

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO. 1369 OF 2023**

Sameer Suleman Khan ...Applicant

**Vs.**

The State of Maharashtra ...Respondent

Mr. Mahendra N. Sandhyanshiv, for Applicant.

Mr. S. H. Yadav, APP for State.

Mr. M. P. Bagul, HC, Chandwad Police Station, Present.

**CORAM:- N. J. JAMADAR, J.**

**DATED:- 29<sup>th</sup> NOVEMBER, 2023**

**PC:-**

- 1) Heard the learned counsel for the applicant and the learned APP for the State.
- 2) This is an application for pre-arrest bail in connection with C.R. No. 96 of 2023, registered with Chandwad police station, for an offence punishable under Section 409 of Indian Penal Code, 1860 ("the Penal Code").
- 3) The applicant was posted as In-charge Head Master at

Bagwanpura, Urdu school, Chandwad. After the said school was closed, it was incumbent on the applicant to hand over the charge of the said post of Head Master and the relevant record and registers to Smt. Shaikh Saida Yunus, the then Head Mistress pursuant to the directions of the Block Development Officer, Chandwad. However, the applicant had allegedly withdrawn a sum of Rs.25,000/- on 23rd October, 2013 and misappropriated the said amount.

4) An Inquiry was instituted against the applicant. Initially the Inquiry Officer exonerated the applicant vide the enquiry report dated 19th July, 2019. Disciplinary Authority did not agree with the said report and directed a fresh enquiry. In the fresh enquiry, the applicant was found to have committed misconduct. Thus, the Chief Executive Officer, Zilha Parishad, Nashik directed lodging of the FIR.

5) The learned Counsel for the applicant submitted in the enquiry report dated 19th July, 2019, the Inquiry Officer has recorded a categorical finding that none of the charges were proved against the applicant. The Inquiry Officer has considered the material on record and gave reasons in support of the said finding. In the subsequent enquiry also there is no categorical

finding indicating an element of criminality on the part of the applicant. The sum of Rs.25,000/-, which was withdrawn by the applicant, had already been deposited. In fact, in the enquiry report dated 19th July, 2019, it was recorded that to avoid inconvenience and hardship to the students, the applicant had incurred out of pocket expenses.

6) When the application was listed before the Court on 4th May, 2023, this Court had granted interim protection while directing the applicant to join in the investigation.

7) The situation which thus obtains is that there are two enquiry reports. In the first enquiry report, the applicant was completely exonerated. In the subsequent enquiry report, to which the attention of the Court was invited by the learned Public Prosecutor, the Inquiry Officer has found the applicant guilty of certain misconducts. However, in the context of the charge of criminal breach of trust, there is material on record to indicate that the applicant had deposited the amount of Rs.25,000/-, which was withdrawn by the applicant. It is true that the misappropriation for a time only is an offence and the subsequent deposit of the amount by the applicant may not efface the alleged offences. Yet, in the totality of the

circumstances and especially in view of the fact that in the first inquiry report, the applicant was completely exonerated and the offences revolve around documents, custodial interrogation of the applicant does not seem warranted to facilitate further investigation.

8) I am, therefore, persuaded to exercise the discretion in favour of the applicant.

9) Hence, the following order.

**ORDER**

I) In the event of arrest of the applicant in connection with C.R. No. 96 of 2023, registered with Chandwad police station, for an offence punishable under Section 409 of Indian Penal Code, 1860, the applicant be released on bail on executing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

II) The applicant shall co-operate with the investigation and attend Chandwad police station as and when directed by the Investigating Officer or till filing charge-sheet.

III) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

IV) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

V) The application stands disposed.

**[N. J. JAMADAR, J.]**