

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

Criminal Application No. 4761 of 2016

District : Hingoli

1. Deelip s/o. Dattappa Basmathkar,
Age : 50 years,
Occupation : Business,
R/o. Gavhane Chowk, Parbhani,
District : Parbhani.
 2. Dhanyakumar s/o. Santukrao Shivankar,
Age : 50 years,
Occupation : Business,
R/o. Agricultural Colony,
Basmath Road, Parbhani,
District : Parbhani.
- .. Applicants.

versus

1. The State of Maharashtra,
through Police Station Officer,
Basmath Nagar,
Taluka : Basmath Nagar,
District : Hingoli.
 2. The Superintendent of Police,
Hingoli, District : Hingoli.
 3. Sanjay Khalse,
Age : 45 years,
Occupation : Service,
R/o. Channe Colony,
Basmath Nagar,
Taluka : Basmath,
District : Hingoli.
- .. Respondents.

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Mr. B.L. Sagar Killarikar, Advocate, for applicants.

Mr. S.M. Ganachari, Addl. Public Prosecutor, for respondent nos.1 and 2.

Mr. R.L. Kute, Advocate, for respondent no.3.

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CORAM : A.M. BADAR, J.

DATE : 30TH SEPTEMBER 2016

ORAL ORDER:

Applicants / accused in Crime No. 61/2015 for offences punishable under Sections 353, 323, 504, 506, read with Section 34 of the Indian Penal Code, registered with Police Station, Basmath (Urban), District Hingoli, by this application, are seeking pre-arrest bail.

2. Heard the learned Counsel appearing for applicants as well as the learned Addl. Public Prosecutor and the learned Counsel appearing for informant Sanjay s/o. Ambadas Khalse.

3. It is argued by the learned Addl. Public Prosecutor as well as the learned Counsel for the informant that the FIR itself goes to show that there was assault and use of criminal force on the informant who was then working as Headmaster of Sau. Anusayabai Sakhare Primary School, Basmath and

therefore, applicants are not entitled for pre-arrest bail. It is further argued that so called order of suspension as well as resolution of the management to suspend the informant are fabricated documents. Though it is shown that on 10.06.2015, the Education Officer was moved for permission to suspend the informant, in fact no such proposal was ever sent to the Education Officer. Therefore, contention of applicants that the informant is a suspended employee, is *per se* illegal and therefore applicants are not entitled for pre-arrest bail.

4. Perused the FIR lodged by Sanjay Khalse. He averred that while he was discharging his duties of the post of Headmaster at Sau. Anusayabai Sakhare Primary School, Basmath, both applicants came to his office, assaulted him and tampered the record. They pressurized the informant by asking him as to why he has not tendered resignation.

5. On this factual backdrop, applicants who are Chairman as well as Secretary of the Educational Society running the school in question have produced on record the order dated 23.06.2015, suspending the informant from the post of Headmaster, contemplating initiation of departmental enquiry against him. Similarly, a communication dated 10.06.2015 addressed to the Education Officer seeking permission to suspend the informant is also placed on record. At

this stage, it is not possible to record a finding that these documents placed on record by the office bearers of the Educational Society running the school where the informant was working as Headmaster are false and fabricated documents. It is well settled that the suspension comes into force as soon as the employer signs the order suspending the employee. In the case in hand, the order dated 23.06.2015 is the order suspending the informant from the post of Headmaster. In this view of the matter, applicability of Section 353 of the IPC to the crime in question is seriously doubtful. Similarly, the question will be whether the informant who was Headmaster of the private school can be termed as a public servant. Other offences alleged against applicants are bailable in nature.

6. In this view of the matter, custodial interrogation of applicants is not warranted.

7. Hence, I pass the following order :-

(a) The order dated 26th August 2016, granting ad interim anticipatory bail to applicants, is confirmed on same terms and conditions.

(b) In addition, applicants shall attend the concerned Police Station as and when reasonably called by the Investigation Officer for the purpose

of investigation of the crime in question.

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

(A.M. BADAR)
JUDGE

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