



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

ANTICIPATORY BAIL APPLICATION NO. 808 OF 2024 WITH
CRIMINAL APPLICATION NO. 2035 OF 2024

1. Suvarna w/o Bhausahab Hole
2. Ulhas s/o Tukaram Kale
3. Rohit s/o Bhausahab Hole
4. Chirag s/o Bhausahab Hole
5. Appasaheb s/o Baban Hole
6. Rohan s/o Appasaheb Hole
7. Manisha Apapsaheb Hole .. Applicants

versus

The State of Maharashtra & another .. Respondents

Mr. N. S. Ghanekar, Advocate for the Applicants.

Mr. S. B. Pulkundwar, APP for the State.

Mr. S. V. Natu, Advocate for Applicant in Criminal Application No. 2035/2024.

CORAM : R. M. JOSHI, J.

DATE : 29th JULY, 2024.

ORDER :

1. At the outset, Criminal Application No. 2035/2024 filed by the informant to assist learned APP is allowed.

2. Applicants are apprehending arrest in connection with Crime No. 0337/2024 registered with Shrigonda Police Station, Dist. Ahmednagar for the offences punishable under Section 420, 468, 471 read with Section 34 of Indian Penal Code.

3. Sunilkumar Kalikprasad Tiwari, claims himself to the Chairman of Swami Vivekanand Educational and Rural Development Charitable Foundation (Trust), Pargaon Sudrik, Tq. Shrigonda, Dist. Ahmednagar. It is his contention that from 23.06.2016, he was working in the managing committee of the trust as Vice Chairman. He resigned from the said post on 05.02.2021 and from 09.09.2021 he is Chairman of the said trust. He has also stated about other members of the committee being elected to manage affairs of the trust. It is alleged that on 05.02.2021, then Chariman Bhausahab Baban Hole had resigned from chairmanship as well as membership of the trust. Similarly, other members of the managing committee also tendered resignation which was accepted by the Assistant Charity Commissioner, Ahmednagar. It is further alleged that on 09.08.2023, Applicant No. 1 Suvarna Bhausahab Hole had submitted bogus documents to the Assistant Charity Commissioner for recognizing them as the managing trustees of the trust. An

application was filed bearing No. 786/2023 before the said authority along with bogus affidavits of informant, his wife and also affidavits of other managing committee members. It is alleged that those affidavits bear bogus signatures of informant and others. Another application came to be filed bearing No. 787/2023 whereby it was prayed to the Assistant Charity Commissioner for deletion of names of informant and other managing committee members and replace them with the names of applicants herein. Since the said fact was revealed to the informant, present First Information Report came to be lodged.

4. At the outset, learned counsel for the applicants submits that since the proceedings are pending before the Assistant Charity Commissioner, it was not open for the informant to file First Information Report and that it is within powers of the said authority only to take cognizance of such alleged fabrication and to lodge complaint in this regard. This submission is opposed by learned counsel for the informant by placing reliance on judgment of Full Bench of the Hon'ble Supreme Court in case of Iqbal Singh Marwah and another vs. Meenakshi Marwah and another, **(2005) 4 Supreme Court Cases 370**, wherein distinction is made with regard to the

fabrication of record in the proceedings and fabricated documents being relied upon in a proceeding. Reference is also made to the latest judgment of Hon'ble Supreme Court in case of Ashok Gulabrao Bondre vs. Vilas Madhukarrao Deshmukh and others, **2023 9 SCC 539**, wherein it is held that the bar contained in Section 195(1)(b)(ii) of Code of Criminal Procedure is not applicable to a case where forgery of document was committed before the document was produced in a Court. Having regard to this provision of law, objection raised by applicants with regard to recording of First Information Report by the informant stands rejected.

5. On merit, learned counsel for the applicants submits that there are two fractions in the management of the trust and that both sides keep on making allegations against each other. It is submitted that applicants have complained to the authority with regard to the bogus documents and bogus proceeding conducted by informant's side. It is his submission that the issue as to whether documents are fabricated or not is subjudice before the Assistant Charity Commissioner and as such there is no reason or justification to take cognizance of the report at this stage. It is his submission that this is not a case wherein custodial interrogation of the

applicants is necessary. By drawing attention of the Court to the contents of the First Information Report, it is argued that there are no allegations against applicant No. 2 to 7 with regard to creation/fabrication of documents and as such their custodial interrogation is not necessary. Even in case of applicant No. 1, it is contended that she is a lady and medical practitioner and as such she is entitled for pre-arrest bail.

6. Learned APP and learned counsel for the informant opposed said submissions. It is their contention that prima facie there is evidence on record to show that application filed before the Assistant Charity Commissioner is on the basis of bogus documents such as bogus resolutions, fabricated affidavits etc. By relying upon statements recorded during the course of investigation, it is submitted that the Notary before whom affidavits are claimed to have been executed has denied notarisation of the documents. It is pointed out from CDRs of the other managing committee members that they were not even present at Shrigonda at the relevant time to execute affidavits. As far as applicant No. 3 is concerned, it is submitted that the CDRs of this applicant show that on the date of alleged crime, he was at a distance of 240 kms from Shrigonda. It is

therefore their submission that applicant No. 1 as well as other applicants have committed forgery and in order to ascertain as to the manner in which the fabricated documents are prepared, their custodial interrogation is necessary.

7. Perusal of the First Information Report indicates that there are allegations against applicant No. 1 Suvarna that she has fabricated documents and submitted applications to the Assistant Charity Commissioner seeking deletion of names of informant and others and replacing them with the names of applicants. Prima facie, perusal of investigation papers indicates that the allegation of fabrication and creation of documents is essentially against applicant No. 1. Specific query was raised to learned APP to point out any material from the papers of investigation which would indicate involvement of other applicants except applicant Nos. 1 and 3 in fabrication or creation of documents. At least at this stage, no such material was brought to the notice of this Court. Liberty of these applicants was protected. They co-operated investigating agency and that there is no allegation of mis-use of liberty of them. In such circumstances, application deserves to be allowed qua applicant Nos. 2 and 4 to 7.

8. As far as applicant No. 1 is concerned, merely because she is a lady, her liberty cannot be protected when there is prima facie evidence on record to indicate that she is instrumental/has fabricated documents and affidavits. Since the notary public has denied in his statement about stamp of notary imposed upon these documents to be his own, her custodial interrogation is necessary in order to ascertain as to how forgery has been done and bogus documents are created. It is pertinent to note that prima facie crime has been committed to gain control of the trust which runs educational institution. Once involvement of this Applicant is apparently found in connection of serious crime, she is not entitled to anticipatory bail.

9. Insofar as applicant No. 3 is concerned, there is prima facie material on record to indicate that on the date of the alleged meeting though his signature was found on the record, he was not at Shrigonda but was at a place about 240 kms away from Shrigonda. Thus, prima facie, it can be said that this applicant was also party to creation of false/bogus documents for the purpose of their submission before the Assistant Charity Commissioner, ultimately to gain control over Trust/Educational Institution. Since his

involvement is also prima facie seen in this crime, his application also deserves to be rejected. Hence, the following order :-

ORDER

- (i) Application is partly allowed in terms of interim order qua applicant Nos. 2 and 4 to 7.
- (ii) Application stands dismissed qua applicant Nos. 1 and 3.

(R. M. JOSHI)
Judge

dyb

LATER ON :

1. After pronouncement of order, learned counsel for applicant Nos. 1 and 3 seeks extension of the interim relief for a period of four weeks.
2. Learned APP and learned counsel for the informant opposed extension of interim order.
3. Since by way of interim order, liberty of the applicant Nos. 1 and 3 is protected by this Court, to enable them to move the

Hon'ble Supreme Court, interim order stands extended qua applicant
Nos. 1 and 3 for a period of four weeks from today.

(R. M. JOSHI)
Judge

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