

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.91 OF 2022

PADMAKAR S/O VINAYAK INGALE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Dr. R. J. Godbole
APP for Respondent-State : Mr. V. M. Kagne
Advocate for Assist to APP : Mrs. A. N. Ansari

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**WITH
CRIMINAL APPLICATION NO.433 OF 2022
IN ABA/91/2022**

MANOJ S/O SHRIDHARRAO MULE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTEHR

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Advocate for Applicant : Mrs. A. N. Ansari
APP for Respondent No.1-State : Mr. V. M. Kagne
Advocate for Respondent No.2 : Dr. R. J. Godbole

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**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 09-02-2022.**

ORDER :

1. Criminal Application No.433 of 2022 has been filed for assist to learned APP. Said application is allowed and disposed of.
2. Applicant in ABA No.91 of 2022 is apprehending his arrest in connection with Crime No.465 of 2021, registered at Mukundwadi

Police Station, District Aurangabad, for the offences punishable under Section 420, 464, 468, 120-B of the IPC.

3. Heard learned Advocate Dr. R. J. Godbole for applicant and learned APP Mr. V. M. Kagne well assisted by learned Advocate Mrs. A. N. Ansari.

4. It has been vehemently submitted on behalf of the applicant that the applicant is the Chairman of Prabodhan Bahuvidh Sanstha, Aurangabad, who runs school by name Tanshri Prathmik Vidyamandir in Aurangabad. FIR has been lodged by Manoj Shridharrao Mule, who claims himself to be the Secretary of the same institution. Prior to the FIR dated 20-11-2021 he had filed complaint application dated 06-09-2021 to Police Inspector, Mukundwadi Police Station. In that complaint, he had made allegations against one Nitin M. Upasani, who was then an Education officer, Zilla Parishad, Aurangabad, and had stated that he numbered as accused No.4 should also be made as an accused, and in fact he had no authority to sanction approval, yet had sanctioned those approvals, and thereby huge loss has been caused to the Government. However, when police did not take any cognizance in

respect of his written complaint, he filed Misc.Cri.Appln.No.3696 of 2021 before the Judicial Magistrate First Class, Aurangabad, for issuing directions under Section 156 (3) of Cr.P.C. for investigation. In that application, he conveniently dropped Nitin Upasani and other officers and requested the Court to take cognizance of the alleged offence by the office bearers of the said institution as well as teachers whose approval was sanctioned, and also then Superintendent Public Provident Fund Section (Primary), Zilla Parishad, Aurangabad. Learned Magistrate by order dated 17-11-2021 directed Mukundwadi Police to register the offence and conduct investigation. In connection with the said FIR, now the applicant is apprehending his arrest.

5. It has been further submitted on behalf of the applicant that the approval has been accorded from 04-09-2014 onwards from time to time and it has been sanctioned by the officials in their routine official work. There is no question of cheating or fabrication of documents by anybody. The disputes are pending before the Charity Commissioner in respect of the members of the Trust. The FIR is nothing but an attempt to pressurize the applicant. For knowing whether those disputed documents were signed by Mr. Nitin

Upasani or not; physical custody of the applicant is not required. The investigation is depending on documents which have already been seized or they are available with the office of the Trust or the Government office i.e. Zilla Parishad. The applicant is ready to co-operate with the investigation.

6. Per contra, the learned APP well assisted by learned Advocate Mrs. A. N. Ansari, strongly opposed the application and submitted that the physical custody of the applicant is necessary as the applicant being the Chairman of the institution had conspired with the government officers and also fabricated the signature of then Education Officer Mr. Nitin Upasani. Personal approval has been got sanctioned and those teachers are getting salary from the government exchequer. Accused Suhas Page, who was the then Superintendent, Public Provident Fund, was having knowledge that from 05-03-2014 to 14-01-2015, Mr. Nitin Upasani was not looking after the administration affairs under the orders of Chief Officer, Zilla Parishad, Aurangabad, and that job was given to Education Officer, Mr. M. K. Deshmukh, yet the signatures of Mr. Nitin Upasani were forged and orders regarding approval were brought into existence. It is then required to be investigated as to when that document was

created. Other investigation regarding since when this offence is going on is also required to be considered. Sympathy cannot be shown to the applicant as on such a post he has cheated the Government.

7. At the outset, it is to be noted that the informant appears to have approached the Police Inspector, Mukundwadi Police Station by giving complaint application on 08-09-2021 thereby making allegations against Nitin Upasani also apart from the present applicant. Thereafter, he filed the application under Section 156 (3) of the Code of Criminal Procedure in which he had suddenly come with the story that accused Nos.1 to 6 had forged the signatures of Nitin Upasani. The investigation papers do not show, though statement of Nitin Upasani appears to have been recorded, that sample of his signatures were taken and the disputed documents are sent for handwriting expert's opinion. When the technical help can be taken for the investigation, the investigating officer appears to be believing in what the informant is saying that the said signature on the disputed documents is not of Mr. Nitin Upasani. There is communication dated 26.03.2014 in the police papers, which has been addressed by CEO, Zilla Parishad, Aurangabad to Nitin Upasani,

who was the then Education Officer (Primary) stating that the administrative responsibility has been given to one Shri. M. K. Deshmukh, however, without any authority, Mr. Nitin Upasani is signing on certain files and taking decisions in respect of private schools and, therefore, order was passed that except visiting the schools and doing work under Sarv Shiksha Abhiyaan, the other administrative powers of Nitin Upasani have been taken back. Now, in spite of this document, it appears that the informant is giving clean chit to Nitin Upasani. This appears that he wants to settle personal score with the other accused persons who are the office bearers of the institution. Another fact to be noted is that the offence is stated to have taken place during the period 09.09.2014 to 14.01.2015, yet the complaint application has been filed by the informant on 08.09.2021 though it has a reference of his earlier complaint application dated 15.08.2019. Even if we take that since 15.08.2019 he is making complaint, yet it is in respect of the happenings those were committed from 05.03.2014 to 14.01.2015. The complainant/informant claims himself to be the Secretary of the institution. Then why he had kept quiet for such a long period is also a question. It was tried to be submitted that the dispute between the elected bodies and the change reports are

pending before Charity Commissioner. If we consider the FIR, the informant says that he is the Secretary of Prabodhan Bahuvidh Sanstha, Aurangabad. He addresses applicant as Chairman. Question then arises that when the act regarding sending proposal would have been taken by the Trust or School authorities with the permission of management, then whether the Secretary was not aware about all those happenings since 2014, is a question, and we are not getting any answer to this question in the FIR at this stage. Being Secretary of the institution, he cannot be a party to the alleged misdeeds, that too knowingly, and therefore, on this count also, though it would be a very premature stage to observe that the FIR appears to be not filed with bona fide intention, yet the fact will have to be considered in that perspective.

8. The alleged offence appears to be relating to the affairs of the institution and the investigation is depending on the documents which would be either available with the school/institution and corresponding documents with the Education Department. The physical custody of the applicant appear to be not required for the purpose of investigation taking into consideration the allegations. Therefore, the applicant deserves to be released on bail with

conditions. Hence, the following order :-

ORDER

1. The application stands allowed and disposed of.
2. In the event of arrest of applicant Padmakar s/o Vinayak Ingale, in connection with Crime No.465 of 2021, registered with Mukundwadi Police Station, Dist. Aurangabad for the offences punishable under Sections 420, 464, 468 and 120-B of Indian Penal Code, he be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
3. The applicant shall attend the concerned police station on every Sunday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.
4. The applicant shall not tamper with the evidence of the prosecution in any manner.
5. He shall not indulge in any criminal activity.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-