

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 255 OF 2015

Dilip Pardhi. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 243 OF 2015

Dyanraj Yashwant Nikam. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. A.P. Mundargi, Sr. Counsel i/b. Mr. J.J. Bardeskar, advocate for
Applicant in ABA 243/15.

Mr. S.V. Marwadi i/b. Mr. Mehul Shah, advocate for applicant in ABA
255/15.

Ms. Rutuja Ambekar, APP for State.

Mr. Sandeep Badgajar, PSI, Dongri Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JUNE 30, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the learned
APP for State. Perused the papers.

2 These are the applications under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in M.E.C.R. No. 4 of 2014 registered at Dongri Police Station, Mumbai on 22/11/2014 for offence punishable under Section 417, 420, 465, 466, 468, 471, 120(B) of the Indian Penal Code.

3 It is the case of the prosecution that on 22nd November, 2014 one Amit Sakharkar filed a complaint before the Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon, Mumbai alleging therein that the present applicant namely Dhanraj Yashwant Nikam had contested the election to the Municipal Corporation from the reserve category showing his caste as Hindu Gavit by making interpolation in the school record. It is alleged that on the earlier occasion, he had contested election from the open category as Hindu Maratha. At the end, the complainant has alleged that the police had indulged into dereliction of their duties and had not paid any heed to

the forgery committed by the present applicant in connivance with the school authorities and therefore, he had filed a complaint before the learned Magistrate. Learned Additional Chief Metropolitan Magistrate by an order dated 17th October, 2014 had observed that the case requires investigation by police and hence, Dongri police station was given direction under Section 156(3) of the Code of Criminal Procedure, 1973. Pursuant to the said directions, M.E.C.R. No. 4 of 2014 was registered at the police station and investigation was set in motion. Hence, the applicants apprehend their arrest.

4 The learned Senior Counsel appearing for the applicant Dyanraj Yashwant Nikam in ABA 243/15 submits that initially the Hon'ble Division Bench of this Court by a judgment and order dated 4th May, 2012 had heard a group of petition in respect of caste validity claim of several claimants. The Hon'ble Division Bench had passed an order to the effect that the Government Resolution dated 30th July, 2011 which was under challenge was quashed and set aside. "The committee constituted vide resolution dated 30/7/2011 is not

backed by law and is contrary to the judgment of the Hon'ble Apex Court in the case of **Madhuri Patil V/s. Additional Commissioner, Tribal Development reported in 1997 (5) SCC 437** and therefore, validity certificates issued by such committee do not have force in law.” The Hon'ble Division Bench declared that the validity certificates issued by the Scrutiny Committees without calling for the report from vigilance cell, being a mandatory requirement of law, cannot be considered as valid in the eyes of law and suffer from jurisdictional error which goes to the root. The said judgment and order was challenged by the State of Maharashtra before the Hon'ble Apex Court and the Hon'ble Apex Court by an order dated 3/7/2012 has been pleased to stay the judgment and order passed in Writ Petition No. 853 of 2012 & ors.

5 Reverting back to the facts of the present case, it seen that the complainant who has taken all the efforts, has not approached the caste scrutiny committee. The learned APP upon instructions from the Investigating Officer who is present in the court makes a

statement that the complainant in all probabilities has not approached the caste scrutiny committee, which would be seized with the validation of the caste validity certificate. It appears from the record prima facie that the complainant has filed complaint before the Magistrate and pursuant to the direction under Section 156(3) of the Code of Criminal Procedure, 1973, the matter is under investigation.

6 Section 11(2) of the Caste Certificates (Issuance and Verification) Laws in Maharashtra contemplates that no courts shall take cognizance of offence punishable under this section except complaint in writing made by the scrutiny committee or by any other officer duly authorised by the scrutiny committee for this purpose. In the eventuality that the certificate appears to be forged and fabricated, it would be within the powers of the caste scrutiny committee to file a complaint before the competent court.

7 The learned Senior Counsel rightly submits that this appears to be politically motivated. That the complainant had lost the election

in the year 2012 and the present applicant in Criminal Application No. 243 of 2015 was declared as returned candidate since the issue of validity of the said certificate is seized before the caste scrutiny committee. The investigation by the police or rather custodial interrogation of the applicant would be unwarranted.

8 The allegation against the applicant in ABA 255 of 2015 is that the school leaving certificates were forged by him in connivance with the returned candidate i.e. the applicant in Criminal ABA No. 243 of 2015 to show that the said candidate belongs to reserve category. It is also submitted that Election Petition No. 80 of 2012 challenging the election of the applicant in Criminal ABA No. 243 of 2015 is filed by the complainant in Small Causes Court and is pending.

9 In view of these observations made hereinabove, this Court is of the opinion that the applicants deserve pre-arrest bail on an undertaking that they would cooperate to the investigating agency to the best of their capacity.

10 The observations made hereinabove are prima facie in nature. The same shall not be considered while deciding application for discharge or quashing of FIR or at the time of hearing. The concerned Trial Court shall decide the matter uninfluenced by the above observations in accordance with law.

11 Hence following order is passed.

ORDER

(i) The applications are allowed. The interim relief granted in favour of the applicants vide order dated 20th February, 2015 is hereby confirmed.

(ii) In the event of arrest, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each and one or two sureties in the like amount.

(iii) The applicants shall report the concerned police station as and when called by the Investigating Officer and cooperate with the investigating agency to the best of their capacity.

12 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)