IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.381 OF 2021
WITH
CRIMINAL APPLICATION NO.1188 OF 2021

RAIS AHMED SHAIKH AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.B. Narwade, Advocate for applicants

Mr. N.T. Bhagat, APP for the respondent

Mr. R.R. Karpe, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 18th JANUARY, 2022

PRONOUNCED ON : 16th FEBRUARY, 2022

ORDER :

1 Criminal Application No.1188 of 2021 moved for assist to PP stands allowed and disposed of.

2 Applicants are apprehending their arrest in connection with Crime No.2042/2020 dated 14.12.2020 registered with Sangamner City Police Station, Dist. Ahmednagar, for the offence punishable under Section 120-B, 416, 420, 465, 467, 468, 471, 472 read with Section 34 of the Indian

Penal Code, 1860.

3 Heard learned Advocate Mr. N.B. Narwade for the applicant and learned APP Mr. N.T. Bhagat, well assisted by learned Advocate Mr. R.R. Karpe for the informant.

4 It has been vehemently submitted on behalf of the applicants that the applicants are innocent and have been falsely dragged by the informant. The scrutiny of First Information Report would reveal that old Trustees by name Iliyas Ibrahim Jod, Fakruddin Ali Saheb Jaan Bar Shaikh and Rafik Anjuman Abdul Khalil Ansari had resigned from the Trust in 2017, but it is incorrect statement, taking into consideration the change report No.1325/2007. The change report was not accepted and, therefore, Iliyas Jod and Fakruddin Shaikh remained to be the Trustees. Change report bearing No.1766 was also rejected by order dated 15.11.2014. However, Change Report No.1824/2016 was filed after completion of the lacunas those were remaining and it was then allowed/accepted on 20.08.2016. In the First Information Report the allegations are made that the said Trust by name 'Allied Education Society' was formed by the deceased brother of informant. The informant and others were inducted in the Trust from 2007 to 2012. One Karim Tamboli – brother of the informant was president of the Trust from 2007 to 2019. It is then stated that thereafter by forging the signatures

of Fakruddin Ali Saheb Jaan Bar Shaikh some documents have been prepared in respect of meetings dated 03.08.2018, 15.08.2018, 21.08.2018 and the names of the present applicants were got inserted. It is also stated that the Change Report No.1689/2018 was filed along with the false affidavit, for which Karim Tamboli had made complaint with the Sangamner Police Station, but his First Information Report was not taken. He had therefore written letter to Deputy Superintendent of Police as well as Superintendent of Police, Ahmednagar on 22.10.2019; yet, offence was not registered. Unfortunately Karim Tamboli expired on 26.01.2020 and, therefore, his brother has lodged the private complaint, which was argued by the Advocate for the informant before the Magistrate and then order under Section 156(3) of the Code of Criminal Procedure for investigation came to be passed and on the basis of the same the First Information Report has been lodged. All the documents are before this Court as well as the police and, therefore, the offence is revolving around the documents, for which the physical custody of the applicants is not required. This Court by order dated 26.07.2021 had protected the applicants and that interim protection deserves to be confirmed.

5 It has been further submitted on behalf of the applicants that the informant has intentionally kept silence in respect of Change Report

No.1277/2015, which was rejected by the competent authority. Further, the Change Report Nos.1824/2016, 1689/2018 and 648/2019 have been now remanded by the learned Joint Charity Commissioner to Assistant Charity Commissioner and, therefore, they all are pending. When the civil litigation is pending, there is no question of taking cognizance of the alleged criminal act. It can also be seen that for the alleged act of 2017 the First Information Report has been lodged in 2020. There is huge delay, which is not fully explained. The applicants are alleging that the applicant No.1 found that deceased Karim and the informant and family members have prepared false resolutions and demanded huge loan of Rs.75,00,000/- in the name of institution, but utilized the said loan amount for their own purpose. Therefore, the complaint application was filed by the applicant No.1 before the Economic Crime Bureau, Ahmednagar as well as the Sangamner City Police Station. Investigation is pending in respect of the same. Therefore, the applicants deserve to be released on anticipatory bail.

