

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

**ANTICIPATORY BAIL APPLICATION NO.329 OF 2021
WITH
CRIMINAL APPLICATION NO.966 OF 2021**

- 1) Samina D/o Badijama Patel @
Samina W/o Saeed Shaikh,
- 2) Sandhya Parasram Pawar,
- 3) Raosaheb Pundlik Latke,
- 4) Shrikrushna Sheshrao Cheke,
- 5) Yusuf Nasir Inamdar

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.S.J. Salunke Advocate for Applicants.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
Mr.S.S. Thombre Advocate for assist to APP.
...

ANTICIPATORY BAIL APPLICATION NO.603 OF 2021

- 1) Abrar Sohail S/o Tahermiya Saudagar,
- 2) Sabera Ruhi W/o Mohd. Tahermiya Saudagar

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.A.D. Sonkawade Advocate for Applicants.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 13th JANUARY 2022

DATE OF PRONOUNCING ORDER : 9th FEBRUARY 2022

ORDER :

1. Criminal Application No.966 of 2021 moved for assist to APP stands allowed and disposed of.
2. The applicants in Anticipatory Bail Application No.329 of 2021 and Anticipatory Bail Application No.603 of 2021 are apprehending their arrest in connection with Crime No.51 of 2021 registered with Gondli Police Station, District-Jalna, for the offences punishable under Sections 406, 420, 467, 468, 469, 470, 471, 504, 506 of the Indian Penal Code.
3. Heard learned Advocates for the applicants in both the applications and learned APP well assisted by learned Advocate Mr.Thombre for the informant.

4. It has been vehemently submitted on behalf of the applicants that the dispute between the educational institution by name Godavari Shikshan Sanstha Gondi, Taluka-Ambad, District-Jalna has a chequered history. The applicants in Anticipatory Bail Application No.329 of 2021 are the employees serving as assistant teachers in the school run by the said educational institution, whereas the applicants in Anticipatory Bail Application No.603 of 2021 were inducted as Secretary and Member of the said institution in the year 2009 and 2015 respectively. The said educational institution is a public trust registered under the Maharashtra Public Trust Act. The informant contends that she is serving as assistant teacher in the said institution since last about 23 years. According to her she ought to have been promoted as Headmistress as per the seniority in the year 2003 itself, however, then she states that in 2016 one Tahermiya Saudagar from the management had sought no objection to promote applicant – Samina as Headmistress. Informant refused to give the no objection and therefore, it is her say that the management had mentally harassed her by issuing memos, with-holding her payments etc. She had then filed writ petition before this Court wherein the record from Education Officer (Secondary) was called. According to the

informant, applicant No.3 – Raosaheb Latke had submitted affidavit along with bogus seniority list in the said writ petition. So also applicant No.4 – Shrikrushna Cheke had also submitted false affidavit contending that applicant No.1 – Samina Patel and applicant No.2 – Sandhya Pawar are senior to the informant. Inquiry was held and seniority of the informant was upheld by order dated 25th January 2019 by the Education Officer. However, now applicant No.1 – Samina Patel and applicant No.2 – Sandhya Pawar have filed writ petition in this Court. It is then contended that in the inquiry report, the Deputy Director of Education, Aurangabad had issued directions that applicant No.1 Samina Patel and applicant No.2 – Sandhya Pawar should produce copies of their approvals but they had failed to produce the same and therefore, the said authority had cancelled the approvals of Samina Patel and Sandhya Pawar on 4th January 2021 and then the First Information Report has been lodged by the informant for the alleged acts.

5. It has been further submitted on behalf of the applicants that the contents of the First Information Report would show that there is dispute pending between the informant and the management. In fact the management had issued charge-sheet to the informant and initiated departmental inquiry. In the said

inquiry it was held that those charges are proved and she is liable for the punishment under Rule 21(2) of the M.E.P.S. Rules. In order to avoid further action, it appears that the First Information Report has been lodged. No orders were passed by this Court holding that those affidavits are false and action should be taken against them. In fact the First Information Report discloses that occurrence of the alleged offence is from the year 1996 to 2021. Taking into consideration this long span, it cannot be said that it was a continuous offence and the delay is unexplained.

6. As regards the applicants in Anticipatory Bail Application No.329 of 2021 it has been further submitted that sending of proposals for approval for the post of Headmistress or preparation of seniority list etc. has to be done by the management and the assistant teachers cannot be said to be directly concerned with that act. The First Information Report is the example of vengeance and the custodial interrogation of the applicants is not required. The interim protection granted to the applicants deserve to be confirmed.

7. As regards the applicants in Anticipatory Bail Application No.603 of 2021, it has been further submitted that since the

applicants came to be inducted in the year 2009 and 2015 respectively, they had no knowledge about the acts which were done in the past. In fact, on 7th February 2020, by following due procedure of law the services of the informant as assistant teacher were terminated. However, now she has been reinstated after the compromise or settlement arrived at on 1st September 2021. In the said settlement the informant has stated that she undertakes to take back the allegations made by her in all the Courts against the institution and the body of the trust. By cancelling her termination, informant has been promoted on the post of Headmistress and it has been given retrospective effect from 18th June 2002. Taking into consideration these developments the physical custody of the applicants is not required at all.

