

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

CRIMINAL APPLICATION NO. 328 OF 2016

1. Nilesh s/o Dattatrya Hire,
Age: 35 years, Occ: Service (Army),
R/o. 1642, Pnr Coy attd with 100 RCC
(GREF), C/o. 99 APO, Mohan City,
Nagaland.
 2. Babasaheb s/o Jagannath Jadhav,
Age: 42 years, Occ: Service (Peon),
R/o. Loni (Kh), Tq. Vaijapur,
Dist. Aurangabad.
 3. Gokul s/o Bajirao Jadhav,
Age: 30 years, Occ: Service (Teacher),
R/o. Loni (Kh), Tq. Vaijapur,
Dist. Aurangabad
- ...Applicants

versus

The State of Maharashtra,
Through the Police Inspector,
Shivoor Police Station,
Tq. Vaijapur, Dist. Aurangabad.

...Respondent

.....
Mr. Rahul R. Karpe, Advocate for applicants
Mr. S.J. Salgare, A.P.P. for respondent/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 18th JANUARY, 2016

ORAL ORDER :

The applicants are seeking pre-arrest bail in Crime No.I-
166 of 2015 registered with Shivoor Police Station, District

Aurangabad, for the offence punishable under Sections 307, 395, 323, 504, 506, 147, 148, 149, 427, 435 of the Indian Penal Code and under Section 3(i)(ii)(x)(xi)3(2)(iii)(iv)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1949.

2. The prosecution story in brief are as under :

The applicants herein formed unlawful assembly and have committed an offence with common intention.

3. Learned Counsel for the applicants submits that, applicant No.1 is falsely implicated in the crime and has placed reliance upon the communication issued by Officer Commanding 100 RCC (GREF) dated 23/12/2015 certifying that applicant No. 1 Nilesh attached with the said Unit of GREF was on duty on the date of offence in question. Learned Counsel for the applicants, as such, submits that applicant No.1 Nilesh is falsely implicated in the crime in question.

4. Apart from above, according to him, perusal of F.I.R. speaks of general allegations against the applicants. No specific role is attributed to the applicants. Relying upon the judgment of the Apex Court in the matter of **Siddharam Satlingappa Mhetre vs. State**

of **Maharashtra & ors.**, reported in **(2011) 1 SCC 694**, he would submit that custodial interrogation of the applicants is not necessary. He would then relying upon the judgment of the Apex Court in the matter of **Mukesh Kumar Saini vs. State (Delhi Administration)** reported in **2002 ALL MR (Cri.) Journal 41** would urge that in case of absence of specific accusation alleged against the accused, an offence punishable under Section 34 of Indian Penal Code cannot be pressed into service. He would submit that omnibus statement that all the accused-applicants have uttered allegedly words based on the caste is not sufficient/enough to register the crime and inviting bar under Section 18 of the Atrocities Act for entertaining pre-arrest bail.

5. Learned A.P.P. while strenuously opposing application would urge that custodial interrogation is very much necessary, particularly in the light of allegations and investigation carried out against the applicants. He would submit that there are eye witnesses to the incident in question and offence committed against the applicants is serious punishable with life imprisonment. He would then urge that if the applicants are released on bail, same is likely to disturb law and order situation in the village and has prayed for rejection of the bail application.

6. With the assistance of learned A.P.P., I have perused the

investigation papers. Admittedly, the victim has suffered simple injuries. The applicants claimed to be permanent resident of village and admittedly, applicant No. 1 was not present in the village when the incident in question has occurred, as is apparent from the certificate to that effect issued by Army authorities. Since the applicant Nos. 2 and 3 are peon and teacher, working in the school and having immovable property, there is no likelihood that the applicant would run away from the process of law.

7. In my opinion, custodial interrogation of the applicants, particularly in the above back ground, is not necessary. As such, the application stands allowed, particularly keeping in mind the law laid down by the Apex Court in the matter of **Siddharam Satlingappa Mhetre** (supra) and **Mukesh Kumar Saini** (supra). Hence, following order.

In the event of arrest, the applicants be released on bail, in Crime No.I-166 of 2015 registered with Shivoor Police Station, District Aurangabad, for the offence punishable under Sections 307, 395, 323, 504, 506, 147, 148, 149, 427, 435 of the Indian Penal Code and under Section 3(i)(ii)(x)(xi)3(2)(iii)(iv)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1949, upon executing P.R. bond of Rs.15,000/- with one surety in the like

amount, by each of them. The applicants shall attend the concerned police station everyday from 21st January to 25th January, 2016 in between 10-00 a.m. to 12-00 noon and thereafter as and when called by Investigating Officer. The applicants shall not enter in the village till 29/01/2016 but for co-operation in investigation.

8. The application stands allowed in above terms.

[N.W. SAMBRE, J.]