

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

Criminal Application No. 5723 of 2015

Ganesh s/o. Digambar Kharat,
Age : 35 years,
Occupation : Service,
R/o. Bangali Pimpla,
Taluka : Georai,
District : Beed.

.. Applicant.

versus

1. The State of Maharashtra,
Through Police Station,
Parli (City), District : Beed.

2. The Superintendent of Police,
Beed, District : Beed.

.. Respondents.

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Mr. S.J. Salunke, Advocate, for the applicant.

*Mr. S.J. Salgare, Additional Public Prosecutor, for
respondent nos.1 and 2.*

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CORAM : A.M. BADAR, J.

DATE : 3RD NOVEMBER 2015

[Diwali Vacation]

PER COURT :

1. By this application under Section 438 of the Code of Criminal Procedure, 1973, the applicant / accused in Crime No. 10/2014, registered

with Police Station, Parli-Vaijnath (City) [District : Beed], for the offences punishable under Sections 420, 465, 468, 469, 471 read with Section 34 of the Indian Penal Code, has prayed for pre-arrest bail.

2. Heard the learned Counsel for the applicant / accused. He vehemently submitted that the applicant / accused is working as Senior Clerk with Chatrapati Sambhaji Vidyalaya, Parli-Vaijanath, run by Samarth Shikshan Prasarak Mandal, Shirasmarg [Taluka : Georai, District : Beed]. In submission of the learned Counsel for the applicant, as such the applicant is in no way concerned with the submission of proposal for transfer of the school from Parli-Vaijanath to Wadwani (District : Beed). The entire exercise was done by the Secretary of the Society as well as Head Master of the school. The learned Counsel for the applicant pointed out undated letter No.9 issued by Secretary of the Society and Head Master of the School and addressed to the School Education Department seeking permission for transfer of the school. He has also drawn my attention to the no objection certificate dated 19-6-2012 allegedly issued by the Municipal Council, Parli-Vaijanath, which according to the prosecution, is a forged document. The learned Counsel for the applicant submitted that the signature of the applicant is not there

on this document also and the same is signed by the Head Master of the school. The learned Counsel for the applicant further submitted that there was heavy litigation in respect of transfer of the school from Parli-Vaijanath to Wadwani and Writ Petition is also pending. Lastly he contended that there is malice towards the applicant and management has tried to oust him by declaring him surplus. Therefore, according to the learned Counsel for the applicant, he is falsely implicated in the crime in question. The offences are punishable with the imprisonment which may extend up to 7 years and, therefore, the Investigating Officer ought to have issued notice to the applicant and on coming to the conclusion that his arrest is necessary, the applicant should have been arrested by the Investigating Officer.

3. Per contra, according to the learned Additional Public Prosecutor, during the course of investigation of this offence, from the other accused i.e. Secretary of the Society and Head Master of the School, complicity of the applicant in the crime in the question is revealed. According to the learned Additional Public Prosecutor, the job of preparation of proposal for transfer of the school was entrusted to the applicant, he being Senior Clerk with the school in question. The learned

Additional Public Prosecutor pointed out the no objection certificate dated 19-6-2012 allegedly issued by Municipal Council, Parli-Vaijanath as well as no objection certificate allegedly issued by Grampanchayat, Wadwani, and contended that both these documents are false documents forged for seeking transfer of the school. He further pointed out no objection certificate allegedly under signature of Village Development Officer and submitted that the handwritten portion thereof is in the handwriting of the applicant. Therefore, according to the learned Additional Public Prosecutor, application deserves to be rejected.

4. The applicant is working as Senior Clerk with the school in question. The FIR came to be lodged by the Superintendent of Municipal Council, Parli-Vaijanath, with an averment that no objection certificate under Outward No. 2933/12/13, dated 19-6-2012, used for transfer of school from Parli-Vaijanath to Wadwani was never issued by the Municipal Council, Parli-Vaijanath and it bears forged signature of the Chief Officer. Photo-copy of papers of investigation shows that another certificate issued by Grampanchayat office of Grampanchayat, Wadwani, was also used and it is also stated to be forged no objection certificate. Handwritten portion of yet another certificate dated 19-5-2012, under

signature of Village Development Officer is stated to bear handwriting of the applicant.

5. The offence alleged against the applicant is serious. As yet, rubber stamp and seal of the Municipal Council is not recovered. During the course of investigation, complicity of the applicant in the crime in question is revealed. Thus, personal liberty of the applicant must surrender for fair, proper and expeditious investigation of the crime in question which has greater ramification and effect on the society. In this view of the matter, I am of the considered view that the custodial interrogation of the applicant is required in this crime.

6. I do not find any force in contention of the learned Counsel for the applicant, that the applicant has no role to play in the crime in question or the management is harbouring malice against him. Hence, I pass the following order :-

ORDER

(a) Application is rejected.

(6)

Cri. Appln. No. 5723 of 2015

(b) Needless to mention, that the above observations are prima facie observations of this Court, limited only for the purpose of deciding application under Section 438 of the Code of Criminal Procedure, 1973.

(A.M. BADAR)
JUDGE

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