

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 119 OF 2022

1. Shaikh Nizam Shaikh Jainuddin
2. Shaikh Jainuddin Shaikh Sujaoddin Applicants

Versus

The State of Maharashtra
and another Respondents

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Mr. Hrishikesh V. Tungar, Advocate for the Applicants
Mr. A.V. Deshmukh, APP for Respondents – State
Mr. N.E. Deshmukh, Advocate for the Informant.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd FEBRUARY, 2023

ORDER :

1. The applicants apprehend their arrest in connection with Crime No. 11 of 2022 registered with Beed City Police Station, District Beed for the offence punishable under sections 420, 406, 468, 471, 448, 120-B read with 34 of the Indian Penal Code and under section 52 (A) of the Wakf Act.

2. Aminu Jama Khiliku Jama, District Wakf Officer, Beed lodged complaint alleging that there is *khidmat-mash land of Sayed Suleman Dargah* at Beedbearing survey No.20/e. By virtue of it's decision dated 28/10/1993, Marathwada Wakf

Board leased out this land to Shaikh Sujauddin (father of applicant No.2), Shaikh Jainuddin (present applicant No.2) and one Mirza Shafiq Baig for consideration of Rs.5,000/- per year for the period of 51 years. After death of Sujauddin, applicant No.2 Jainuddin illegally got the said land converted into *madad-mash* on 30/06/2001, and by joining hands with revenue authorities, managed to enter names of himself and applicant No.1 Nizam by way of mutation entry No.554. The District Wakf Officer preferred appeal through Marathwada Wakf Board before Sub-Divisional Officer. On 27/10/2005, the then Sub-Divisional Officer cancelled mutation entry No.554. Simultaneously, Marathwada Wakf Board challenged the decision dated 30.06.2001 rendered by Deputy Collector (Land Development) which came to be quashed by State Ministry (Revenue) on 14.02.2006. Thus, despite mere leasehold capacity and status, accused persons managed to obtain orders dated 30/06/2001 as well as 24/07/2009 by joining hands with Revenue Authorities, for the said purpose, they prepared false documents and have committed offence of forgery and thus, managed to enter their names in PR card vide mutation entry No.5280 and raised illegal constructions on the land in question.

3. Heard learned advocate for the applicants, learned Additional Public Prosecutor for the State and the learned advocate for the informant. Perused the documents placed on record.

4. According to the applicants, they have filed application bearing No.2001/*Inam*/Desk/212 before the Deputy Collector, Land Reforms, Beed on 14/05/2001. The same was allowed on 30/06/2001. The said order was challenged by the Wakf Board before the State Minister. The State Minister has remanded the matter back to the Deputy Collector on 14/02/2006.

5. It is the case of prosecution that the applicants have alienated the property of Wakf in contravention of section 51 and 56 of Wakf Act. The applicants got Wakf property on lease from Marathwada Wakf Board vide resolution dated 28/10/1993 and order dated 14/09/1994 for 51 years along with father of applicant No.2 Shaikh Shujauddin and 2 other persons namely Miraz Sharif Baig and Mirza Usman Baig. According to the prosecution, the applicants have filed proceedings and illegally got *Khidmat-mash* land converted in *Madad-mash* land. The same was done in violation of section 3(r) and section 32(4) of the Wakf Act. There is clear violation

of section 51 and 56 of the Wakf Act. All the accused have entered into criminal conspiracy and illegally converted the Wakf land into private land and further converted land into plots and carried out illegal construction over the Wakf land without sanction of the Wakf Board.

6. Admittedly, the prosecution case is based on documents, which are already seized by the Investigating Officer, and the investigation is on the verge of completion. Nothing is to be recovered from the applicants.

7. The applicants were granted interim protection and they have co-operated in the investigation. In the facts of the present case, pre-trial custodial detention of the applicants is not necessary.

8. Learned Additional Public Prosecutor, however, submits that investigating officer has reserved his right to conduct further investigation under section 173(8) of Cr.P.C., if any material is found during the course of further investigation, the prosecution may be given liberty to apply for cancellation of anticipatory bail. That liberty is always there with the prosecution.

9. In the result, the application is allowed. In the event of arrest of the applicants in connection with Crime No. 11 of 2022 registered with Beed City Police Station, District Beed for the offence punishable under sections 420, 406, 468, 471, 448, 120-B read with 34 of the Indian Penal Code and under section 52 (A) of the Wakf Act, the applicants shall be released on executing Personal Bond of Rs.15,000/- each with one surety in the like amount.

10. Till filing of charge sheet, the applicants shall attend the concerned police station as and when called by the Investigating Officer. The applicants shall not tamper prosecution evidence. The applicants shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane