IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application No.3669 of 2015

Vikhar Khan S/o. Mabood Khan. .. **Applicant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. Atta-Ur-Rehman, Advocate for applicant.

Shri. P.N. Muley, Additional Public Prosecutor, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 21st AUGUST 2015

ORDER:

1) The application is filed for relief of anticipatory bail. Both the sides are heard.

2) Previous application filed for similar relief was withdrawn when this Court had expressed that the Court was not inclined to grant the relief and said order was made on 19-1-2015. In view of this circumstance, it was necessary for the applicant to show that there has been

change in circumstances. As the applicant had preferred not to take reasons for refusal in the order, today this Court is giving reasons for refusal of the relief of anticipatory bail.

3) Charge sheet is filed against the applicant for offences punishable under sections 363, 505(2), 149 of Indian Penal Code, section 66-A of Information Technology Act and sections 3(1)(E), 3(2) (VA) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014. The learned counsel for the applicant submits that at the relevant time the Ordinance had lapsed and so provision of the aforesaid sections under the Ordinance cannot be used and that was the main hurdle in the way for the applicant to get the relief. He placed reliance on a case reported as **AIR 2015 SC 1523 (Shreya Singhal v. Union of India).** He submits that provision of Section 66-A of the Information Technology Act is struck down by the Hon’ble Apex Court and for this reason also the applicant is entitled to the relief of anticipatory bail.

4) Even if the aforesaid submission made by the learned counsel is accepted as it is, this Court holds it is such a serious case that thorough investigation is required in this case. There are allegations against the applicant and others that they forcibly took away one Sagar, they detained him in a field, they gave beating to him and they compelled him to say something which is sufficient to create hatred between persons of two communities and which was likely to provoke the religious feelings and create tension in the society as such. They had recorded the so called disclosures made by Sagar and this clip was circulated in the society. Many persons saw the clip and they started making inquiry. Then Sagar was traced by police and his statement came to be recorded.

5) The material collected shows that Sagar, a Hindu has stated before police that he had converted himself and had become Muslim. For creating tension between two communities all accused created some record by extracting some disclosures from the mouth of Sagar. This Court has gone through the transcript of the said clip prepared by police and it shows that it was

extracted from Sagar that some persons of Hindu religion had created a group and they were trying to spread rumors in Hindu community that Muslim boys were deceiving Hindu girls in the name of "*Love Jihad*". This Court is avoiding to quote the portion from the transcript.

6) In the statement recorded by police Sagar has taken name of the present applicant and said conversation was recorded in the field of applicant. Thus in one way present applicant was behind the aforesaid incident. Such instances are increasing day by day and the persons like applicant from both the communities are creating tension in the society in the name of religion. Such instances cannot be taken lightly. They need to be interrogated thoroughly to find out as to whether there are other persons behind the incident. Even if charge sheet is filed against other accused, it cannot be said that investigation is completed. In such case investigation cannot be treated as completed unless and until persons like present applicants are arrested, relevant material is collected by police and all the persons involved are booked in such case.

7) Learned counsel for the applicant placed reliance on one case reported as **2008 All MR (Cri.) 2132 (Shashikant v. State of Maharashtra)** decided by this Court and submitted that in that case due to circumstance like giving FIR late, relief of anticipatory bail was granted. Facts and circumstances of each and every case are always different.

8) Police took some time and Sagar was to be traced. This Court holds that it is not a fit case to grant the relief of anticipatory bail. The trial Court needs to consider as to whether provision of Section 153-A of the Indian Penal Code can be used.

9) In the result, the application is rejected.

Sd/-
(T.V. NALAWADE, J.)

rsl