

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

APPLICATION FOR CANCELLATION OF BAIL NO.46 OF 2021

Satwaji S/o Sadbaji Nandapurkar

...APPLICANT

VERSUS

1) The State of Maharashtra,

2) Nikhil S/o Sunil Jain

...RESPONDENTS

...
Mr.Sudhir K. Chavan Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent No.1.
Mr.Swapnil S. Rathi Advocate for Respondent No.2.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 4th APRIL, 2022

ORDER :

1. Present Application has been filed for cancellation of bail granted to respondent No.2 in Criminal Misc. Application No.140 of 2020 by learned Additional Sessions Judge, Parbhani on 18th February 2020. It was in connection with Crime No.64 of 2020 registered with Nanalpeth Police Station, Parbhani for the offence punishable under Sections 420, 467, 468, 470, 175 of the Indian Penal Code. Present applicant is founder member and treasurer

of the trust, namely, Modern English Education Society and it is stated that he is the person who had made complaint application to the Collector and thereafter, after inquiry, Mr. Santosh Gopinath Kathale, Superintendent, Class-II, Education Department, had lodged the First Information Report on the orders given by the Collector, Parbhani.

2. What can be gathered from the First Information Report as well as documents which have been placed on record that, present applicant was the only trustee of Modern English Education Society, Parbhani, who was alive and rest expired long ago. By showing a dead trustee as alive, it is stated that present respondent No.2 has got elected himself as Secretary of the Trust, when in fact Collector, Parbhani is the Ex-Officio President of the Trust. All the documents were not considered by the learned Additional Sessions Judge while granting anticipatory bail to respondent No.2. Learned Advocate for the applicant has tried to demonstrate as to how the litigation is going on before Joint Charity Commissioner, Assistant Charity Commissioner, etc. and the change reports are pending.

3. Learned Advocate appearing for respondent No.2, with the help of affidavit-in-reply of respondent No.2, submitted that initially Collector was the Ex-Officio President / Chairman of the Trust, however, he had given letter to the Secretary of the Trust on 27th July 2015 that he is unable to do the said work due to his official duties. However, later on the same authority i.e. Collector, Parbhani issued show cause notice to respondent No.2 on 6th February 2020 and asked him as to why he could pose himself as Secretary and all the minutes of the meetings should be produced before him with explanation as to why he has taken the documents of the Trust in his custody. In fact, according to respondent No.2, every step has been taken by him and he was duly elected / selected as Secretary in 2015. Even for the sake of arguments it is accepted that appointment of respondent No.2 as a Secretary of the trust was under judicial scrutiny before the learned Assistant Charity Commissioner, the Collector had no authority to call upon him to make any submissions and further to pass order on 6th February 2020 in the capacity of a President of the trust that the illegal body has been cancelled.

4. Learned Advocate for respondent No.2 accepts the position that the administrator has been appointed to look after the trust

and the reference of the same has been pointed out by the learned Advocate for the applicant from the affidavit filed by respondent No.2 himself before the Joint Charity Commissioner, wherein it is stated that a resolution was passed in the meeting dated 6th February 2020 appointing Education Officer as administrator of the society. A statement has been made on behalf of respondent No.2 that the proposal in respect of including his name in the Trust record with the Charity Commissioner, in view of his appointment as secretary in the meeting dated 25th March 2019, is pending.

5. The learned Advocate for respondent No.2 was unable to make a specific statement that whether his client has challenged the order appointing administrator before the appropriate authority. However, the learned Advocate for the applicant is making a statement that there is no challenge to said resolution passed on 6th February 2020.

6. Learned Advocate appearing for respondent No.2 is making categorical statement, on the instructions of respondent No.2, that respondent No.2 is not looking after the affairs of the trust,

as according to him the Collector is not allowing respondent No.2 to do that work.

7. Taking into consideration this position, the following condition is added to the conditions imposed to the bail order dated 18th February 2020 passed by learned Additional Sessions Judge, Parbhani in Criminal Misc. Application No.549 of 2020, under Section 439(2) of the Code of Criminal Procedure:-

“Respondent No.2 to this Application (Applicant in Criminal Misc. Application No.140 of 2020 before the learned Additional Sessions Judge, Parbhani) shall not take part in the affairs of the Trust unless he is permitted by competent authority in an appropriate proceeding, till conclusion of trial.”

8. Application stands disposed of, accordingly.

[SMT. VIBHA KANKANWADI , J.]