

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Anticipatory Bail Application (ABA) No. 709 of 2022

Sheikh Hussain S/o Abdul Jabbar

Versus

State of Maharashtra, through Police Station Sakkardhara, Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.K.Mishra, Senior Advocate assisted by Shri Ishant Tambi, Advocate and Shri Aadarsh Dubey, Advocate for the applicant.

Shri V.A.Thakare, APP for the State / Non-applicant

Shri S.P.Bodalkar, Advocate for the non-applicant no.2.

CORAM : ANIL S. KILOR, J.

Reserved on : 12th December, 2022.

Pronounced on : 21st DECEMBER, 2022.

The applicant is seeking pre-arrest bail under Section 438 of the Code of Criminal Procedure in Crime No. 460 of 2022 registered with Police Station Sakkardhara, Dist. Nagpur for the offence punishable under Sections 409, 420 and read with Section 34 of Indian Penal Code.

2. The prosecution case is that the informant is the Secretary of Sufi Sant Hajrat Baba Tajaddin Trust. The said trust was formed in the year 1962. As per the

order passed by the learned District Judge, Nagpur-9 trustees were appointed for the purpose of three years who are having different faiths. In the year 2001, as per the order passed by the learned District Judge, Nagpur nine persons came to be appointed and in the said body the accused no.1 namely Sheikh Hussain Abdul Jabbar (present applicant) is the President whereas the accused no.2 Iqbal Ismail Veljee is the Secretary. There were various complaints against the functioning of the accused persons therefore after taking cognizance of the said complaints the learned District Judge, Nagpur vide order dated 15th October, 2016 was pleased to appoint retired District and Sessions Judge, Shri Kudbe as Administrator on the said trust.

3. The said administrator looked after the management from 2016 to 2021. Thereafter, new body came to be elected wherein informant came to be elected as Secretary. In the audit report it was found that, the accused persons have misappropriated the funds of the trust. It was found that the accused persons without obtaining any permission from the Charity Commissioner have misappropriated the amount of Rs.1,48,00,379 to the account of President Sheikh Hussan Abdul Jabbar (Present applicant) and the amount of Rs.11,52,207/- to the account of Secretary

Iqbail Ismail Veljee was credited. Therefore, the First Information Report came to be registered vide Crime No. 460 of 2022 for the offence punishable under Sections 409, 420 read with Section 34 of the Indian Penal Code.

4. Shri Mishra, learned Senior Advocate argues that the allegations of misappropriation are false, as the amount which was transferred from the accounts of the Trust in the account of the applicant was in the nature of reimbursement. It is submitted that the applicant invested huge amount for development and beatification of the Dargah. It is submitted that there is a resolution permitting transfer of amount towards reimbursement, however, the prosecution has suppressed the said resolution from this Court.

5. He further submits that only because of change in hands after election of Managing body of the Trust, the false report came to be filed against the applicant.

6. He further submits that the applicant has not signed a single cheque which sufficiently shows that there was no ill-intention of the applicant to receive the amount in his account. He therefore, submits that the applicant has been falsely implicated in the alleged offence.

7. On the other hand, Shri Thakare, learned Additional Public Prosecutor strongly opposed the present application and submits that a clear evidence is available to show that Rs.1,25,00,000/- were transferred from the account of the Trust to the personal account of the applicant.

8. It is submitted that in the audit report a specific objection was raised in this regard and after lodgment of the report, the investigation was made and during which numerous irregularities were found in financial transaction of the Trust. He therefore submits that as it is an economic offence, custodial interrogation of the applicant is required to take the investigation to the logical end. He therefore prays for rejection of the present application.

9. Shri Bodalkar, learned counsel who is assisting to prosecution on behalf of informant reiterates the submission of the learned Additional Public Prosecutor.

10. I have perused the case diary and from the same it is seen that the applicant was the President of the Trust namely Sufi Sant Hajrat Baba Tajuddin Trust from the year 2001-2016.

11. In the year 2016, the Administrator was appointed and thereafter the elections were held and

new body took charge of the Management in the year 2021. The audit conducted during the period of administrator and the audit conducted after the new body took charge shows financial irregularities. Thereupon, the complaint was lodged. In the investigation, it was found that on eight occasions between 10th March, 2011 to 9th April, 2015, Rs.1,25,00,000/- were transferred from the account of the Trust to the personal account of the applicant.

12. It is further revealed from the case diary that though the cheques were signed by the Secretary and the Treasurer and not by the applicant, the amount was deposited in the personal account of the applicant. Whether the said amount which was towards reimbursement or not, cannot be commented upon it at this stage, in absence of any evidence to that effect. Furthermore, it is a matter of trial.

13. Though there are some discrepancies in the two audit reports, about total amount of misappropriation, however, the fact remains that there is incriminating material to *prima facie* shows that financial irregularities have taken place in the Trust during the period when the applicant was the President of the Trust. In the circumstances, I am of the view that

learned Additional Public Prosecutor is right in saying that custodial interrogation of the applicant is necessary.

14. The religious Trust's huge amount has been allegedly transferred in the account of the applicant and thereby the amount of such religious trust has been misappropriated. Therefore, proper and thorough investigation is necessary in this case and same is not possible without custodial interrogation. In that view of the matter, I pass the following order.

i. Criminal application is rejected.

[ANIL S. KILOR, J.]

SACHINDANAND
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