

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2848 OF 2016

- 1] Sugriv Prakash Garde,
Age : 28 years, Occupation – Service,
R/o. At present Bodhegaon,
Tq. Parali (V), Dist. Beed
 - 2] Hanumant @ Balu Prakash Garde,
Age 27 years, Occupation – Agriculture
R/o Undri, Tq. Kaij,
Dist. Beed
 - 3] Angad Prakash Garde,
Age – 25 years, Occu.: Education,
R/o At present Vasantryao Naik
Marathwada Agricultural
University Campus, Parbhani,
Dist. Parbhani
 - 4] Prakash Raghunath Garde,
Age : 65 years, Occu.: Agriculture,
R/o. Undri, Tq. Kaij,
Dist. Beed
- .. Applicants

Vs.

- 1] The State of Maharashtra
Through Police Station,
Yusuf Wadgaon, Tq. Kaij,
Dist. Beed
 - 2] The Superintendent of Police,
Beed, Dist. Beed
- .. Respondents

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Mr. S.J. Salunke, Advocate for the applicants
Smt. R.P. Gour, APP for the respondent-State

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CORAM : N.W. SAMBRE, J.

DATED : 09/06/2016

ORAL ORDER :

Heard.

2. The applicants are seeking pre-arrest bail in Crime no. 27 of 2016 registered at Yusuf Wadgaon Police Station, Tq. Kaij, Dist. Beed for an alleged incident dated 23/3/2016.

3. The FIR came to be lodged on April 24, 2016 for the offences punishable under section 354(1)(A), 323, 504, 506, 34 of the Indian Penal Code and under section 3(1)(x), 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4. Perused the contents of the FIR. Learned counsel for the applicants Shri Salunke would submit that upon perusal of the contents of the FIR, it can be inferred that the probability of alleged offence is completely negative, as it is claimed in the FIR

that all the accused persons have uttered the insulting words at the same time against the complainant. He would rely on the judgment of this Court in the matter of *Shashikant Ramhari Tambe and others Vs. State of Maharashtra 2008 (0) BCI 418*. Paragraph nos.3, 4 and 5 of the said judgment are worth referring to, which reads thus :-

"3. The case of the complainant is that on 19.5.2008 at about 2:00 p.m. one Sou. Prabhavati Tambe came and abused her with reference to her caste. Thereafter she went away. Thereafter at 6:30 p.m., seven persons including the applicants came to the field of the complainant and from a distance, all of them abused her with reference to her caste. It is also stated that one other accused Hanumant assaulted her at that time. No injury certificate has been produced by the prosecution.

4. The FIR has been lodged on 27.5.2008 i.e. one week after the incident. There is inordinate delay in lodging the FIR. No explanation for the delay has been given by the complainant. This delay raises grave doubt in the mind regarding the veracity of the complainant. Moreover, on perusal of the complaint, it is seen that the complainant has made general allegations against all the seven accused persons that they abused her with reference to her caste.

5. Useful reference may be made to a decision of the Supreme Court in the case of Mukesh Kumar Saini Vs. State (Delhi Administration) reported in 2002 ALL MR (Cri) JOURNAL 41. In the said case, it was observed that there must be specific accusation alleged against each of the accused and Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating word may not be enough. In the present case there is no specific accusation alleged against each of the accused. Looking to the above facts, I am inclined to grant anticipatory bail to the applicants."

5. In my opinion, the claim, as is put forth by Shri Salunke, needs to be granted taking into account the ratio of above referred judgment. Perusal of the judgment would show that the facts of the present case are squarely covered by the said judgment. In my view, false implication cannot be ruled out in the offence, particularly under section 354(1)(A) of the Indian Penal Code and the other offences are bailable.

6. In this background, in my opinion, the application needs to be allowed. Hence, the following order:-

7. In the event of the arrest of the applicants in Crime no.27 of 2016 registered with Yusuf Wadgaon Police Station, Tq. Kaij, Dist. Beed for the offences punishable under section 354(1)(A), 323, 504, 506, 34 of the Indian Penal Code and under section 3(1)(x), 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, each of them be released on bail, upon their executing P.R. bonds in the sum of Rs.15,000/- (Rs. Fifteen Thousand) each with one surety each in the like amount.

8. The applicants shall attend the concerned Police Station on 17th and 18th June, 2016 between 10 am and 12 noon and thereafter as and when called.

9. The applicants shall not tamper with the prosecution evidence in any manner.

10. Criminal Application stands allowed accordingly.

[N.W. SAMBRE]
JUDGE

arp/-