

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

CRIMINAL APPLICATION NO. 675 OF 2016

Baba Qureshi s/o Manna Qureshi,
Age: 52 years, Occu: Business,
R/o 5-3-112, Baba Ashur Khana,
Aurangabad,
Taluka and Dist. Aurangabad

...Applicant

versus

The State of Maharashtra & anr.

...Respondents

WITH

CRIMINAL APPLICATION NO. 888 OF 2016

Ferozkhan s/o Samsherkhan

...Applicant

versus

The State of Maharashtra & anr.

...Respondents

.....

Mr. Rajendra S. Deshmukh, Advocate for applicant
Mr. M. B. Bharaswadkar, A.P.P. for respondent/State
Mr. S. P. Tilve, Advocate to assist A. P. P.

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CORAM : N.W. SAMBRE, J.

DATE : 17th FEBRUARY, 2016

ORAL ORDER :

This application is for grant of pre-arrest bail in Crime No. 871 of 2015 registered on 14/10/2015 with Kranti Chowk Police Station, District Aurangabad for the offence punishable under Section 397 read with Section 34 of the Indian Penal Code, for the alleged incident of the same date.

2. The prosecution story against the present applicant is that the applicant assaulted one Ferozkhan, with whom the present applicant has differences over the control of one of the trust. The prosecution has investigated the matter in question and it is noted that there is specific role attributed to the present applicant of use of knife in the commission of crime. The investigation in the matter is complete and charge sheet is filed. The charge sheet against the present applicant is filed under Section 299 of Code of Criminal Procedure, as the present applicant is not traceable.

3. In the above background, while trying to make out a case for grant of pre-arrest bail, Mr. R.S. Deshmukh, learned Counsel for the applicant would strenuously urge that the applicant is falsely implicated in the crime in question. So as to substantiate his contention, he has invited my attention to the order passed by the Wakf Tribunal in exercise of powers under Sections 69 and 32 of the Wakf Act framing scheme in relation to the wakf property in favour of the complainant which was upset in Wakf Appeal No. 05 of 2013 at the behest of present applicant. He has invited my attention to the fact that the complainant Ferozkhan is respondent No. 10 to the said proceedings before the Wakf Tribunal. According to him, this Court has also upheld the said order. The Apex Court in S.L.P. has granted

stay in favour of complainant. He would invite my attention to the order dated 02/09/2015 passed by learned Magistrate in exercise of powers under Section 156(3) of Code of Criminal Procedure. The second submission of learned Counsel for the applicant is that the applicant has image in the society and enjoys goodwill in the community. He would submit that the applicant held immovable property in the city and being office bearers of renowned trust in the city, there is hardly any likelihood of running away from the process of investigation. He would then urge that protection needs to be granted to the applicant, particularly in the background of fact that the scheme for regulating the wakf property is already under consideration at his behest.

4. Based on investigation papers, he would urge that another accused who is named in the F.I.R. was already arrested and amount and weapon used in the crime in question is already seized from him. In this background, he would urge that as investigation is complete, custodial interrogation of the applicant is not necessary.

5. Learned A.P.P. opposed the application for bail on the ground that filing of the charge sheet under Section 299 of Code of Criminal Procedure against the present applicant, according to him, speaks voluminous about conduct of the applicant, as he is running

from the process of Court and law. He would then urge that there is specific role attributed to the applicant of use of knife in the commission of crime in question and medical evidence co-relates with what has been stated in the F.I.R. He would then urge that there are eye witnesses to the incident and as such, custodial interrogation of the applicant is necessary and prayed for rejection of the bail application of the applicant.

6. The complainant has moved application to assist the prosecution, which for the reasons stated in the application, stands allowed.

7. Having bestowed my thought to the submissions made, it is required to be noted that F.I.R. came to be lodged on 14/10/2015 i.e. on the very day of the incident. The F.I.R. in specific terms attributes the act of active participation of the applicant in the crime in question and the applicant has assaulted Ferozkhan with knife causing grievous injury.

8. Apart from above, there are eye witnesses to the incident in question. The fact that the applicant claims to be a person good standing in the society, if is to be accepted, this Court must take note of the fact of filing of the charge sheet against the applicant

pursuant to the provisions of Section 299 of Code of Criminal Procedure.

9. The litigation in between the applicant and complainant, if considered, it is not that the complainant is only party to the litigation. There appears to be others, who are also claiming to be right to administer wakf property, in my opinion, same has hardly any bearing over the right of present applicant to claim pre-arrest bail in the matter.

10. In the above background, it could be easily inferred that there is strong *prima facie* case against present applicant. In my opinion, custodial interrogation of the present applicant is necessary. As such, the application fails, stands rejected.

[N.W. SAMBRE, J.]