

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

931 APPLICATION FOR CANCELLATION OF BAIL NO.17 OF 2022

THE DISTRICT WAQF OFFICER (INCHARGE), PARBHANI

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. N.E. Deshmukh, Advocate for the applicant

Mrs. V.N. Patil-Jadhav, APP for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th MARCH, 2022

ORDER :

1 Present application has been filed by the original informant for cancellation of bail granted to respondent No.2 by learned Additional Sessions Judge, Parbhani on 06.12.2021 in Criminal Miscellaneous Application No.872/2021. The said bail application was granted under Section 438 of the Code of Criminal Procedure, 1973 when the respondent No.2 was apprehending his arrest in connection with Crime No.605/2021 dated 13.11.2021 registered with Nanalpeth Police Station, Dist. Parbhani, for the offence punishable under Section 420, 465, 466, 468, 471, 120-B of the Indian Penal Code, 1860 and under Section 52(A) of the Waqf Act, 1954.

2 Heard learned Advocate Mr. N.E. Deshmukh for the applicant and learned APP Mrs. V.N. Patil-Jadhav for the respondent No.1. It is not even necessary to issue notice to respondent No.2.

3 Perusal of the First Information Report would show that as per the informant, land Sy. No.636 admeasuring 20 Acres 12 Gunthas and land Sy. No.637 admeasuring 02 Acres 19 Gunthas was the land of Dargah Burhan Shah Wali. It is a waqf property as per the Notification issued by the Government of Maharashtra. It has been stated that one Sayyad Saber Ali s/o Khamar Ali was not given any order as Mutwali, but then he has opened a shop in the premises of the waqf property and by giving it on rent has collected amount of Rs.76,51,600/-, so also, he has collected the donation. Thereby he has cheated and prepared forged documents.

4 At the outset, it is to be noted that though there is reference of the Government Resolution, it has been stated that the possession of the property was given by Collector's order to the District Waqf Officer on 30.08.2021. If the Waqf Officer had received the possession on 30.08.2021, then, how he would be asking for the account of what has been done in the past, is a question. In the bail application the respondent No.2 had contended that the said land was *Inam* land and his forefathers were taking care and performing the service of the said Dargah. Respondent No.2's father

expired on 29.06.2020. One Sayyad Saber Ali has filed Regular Civil Suit No.237/2021. It was also contended that this Court had granted Anticipatory Bail Application No.1042/2021 on 27.09.2021 which was filed by the respondent No.2 Sayyad Saber Ali himself and this is stated to be the second offence. In the impugned order the learned Additional Sessions Judge has stated that there is litigation between the parties since long. Order in Anticipatory Bail Application No.1042/2021 was also considered, wherein the same stand was taken that there is fabrication of false and bogus documents in respect of office of Mutwali. The application therefore came to be allowed holding that the custodial interrogation is not necessary. Another fact to be noted is that if the respondent No.2 has collected some amount by illegal means at the most, the proper authority may recover that amount, but it is impossible that for years together when the respondent No.2 was collecting the rent, the Waqf Board or District Waqf Officer or any other person would not have taken any objection and allowed the respondent No.2 to collect the rent. The discretion has been properly used by the learned Additional Sessions Judge and, therefore, there is no question of cancellation of bail granted to the respondent No.2. Application stands rejected at the threshold.

(Smt. Vibha Kankanwadi, J.)