8. The learned APP well assisted by learned Advocate Mr. Thombre for the informant submitted that the settlement is arrived at, however, it is in respect of the matter which informant had filed before the School Tribunal. It has nothing to do with the criminal complaint she has filed and therefore she has every objection to grant anticipatory bail to the applicants. It is then stated that the investigation is almost complete, however, custody of the applicants is required to seize certain record

which the Secretary Abrar Sohail has in his possession and in spite of issuing notice under Section 91 of the Code of Criminal Procedure, he has not produced it. The Education Officer has also not produced the orders passed in respect of granting approval to applicants Samina and Sandhya. The contents of the First Information Report are sufficient enough to give idea as to how the informant was cheated and how false documents have been created. The informant was cheated for her rights since many years and the filing of the writ petition before this Court was one of the steps. During the course of the hearing of the matter, false affidavits were filed so also false gradation list was produced. The applicants Samina and Sandhya could not produce documents in respect of individual approval and therefore, their approval was required to be cancelled by order dated 4th January 2022. Under such circumstance, the custody of the applicants is necessary for the purpose of investigation.

9. At the outset, perusal of the First Information Report would show that the informant is making allegations that in the year 2003 she ought to have been promoted as Headmistress taking into consideration the seniority, but then she is not explaining as to why she has not taken any legal steps immediately. She states directly by referring that in the year 2016 trustee

Tahermiya had demanded no objection from her which she refused and thereafter she was harassed. She has not explained as to what she has done between 2003 to 2016. She had filed the writ petition bearing No.14823 of 2017 in the year 2017 before this Court wherein this Court has only directed the concerned authority to give hearing to the parties. No doubt it appears that the respondents therein had filed affidavit, but this Court has not stated anything that it could find the impugned affidavit as false. During the course of hearing before the Education Officer (Primary) applicants Samina and Sandhya could not produce their approvals, however, applicant Raosaheb had given affidavit. According to the informant the seniority list submitted by applicant Raosaheb is illegal and false. Similar affidavit has been given by applicant Shrikrushna as well as applicant Abrar Sohel. It is then also stated that applicant No.1 Samina and applicant No.2 Sandhya had also filed affidavit stating that the informant is not senior to them. It appeared to be all disputed facts and also it has come on record now that after the approval of applicants Samina and Sandhya has been cancelled by order dated 4th January 2021 now they have filed writ petition; supposes that the dispute is still pending. When the

dispute is still pending, we cannot say that whatever documents have been produced are false or fabricated.

10. It also appears that settlement is arrived at and the informant has been promoted as Headmistress. That settlement arrived at on 1st September 2021. That settlement is not agreeable to the applicants Samina and Sandhya and therefore, they have challenged it before this Court. When the matter is adjudged, we cannot come to the conclusion, even prima facie, that a false record has been created and it gives advantage to the applicants – accused to seek anticipatory bail. Important point to be noted is that in the settlement it is stated that the informant was terminated from 7th February 2020. However, when the settlement was arrived at on 1st September 2021, it is stated that she has been absorbed in the service with retrospective effect from 7th February 2020. It is then also stated that she has been promoted as Headmistress since 18th June 2002 with retrospective effect. Whether such settlement is binding, is the consideration either before the School Tribunal or this Court in the writ petition. The inquiry / investigation into the offence in question appeared to be based on the documentary evidence and the substantial part of the investigation appears to be over. The interim protection granted to the applicants in the

past, deserve to be confirmed. Hence the following order is passed:-

ORDER

i) Anticipatory Bail Application No.329 of 2021 and Anticipatory Bail Application No.603 of 2021 stand allowed.

ii) The ad-interim protection granted by this Court earlier to the applicants in Anticipatory Bail Application No.329 of 2021 vide order dated 11th May 2021 is hereby confirmed.

iii) The ad-interim protection granted by this Court earlier to the applicants in Anticipatory Bail Application No.603 of 2021 vide order dated 29th June 2021 is hereby confirmed.

iv) It is clarified that in the event of arrest of applicant No.1 – Samina D/o Badijama Patel @ Samina W/o Saeed Shaikh, applicant No.2 – Sandhya Parasram Pawar, applicant No.3 – Raosaheb Pundlik Latke, applicant No.4 – Shrikrushna Sheshrao Cheke, applicant No.5 – Yusuf Nasir Inamdar in Anticipatory Bail Application No.329 of 2021, and, applicant No.1 – Abrar Sohel S/o Tahermiya Saudagar, applicant No.2 – Sabera Ruhi W/o

Mohd. Tahermiya Saudagar in Anticipatory Bail Application No.603 of 2021, in connection with Crime No.51 of 2021 registered with Gondli Police Station, Taluka-Ambad, District-Jalna for the offence punishable under Sections – 406, 420, 467, 468, 469, 470, 471, 504, 506 of the Indian Penal Code, they be released on bail on PR Bond of Rs.15,000/- each with solvent surety of Rs.15,000/- each.

v) The applicants shall remain present before the Investigating Officer as and when called and co-operate with the investigation.

vi) The applicants shall not tamper with the evidence of the prosecution in any manner.

vii) Criminal Application No.966 of 2021 stands disposed of.

[SMT. VIBHA KANKANWADI , J.]