

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

**ANTICIPATORY BAIL APPLICATION NO.470 OF 2022
WITH APPLN/1824/2022 IN ABA/470/2022**

1. Syed Shafiq Ahmed Hashmi s/o Rashioddin
2. Syed Iftekhar Ahmed s/o Abdul Jabbar
3. Momin Abdul Zafar s/o Abdul Aziz ..Applicants

Versus

The State of Maharashtra ...Respondent

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Mr. Rajendra Deshmukh, Senior Advocate a/w Mr. Sanket A. Jadhav
i/b Mr. Sayyed Tauseef Yaseen, Advocate for the applicants.

Ms. V.S. Choudhari, APP for the respondent-State.

Mr. Sohail E. Siddiqui, Advocate for Assist to PP.

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CORAM : S.G. MEHARE, J.

DATED : 20th JULY, 2022

PER COURT:-

1. Heard learned senior counsel for the applicants, learned APP for the State and learned counsel assisting the learned APP.

2. The complainant is the Assistant Teacher in the school run by a trust. He has alleged against the applicants that they have misappropriated the fund. The applicant nos.1 and 2 were not the office bearers of the trust from 2012 to 2015. Even then, they were acting as the President and the Secretary. The change report filed by applicant nos.1 and 2 was rejected by the Deputy Charity Commissioner, Beed. However, he did not give information about the

said order. They have forged the documents in the name of the trust and made the false communication with the Government Office, Zilla Parishad and Education Department. The applicant – Syed Iftikhar though not the executive, wrote a letter to the Education Department seeking permission to suspend the complainant. They have passed the false resolutions. The applicant no.3/Headmaster, in conspiracy with applicant nos.1 and 2 had illegally used Rs. 2 lacs and thereby cheated the government.

3. The learned senior counsel for the applicant has argued in detail and referred to many documents. In nutshell, he has the argument that the applicants have no locus to challenge the membership of management of applicant nos.1 and 2. Applicant no.3/Headmaster has lodged a report against three assistant teachers including the present first informant for the offence punishable under Section 307 etc. The trial is in progress. He has made the false allegations that these applicants have committed the fraud and misappropriated the public fund. He has referred to the orders passed by the Assistant Charity Commissioner and the Schedule-I, in which the names of the applicants were shown as trustees and executive members. He has also pointed out that another assistant teacher lodged a report with another police station on the same allegations. He has referred to the order of the learned Assistant Charity Commissioner and argued that the Assistant Charity

Commissioner accepted the change report and declared the applicants *de facto* trustees from 2012 and accordingly, the entries have been taken in Schedule-I.

4. He would also pointed out that on the same allegations, the present complainant has filed an application under Section 41 of the Maharashtra Public Trusts Act before the Assistant Charity Commissioner, Beed. The Assistant Charity Commissioner was pleased to reject the application. The first informant did not attend the said proceeding. He has also argued that as per the directions of this Court, the applicants attended the police station and provided the documents as sought by the Investigating Officer. Those documents are also placed on record. The complaint is malicious. The applicants have also filed complaint before the learned Magistrate and that has been challenged before the High Court and it is pending. All the applicants were bonafidy discharging their duties as trustees of their trust. However, the complainant was not performing his duties. Hence, leave to suspend the applicant was sought. This is nothing but to counter the actions taken against the applicants. Presently, applicant nos.1 and 2 are not the trustees. The audit report is also in their favour. At no point of time, the office of the charity raised objection about the business done by the applicants. Hence, the application deserves to be allowed.

5. The learned APP has vehemently argued that the complainant has recently given the statement on 12.06.2022 and alleged that the applicants had collected worth Rs.6,47,92,614/- as donation. However, out of it only about Rs.2 Crores have been spent and Rs. 4 Crores and more have been misappropriated by the applicants. The Investigating Officer wants to make the investigation about the misappropriation of such huge amount. Hence, the custodial interrogation of the applicants is necessary. She has also argued that the applicants have not handed over the charge to the newly appointed body of the trust. The offence is serious. Huge public fund has been misappropriated by the applicants. Therefore, the application be rejected.

6. Perused the papers submitted by the applicants and considered the arguments advanced by the respective counsels. It seems that there is a serious dispute between the present applicants and the informant. Long back, a crime under Section 307 of the Indian Penal Code was registered on the complaint of applicant no.3 against the complainant and other assistant teachers. A leave was also sought by applicant no.3 after registering the said crime to suspend the present applicants. Unfortunately till date, no leave is granted. So far as the issue regarding the change report is concerned, the Charity Commissioner has accepted the change report for the relevant year and approved the applicants as trustees *de facto* and

necessary entries have been taken in Schedule-I as provided under the Maharashtra Public Trusts Act.

7. On the same facts and allegations, an application was also filed against the applicants by the first informant before the Assistant Charity Commissioner, Beed praying to remove the applicants from trust. That application has also been dismissed recently by the Assistant Charity Commissioner.

8. The record reveals that the papers which were demanded by the Investigating Officer to the applicants have been supplied. They were attending the police station as per the directions of this Court. Nothing has been suppressed by them. Now, the first informant has come with a new case by way of his statement dated 12.06.2022 that the huge amount more than Rs. 4 Crores has been misappropriated by the applicants. This seems to be after the knowledge of passing the order by the Deputy Charity Commissioner in a application of the complainant dated 17.06.2022. The overall facts of the case reveal that the first informant and the applicants were fighting since long. The allegations of serious assault have also been levelled against the applicant and a crime is also registered against him. So far as the business of the trust is concerned, the learned Deputy Charity Commissioner has specifically observed that the present informant is not the person interested in the trust as per

Section 2(10) of the Maharashtra Public Trusts Act. Hence, his application has been dismissed.

9. At the cost of repetition, it may be stated that there are serious disputes between the first informant and the applicants and a new story has been developed against the applicants recently, that they have misappropriated the donation money more than Rs.4 Crores.

10. The prosecution has no evidence what details the first informant has given to the Investigating Officer about collecting such huge donation. But it is clear that the complainant is making one more attempt to see the applicants behind the bars. Viewing the facts of the case and the dispute raised by the first informant and the cooperation of the applicants to the Investigating Officer, this Court is of the view that the application deserves to be allowed. Hence, the following order :

ORDER

- I) The application is allowed.
- II) The interim protection granted to the applicants by order dated 21.04.2022 is confirmed on the same terms and conditions that they shall attend the concerned police station as and when called by the Investigating Officer on written notice and shall not tamper with the prosecution witnesses.

(7)

III) Criminal Application No.1824 of 2022 filed for assisting the learned Public Prosecutor is allowed and disposed of.

(S.G. MEHARE, J.)