem Merchant
2] Mr. Fayyaz Abdul Raheem Merchant Applicants.
V/s
The State of Maharashtra Respondent.

Mohd. Abdul Rauf Memon Intervener

1] Anjum Abdul Raheem Merchant
2] Mr. Fayyaz Abdul Raheem Merchant Applicants.
V/s
The State of Maharashtra Respondent.

**WITH
ANTICIPATORY BAIL APPLICATION (ST) NO.3289 OF 2020**

Jazil Nawarange	 Applicant.
V/s.	
The State of Maharashtra	 Respondent.

**WITH
INTERIM APPLICATION NO. 19 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.3289 OF 2020**

Juma Masjid Trust	 Intervener
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In the matter between

Jazil Nawarange	 Applicant.
V/s.	
The State of Maharashtra	 Respondent.

**WITH
INTERIM APPLICATION NO. 17 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.3289 OF 2020**

Mohd. Abdul Rauf Memon	 Intervener
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In the matter between

Jazil Nawarange	 Applicant.
V/s.	
The State of Maharashtra	 Respondent.

Mr. Saurabh Mehta a/w Uzair Kazi i/b YMK Legal for the Applicants in ABA/845/2021.

Mr. Smit Kirti Nagda a/w Mr. Atul Pathak for the Applicant in ABA (St) No.3289 of 2020.

Ms. Shagufta Ansari for the Intervener in IA/20/2021 in ABA/845/2021 and in IA/17/2021 in ABA(St) No.3289/2020.

Ms. Vidhya N. Shet i/b Vaid Associates for the Intervener in IA/172/2021 in ABA/845/2021 and in IA/19/2021 in ABA(St) No.3289/2020.

Ms. A.A. Takalkar, APP for the Respondent/State.
PSI Pallavi Jadhav, L.T. Marg Police Station, present.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 08, 2021

P.C.:-

1] Applicants in both the above Applications are seeking pre-arrest bail in C.R. No. 196 of 2020 registered with L. T. Marg Police Station, for the offence punishable under Sections 420, 465, 467, 468, 471, 380 read with Section 34 of the Indian Penal Code.

2] Prosecution case against the Applicants is, Mohd. Abdul Memon is claimed to have allotted Otta No.20 in H. Block for carrying out (rituals) burial of dead members of his family by the Waqf named Bada Kabrastan, Marine Lines. It is further claimed that the said land though was allotted by the Trust in favour of his family members, the Applicant Trustes, thereafter, allotted the same land to other persons by accepting illegal gratification. As such the offence.

3] Submissions of Counsel for the Applicants are, Applicants are impleaded in the capacity of office bearers of the Waqf. It is claimed that Waqf property cannot be allotted to an individual without following due process of law. In Graveyard/Kabrastan, property cannot be earmarked for a particular family, as the object with which the Kabrastan is managed is to provide space for burial of every Muslim dead person. It is further claimed that allegation of acceptance of illegal gratification is without any basis and amount, if any, paid has gone to the Account of the Waqf. As such, it is claimed that Applicants are entitled for protection from this Court.

4] Learned APP submits that investigation in the matter depicts that the Applicants are involved in diverting land earmarked in the Kabrastan for a particular family after having accepted illegal gratification. It is further claimed that the amount accepted has not gone to the Account of the Waqf. As such, it is prayed that Application be rejected.

5] Considered rival submissions.

6] Allegations against the Applicants revolve around the contention of the complainant that plot of land being Otta No. H. Block- 20 was earmarked for his family, as at the relevant time, he has paid certain consideration for the same to the Wakf.

7] This Court is required to be sensitive to the principle of Wakf viz “Once Waqf, always Waqf”. As such, very claim of the complainant of having allotted Ota No. H. Block 20 to him to be used as burial place for his family members cannot be accepted. The Kabrastan land which is also a Waqf property cannot be allotted to any individual person like the one claimed by the complainant in the present case without following due process of law, as there is no such scheme approved under the Waqf Act or Rules framed thereunder.

8] According to traditions as are followed in Islamic religion, burial of a dead person is a obligation casted on each member of said religious community. The body has to be buried as soon as possible. The property of Grave-yard (Kabrastan) is a property for the benefit of the Muslim Community. It is not a case of the complainant that the

property is a private Grave-yard as it is not exclusively used by the complainant. It cannot be given colour of private Wakf at the instance of moneyed people like complainant. Even the mutawali / trustees cannot deal with the land of Grave-yard by converting it into small plots and allotting them to private individual. The entire Grave-yard gets a character of Kabrastan.

9] Apart from above, if Applicants in their capacity as Trustees of the Waqf have mismanaged the Waqf property, they are liable under the law before the Waqf Board and not in the present proceedings. In burial ground, every dead person has right to claim burial and it cannot be the monopoly of few individuals who can get part of it earmarked for them based on their monetary holdings claiming to be a private burial ground.

10] In the aforesaid backdrop, keeping right of the complainant reserved to move against the Applicants before the competent authority for their disqualification and action against illegal management of the Waqf, in my opinion, case for grant of pre-arrest bail is made out.

11] In the event of arrest of the Applicants in C.R. No. 196 of 2020 registered with L. T. Marg Police Station for the offence punishable under Sections 420, 465, 467, 468, 471, 380 read with Section 34 of the Indian Penal Code, Applicants be released on bail on executing P.R. Bond in the sum of Rs 25,000/- each with one or more sureties in the like amount. Applicants shall neither influence the witnesses in any manner nor tamper with the evidence. Applicants shall attend the Investigating Officer of the concerned Police Station from 22nd November, 2021 to 26th November, 2021 from 10.00 A.M. to 12.00 Noon and thereafter as and when directed by the Investigating Officer. Applicants shall not allot the land to anybody from the Waqf property till scheme to that effect is framed by the competent authority under the Waqf Act and Rules framed thereunder.

12] Both the above Anticipatory Bail Applications are accordingly disposed of. As a consequence, all Interim Applications taken out therein are also disposed of.

(NITIN W. SAMBRE, J.)