

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

Criminal Application No. 3343 of 2016

District : Ahmednagar

Shoyab @ Shoif s/o. Akil Shaikh,
Age : 26 years,
Occupation : Service,
R/o. 55, Sadar Bazar,
Bhingar Camp, Ahmednagar,
Taluka & District : Ahmednagar. .. Applicant.

versus

1. The State of Maharashtra.
2. The Superintendent of Police,
Ahmednagar. .. Respondents.

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Mr. N.C. Garud, Advocate, for the applicant.

*Mr. A.S. Shinde, Addl. Public Prosecutor, for
respondent nos.1 and 2.*

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CORAM : A.M. BADAR, J.

DATE : 18TH AUGUST 2016

ORAL ORDER:

The applicant / accused, in Crime No. I-64/2016, for offences punishable under Sections 143, 147, 148, 149, 452, 324, 323, 504, 506, read with Section 34 of the Indian Penal Code; 3(1)(x) of the

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, so also, under Sections 3 and 7 of the Protection of Civil Rights Act and under Section 37(1)(3) and Section 135 of the Maharashtra Police Act, registered with Bhingar Camp Police Station, Ahmednagar, by this application, is praying pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. By pointing out past incidents, the learned Counsel argued that the applicant, who is in employment of the Armed Forces, is falsely implicated in the crime in question.

3. The learned Addl. Public Prosecutor opposed the application by submitting that there are eye witnesses to the incident in question and the injury certificate of the victim corroborates the prosecution case.

4. Perused the papers of investigation. The incident, in question, is a fallout of the incident which took place on 20.05.2016 in the locality. On that day, Chief Officer of Chawani Parishad was present for some public function. At that time, Yashodabai Pruthawiraj - resident of the locality, requested the Chief Officer to remove the platform in the locality for the reason that in night hours, many boys sits there causing nuisance to the residents.

The FIR itself reveals that the informant had protested and opposed this request and there was quarrel. Thereafter, on 22.05.2016, on the basis of the report lodged by Mangala Pruthawiraj - daughter of Yashodabai, a non-cognizable offence came to be registered against the informant in this case. The FIR of that non-cognizable offence shows that aunt and mother of the present applicant were cited as witnesses. My attention is drawn to the report lodged by aunt of the present applicant with an averment that the informant is threatening her as she is cited as witness in the report regarding non-cognizable offence.

5. On this factual backdrop, informant Buddhabhushan @ Bhushan Gautam Sonawane lodged report against the present applicant and co-accused on 25.05.2016 in respect of the alleged incident dated 23.05.2016. He averred that the present applicant and co-accused assaulted him as well as his sister Shilpa by means of wooden log, fist and kick blows and cable wire. It is further averred that the present applicant and co-accused gave abuses to the informant by referring to his caste.

6. The FIR as well as papers of investigation, prima facie, shows that so far as the caste remarks are concerned, the allegations are omnibus and made against all accused persons without any specific

averments. So far as assault is concerned, injury certificate shows that injured informant and his sister Shilpa suffered simple injuries. In this view of the matter, in the light of the fact that the Lieutenant Colonel of the concerned unit had certified that the present applicant was on duty at the time of alleged incident, possibility of false implication of the present applicant in the crime, in question, cannot be ruled out. As such, custodial interrogation of the applicant is not warranted and, therefore, the order :-

(i) The Application is allowed.

(ii) The order dated 24th June 2016, granting ad interim anticipatory bail to the present applicant, is confirmed on the following terms and conditions.

(iii) As a condition of this order, the applicant shall attend the concerned Police Station on 28th August 2016, in between 11.00 a.m. and 01.00 p.m. and cooperate with the Investigating Officer.

(iv) The applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him/her from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the

prosecution evidence.

(v) The applicant shall not repeat commission of similar type of offences in future.

7. The Application stands disposed of in the aforesaid terms.

(A.M. BADAR)
JUDGE

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