IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.638 OF 2023

DIPAK KESHAVLAL CHAWADA
VERSUS
THE STATE OF MAHARASHTRA

Mr. R. S. Pawar, Advocate for the applicant
Mr. S. N. Morampalle, APP for the respondent/State

CORAM : R. M. JOSHI, J.
DATE : 22nd JUNE, 2023

P.C. :-

1. Applicant apprehends arrest in connection with Crime No. 19/2023 registered with Taloda Police Station, Dist. Nandurbar for the offences punishable under Sections 419, 420, 464, 465, 467 of IPC.

2. First information report is given by Yogesh Choudhari who is a member of Manumata Bahuuddeshiya Sanstha, Taloda, Tal. Taloda, Dist. Nandurbar (for short 'Sanstha'). It is contended by the informant that applicant was a Secretary of the said Sanstha and he was looking after the financial transactions thereto, till year 2020. It is further contended that all documents such as proceeding book, audit report, donation receipt books etc. were in the custody of the applicant and keys of the cupboard containing this record was kept by him with himself. It is alleged that the applicant without giving charge and giving those

documents to other office bearers has retained the said documents with him. It is stated that in the last month in the presence of the Vice President and member of the Sanstha the said cupboard was broke open and it was found that except for one receipt book and pan card there was no other document in the cupboard. It is further alleged that applicant herein has duped Sanstha for Rs. 17 to 18 lakhs by accepting donation from various person and not depositing the into the account of the Sanstha. It is also alleged that on 30th August, 2018 a sum of Rs.5,25,000/- was deposited as he was called upon to deposit the said amount. However, immediately thereafter on 05th September, 2018 Rs.5,00,000/- was withdrawn. On these amongst other allegations crime is registered against the present applicant.

3. Learned counsel for the applicant states that the informant is son of the president of the said Sanstha and number of offences are registered against him including externment proceeding initiated against him. By referring to the allegations made with regard to the withdrawal of the amount from the bank account is contended that the said bank account is in the joint name of President and Secretary and without signature of the president no amount can be withdrawn. With regard to the allegations about the collection of the donation and not depositing the some it is submitted that the said allegations are not supported by

any particulars and that during relevant time applicant was Secretary of Sanstha. According to him this is a case of false implication.

4. Learned APP and learned counsel for the informant opposed the said contention. It is sought to be pointed out to the Court that the all relevant documents were in the custody of applicant and as he has not given the key of the cupboard, it was required to be broke open wherein except for pan card and one donation receipt book nothing else was found. It is further alleged that the said receipt book indicates that the applicant has collected huge amount by way of donation and the same is not deposited in the bank account. As regards the allegation about withdrawal of the amount, learned APP was called upon to seek instructions as to whether the account of Sanstha is jointly operated by President and Secretary. He on instructions confirms the said fact.

5. *Prima facie* perusal of the first information report shows that it is alleged against the present applicant that he did not hand over the charge as a Secretary though he ceased to be Secretary since year 2020. It is alleged that all entire original record, proceeding book, audit report receipt book etc. were in the cupboard which incidentally was in the house of the informant himself, FIR shows that the said cupboard was broke open. When specific query was made to the learned counsel for

the informant as to whether any panchnama was prepared or it was opened in the presence of any independent witness, it was replied that it was opened in the presence of the member of Sanstha and no panchnama/writing is drawn. Once it is admitted by the informant that in absence of applicant or any independent person the cupboard was opened, now at least at this stage it cannot be accepted that the applicant was had kept entire original record etc. in the said cupboard and only two articles were found therein. As regards the allegations about the accepting donation and issuance of receipt is concerned perusal of the investigation papers show that the said receipts pertain to the year 2018 and 2019. There is no dispute about the fact that the applicant was a Secretary of the said Sanstha. If it is a case of the informant that during this period he has collected donation, then no fault can be found in the same unless it is shown that the said amount collected was not deposited in the bank account. There is no *prima facie* material on record to indicate so. It is shocking that offence in question is registered on 19th January, 2023 in spite of lapse of six months therefrom Investigating Officer does not find it necessary to obtain the statement of the bank account of Sanstha in order to ascertain as to whether the amount of collected was deposited therein or not. This speak volumes about the nature of investigating carried out in this case. Suffice it to say at the stage that there is no evidence to show that the amounts so collected under one receipt book as donation are not deposited in account of Sanstha.

6. There is allegation against applicant that he has withdrawn sum of Rs.5 lakhs from the account of the Sanstha. There is no dispute about the fact the account of Sanstha is operated jointly and could not be operated except for the signature of the President, father of informant. In spite of this factual position allegation is made about withdrawal of amount by applicant. This shows that informant is not averse to make false statement. Having regard to *prima facie* the material collected till date during investigation this Court finds no evidence against the present applicant showing his involvement in the crime. Hence application is allowed in terms of interim order dated 26th April, 2023.

(R. M. JOSHI, J.)

ssp