6 Learned APP, well assisted by learned Advocate Mr. R.R. Karpe for the informant, strongly opposed the application and submitted that the present applicants are absconding since 2018 till today. Statements of witnesses have been recorded, which were those persons, whose signatures are stated to have been forged. Vasim Karim Tamboli, Khan Mohammad

Mushraf Khairati and Iliyas Jod, Fakruddin Ali Saheb Jaan Bar Shaikh and those persons, whose signatures have been forged, they are all the way saying that Iliyas Jod, Fakruddin Ali Saheb Jaan Bar Shaikh, Rafik Anjuman Abdul Khalil Ansari had decided not to remain in the Trust in 2007 and accordingly, they had tendered their resignations and they were not working as Trustees since 2007. Still their signatures are appearing for the subsequent period, which are the documents relied by the applicants before the Joint Charity Commissioner as well as Assistant Charity Commissioner. The physical custody of the applicants is required for taking their signatures, from where they had prepared false seal, letter head, proceeding etc.

7 Perusal of the police papers as well as the papers which have been filed by the applicants as well as the informant, who has filed Criminal Application No.1188 of 2021 to assist APP, would show that the dispute is pending before Assistant Charity Commissioner. The change reports were filed and thereafter it appears that Assistant Charity Commissioner had taken some decisions earlier, but thereafter those were objected and appeals were filed before learned Joint Charity Commissioner, who has now, by setting aside the order passed by Assistant Charity Commissioner has remanded the matters for rehearing. Now, as regards the forgery is concerned, the documents are either with Charity Commissioner's office or with the Trust.

None of them have stated that whether the Trust has a fixed place of office, in clear wordings, where Karim used to keep those proceedings. Definitely, if the applicants are having certain documents, they can be directed to produce them before the Investigating Officer. But, at the same time, we cannot forget that even the applicants appear to have filed a complaint application in respect of the alleged misdeeds committed by late Karim and the inquiry appears to be pending. If those change reports are pending since 2016 before the Assistant Charity Commissioner, then, why immediate action was not taken by the concerned persons, is a question. It is not necessary that only the president should take the action. Why the informant himself had not taken the action is not explained, so also, those witnesses have also not explained, why they have not taken any action, when it is alleged that their signatures have been forged. Their statements show that somewhere in the year 2018 or 2019 Karim himself had disclosed that such forged documents have been created.

8 The inquiry or investigation of the offence appears to be revolving around the documents and, therefore, the physical custody of the applicants may not be required. They can be made available for the investigation.

9 Interestingly the Investigating Officer has shown all the

applicants as absconding. Applicant No.3 is an Advocate by profession, who resides at Pune. At this stage, the documents along with the police papers do not show, as to what action was taken by the Investigating Officer to arrest the applicants. Neither learned APP on instructions of the Investigating Officer nor the Investigating Officer himself have explained, as to why he had not taken action under Section 82 and/or 83 of the Code of Criminal Procedure against the present applicants uptill now. Therefore, that cannot be the ground to reject this application. This Court had granted interim protection by order dated 26.07.2021. However, no order was passed in respect of attendance to the Police Station. Investigating Officer has not produced on record that after that order was passed how many times he had tried to call the applicants in connection with investigation. Under such circumstances, condition is required to be added regarding attendance to the Police Station and for cooperating the investigation. Therefore, interim protection granted earlier by this Court to the applicants deserves to be confirmed. Hence, following order.

ORDER

1 Application stands allowed.

2 The ad-interim protection, granted by this Court earlier to

applicants vide order dated 26.07.2021, is hereby confirmed and made absolute. In other words, if the applicants are not formally arrested, in the event of arrest of the applicants viz. **1) Rais Ahmed Shaikh, 2 Javed Shaikhlal Shaikh** and **3) Mohammad Javed Hussain Shaikh**, in connection with Crime No.2042/2020 dated 14.12.2020 registered with Sangamner City Police Station, Dist. Ahmednagar, for the offence punishable under Section 120-B, 416, 420, 465, 467, 468, 471, 472 read with Section 34 of the Indian Penal Code, 1860, they be released on P.R. of Rs.25,000/- (Rupees Twenty Five Thousand only) each with one or two more sureties in the like amount each.

3 The applicants shall not indulge in any criminal activity nor they should tamper with the prosecution evidence, in any manner.

4 They should cooperate with the investigation and shall attend the concerned Police Station, on every Sunday and Thursday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

5 They should produce all those documents, which are in their custody in respect of the Trust, which would be called by the Investigating Officer.

6 Such compliance should be made by them, within a week from the demand by the Investigating Officer to them in writing.

7 Failure on the part of the applicants to observe the conditions would give right to the prosecution to file an application under Section 439(2) of the Code of Criminal Procedure.

8 Criminal Application No.1188 of 2021 stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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