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

CRIMINAL APPLICATION NO. 511 OF 2016

1. Kachru s/o Shriram Kadam
2. Laxman s/o Amrut Hambarde ...APPLICANTS

VERSUS

The State of Maharashtra ...RESPONDENTS

Mr G. A. Gadhe, Advocate for applicants;
Mr S.P. Deshmukh, Public Prosecutor for respondents;

CORAM : N.W. SAMBRE, J.

DATE : 15th February, 2016

ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicants are seeking pre-arrest bail, in connection with C.R. No.88 of 2015, registered with police station, Shivaji Nagar, Nanded, for offences punishable under sections 294, 323, 504 read with section 34 of the Indian Penal Code; under section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under section 7 (1) (d) of the Protection of Civil Rights Act.

2. C.R. No.88 of 2015 came to be registered, pursuant to the first information report lodged by Advocate Tatyrao Kamble, who claims that when he had been to the office of the Assistant Charity Commissioner, Nanded, the present applicants assaulted him and uttered caste based insulting attributions.

(2)

3. In the above background, learned Counsel appearing on behalf of the applicants, while trying to make out a case for grant of pre-arrest bail, would urge that the applicants are falsely implicated in the crime in question. Learned Counsel then would invite my attention to the fact that the education society, in relation to which the dispute for change report is pending before the Assistant Charity Commissioner under section 22 of the Bombay Public Trusts Act, applicant no.1 Kachru happens to be the real brother of Chandrakant Kadam (party before the Assistant Charity Commissioner), both born to their father Shriram. There exists a dispute as regards managing affairs of the said education society, in which applicant no.1 is working as a Clerk. It is further claimed that, it is at the behest of Chandrakant, the real brother of applicant no.1, false case is filed against the applicants. He, therefore, prayed to allow the application.

4. Learned Addl. Public Prosecutor, while trying to oppose the bail application, would urge that since the offence is alleged to have been committed under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, bar under section 18 of the said Act will operate. He would then urge that looking to the background of the case as has been alleged in the first information report, custodial interrogation of the applicant is necessary. Thus, he prayed to reject the application.

(3)

5. With the assistance, I have perused the investigation papers.

6. The investigation depicts that the officials from the office of the Assistant Charity Commissioner are not confirming the happening of such an incident, i.e. altercation between the complainant and the applicants and utterances as has been alleged by the complainant in the case in hand. Apart therefrom, it is required to be noted that Chandrakant - the real brother of applicant no.1 has made a statement in favour of the prosecution case and against the applicants, who appears to be rival of applicant no.1 in the trust matter. However, the fact remains that there appears to be a dispute between applicant no.1 and Chandrakant, in the matter of management of affairs of the institution. Thus, a case as sought to be put-forth, that Chandrakant has set-up a false case against the present applicants, cannot be ruled out.

7. The investigation papers, in my opinion, do not support the case of the complainant in its entirety. The caste based insulting attributions against the complainant is claimed to have been uttered by both the applicants without specifying the role of each of the applicants. In this background, in my opinion, custodial interrogation of the applicant is not necessary.

8. In the above background, in my opinion, it will be appropriate to grant pre-arrest bail to the applicants. I, therefore, pass following order :-

(4)

In the event of arrest of the applicants, in connection with C.R. No.88 of 2015, registered with police station, Shivaji Nagar, Nanded, for offences punishable under sections 294, 323, 504 read with section 34 of the Indian Penal Code; under section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under section 7 (1) (d) of the Protection of Civil Rights Act, they be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

The applicants shall attend the concerned police station initially from 25th to 27th February, 2016, between 10.00 a.m. and 12 noon and thereafter as and when called by the Investigating Officer.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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