

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

**APPLICATION FOR CANCELLATION OF BAIL NO.148 OF 2022
WITH APPLICATION FOR CANCELLATION OF BAIL NO.149 OF 2022
WITH APPLICATION FOR CANCELLATION OF BAIL NO.150 OF 2022
WITH APPLICATION FOR CANCELLATION OF BAIL NO.151 OF 2022**

**MOHAMMAD MUSHTAQ AHMED S/O MOHAMMAD ALI SHAH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Mr. Sandip R. Sapkal, Advocate for Applicant
Ms. R. P. Gour, APP for Respondent – State
Mr. M. V. Ghatge, Advocate for Respondent No.2 in ACB/149/2022
Mr. Joslyn Menzes, Advocate h/f Mr. P. S. Paranjape, Advocate for
Respondent No.3 in ACB/149/2022
Mr. A. S. Shywal, Advocate for Respondent No.2 in ACB/151/2022

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 15th FEBRUARY, 2023

PER COURT :

1. By these applications filed under section 439(2) of Cr.P.C., applicant seeks cancellation of anticipatory bail granted in favour of accused/respondents in Crime No.186/2022, registered with Kotwali Police Station, Parbhani, for offences punishable under sections 408, 409, 419, 420, 468, 471, 499, 501 r/w 34 of the Indian Penal Code, by the learned Sessions Judge, Parbhani, vide order dated 11/07/2022.
2. Applicant lodged FIR on 21/06/2022, alleging that he is Secretary of Kamel Education Society, Parbhani, which is running

Kamel Urdu Primary and Secondary School at Parbhani. Respondents/accused Nos. 1 and 2, were working as Education Officers at the relevant time. The applicant and Headmistress of the society issued letters dated 01/10/2019 and 28/09/2019 to respondents/accused Nos. 1 and 2 Education Officers for not disbursing salaries of teaching and non-teaching staff for the months July, 2019 and September, 2019, as they were absent from duty. However, all the accused/respondents in collusion with each other intentionally got the salary bills for the said period prepared and disbursed salaries to the teaching and non-teaching staff. While doing so no permission was sought from the Government and they prepared fake stamps, letter pad and committed theft of UDISE code and salary to the tune of Rs.48,25,296/- of secondary school teachers and Rs.26,65,200/- of primary school teachers was disbursed and thereby respondents/accused persons committed cheating and misappropriation of the Government funds. Respondents/accused approached the Sessions Court for seeking anticipatory bail, which is granted by the Sessions Court, Parbhani. Hence the present applications.

3. Heard learned advocate for applicant, learned Additional Public Prosecutor for State and learned advocates for respondents/accused. Perused the investigation papers.

4. It is a matter of record that there are disputes going on between the Management of Kamel Education Society. About 70 cases of civil and criminal nature are pending against applicant /informant and his wife, who is Headmistress.

5. The Sessions Court while allowing the applications has taken into consideration the observations of this Court in Writ Petition No.2630/2020, to the effect that "for more than one year salary was not paid to the teaching and non-teaching staff of petitioner school. Petitioner therein was granted permission to agitate grievance about the regular Headmistress before the Education Officer and the Education officer shall consider the grievance of petitioner on it's own merits, preferably within a period of three months after hearing all the parties concerned." The Sessions Court has observed that it is, therefore, clear that for more than one year salary of the employees was not paid and because of that staff members made several representations, responding to the said representations so made, the then Education Officer (respondent/accused No.1) and Suchita Patekar issued directions from time to time to release salaries. However, wife of informant did not act on the said directions. In this situation respondent/accused No.1 was constrained to authorise Siddiqui Mohammed Sharfuddin (respondent/accused No.4) to prepare

salary bills of teaching and non-teaching staff and to submit the same to Superintendent of Salary and Provident Fund, Parbhani. Directions were given to Superintendent to clear salary bills of teaching and non-teaching staff and thereafter salary was disbursed and it was deposited in the respective accounts of teaching and non-teaching staff.

6. Sessions Court has further observed that trap was laid on the applicant by Anti Corruption Bureau and crime was registered against him. 70 matters are pending against applicant and his wife. Sessions Court has also noted that there is inordinate unexplained delay in lodging the FIR. While allowing application it is observed that respondents have not received any benefit from disbursing salaries of the staff members and hence, the applications were allowed.

7. Investigation papers reveal that offence pertains to documents which are already taken in custody by the investigating officer. The investigation is almost complete and charge-sheet is likely to be filed. Learned Additional Public Prosecutor, at this stage, submits that specimen handwriting and signature of the respondents/accused is necessary in the present case. That can be taken care by issuing appropriate directions.

8. In the facts of the present case, there is no illegality or

perversity in the order passed by the Sessions Court, Parbhani, granting anticipatory bail to the accused/respondents. Since investigation is almost complete, custodial detention of respondents/accused is not necessary in the facts of the present case.

9. For the aforesaid reasons, applications are rejected. Accused/respondents shall attend concerned police station on 25/02/2023 and give specimen signature and handwriting to the investigating officer.

(NITIN B. SURYAWANSHI, J.)