

Criminal Application No. 4771 of 2016

By this application under Section 438 of the Code of Criminal Procedure, 1973, applicant Sambhaji s/o. Vitthalrao Dongaonkar, who claims to be the Member of Agricultural Produce Market Committee,

Lasur, and Member of Zilla Parishad, Aurangabad, is seeking pre-arrest bail in Crime No. 766/2016, for offences punishable under Sections 353, 308, 332, 452, 504 and 506 of the Indian Penal Code, at the instance of Suresh Bhikulal Bedmutha, Addl. Chief Executive Officer, Zilla Parishad, Aurangabad.

2. Heard the learned Senior Counsel appearing for the applicant / accused. By drawing my attention to the Resolution No. 436 of the General Body of Zilla Parishad, Aurangabad, the learned Senior Counsel argued that because of conduct of the informant and his apathy towards the public interest, the General Body had decided to send him on compulsory leave and to withdrew charge of the post of Addl. Chief Executive Officer from him. The learned Senior Counsel further argued that the applicant is a public spirited citizen who has lodged several complaints regarding misdeeds of the public servants.

3. The learned Senior Counsel then drew my attention to the FIR lodged by informant Suresh Bhikulal Bedmutha on 09.08.2016 and argued that no non-bailable offence can be culled out from the averments in the FIR as well as the medical certificate produced on record with the application for intervention filed by the informant. The learned Senior Counsel submitted that there is no element of

criminal trespass as Member of the Zilla Parishad is alleged to have entered in the chamber of Vice-President of the Zilla Parishad. The learned Senior Counsel further argued that no ingredient of the offence punishable under Section 308 of the IPC is reflected either from the version of the informant in the FIR or from the medical case papers submitted by the informant with the application for intervention. It is further argued that as the material against the applicant reflects commission of bailable offence, his custodial interrogation is not warranted and nothing is to be recovered from the applicant.

4. As against this, the learned Public Prosecutor by drawing my attention to Explanation 1 to Section 299 of the IPC, argued that the applicant was well aware about heart disease of the informant; still he assaulted the informant and constricted neck of the informant triggering ischemic heart attack. As such, prima facie offence punishable under Section 308 of the IPC is made out. The learned Public Prosecutor further argued that version of the informant is gaining corroboration from eye witnesses who were naturally present on the scene of occurrence. My attention was drawn to the medical certificate of the informant and the learned Public Prosecutor argued that considering impact of the crime on the society, the applicant is not entitled for pre-arrest bail.

5. The learned Counsel appearing for the informant drew my attention to the medical jurisprudence and submitted that transient ischemic heart attack suffered by the informant after the incident, was triggered by the acts of the applicant in assaulting the informant on chest and as the offence alleged is non-bailable, the applicant is not entitled for pre-arrest bail.

6. Perused papers of investigation including statements of Nitin Wani, PA to the Vice-President of the Zilla Parishad; Sanjay Mahalankar, Junior Assistant; Dinkar Pawar, Vice-President of the Zilla Parishad and Shaikh Majid s/o. Shaikh Fatru, Contractor. From statements of these witnesses, it becomes clear that the present applicant had been to the cabin of Dinkar Pawar, Vice-President of the Zilla Parishad. It is seen from statement of these witnesses as well as from the FIR lodged by the informant that the present applicant then gave abuses to the informant by questioning him as to why file of the Irrigation Department was not transmitted to higher authorities by the informant. The FIR makes it clear that the applicant questioned the informant as to why Executive Engineer named Shri Devkar was not relieved by the informant. The FIR makes it clear that Irrigation Department was entrusted to the informant as the Addl. Chief Executive Officer of the

Zilla Parishad.

7. Statements of witnesses and that of the informant goes to show that as the applicant started abusing the informant, the informant told the applicant that he is having ailment of the heart and, therefore, abuses should not be hurled. Then, according to the informant, present applicant gave blows of fist on chest of the informant and had also constrained his neck. Because of this assault, the informant became unconscious. It is seen that initially the informant was taken to Sai Hospital and then he was admitted to the United CIIGMA Institute of Medical Sciences Pvt. Ltd. History disclosed to the hospital is of scuffle with the person of acquaintance. Medical certificate with papers of investigation goes to show that the informant had suffered minor injury on right chest wall in the nature of muscle sprain. Discharge summary issued by United CIIGMA Hospital shows that there was no external injury on person of the informant. There was no loss of consciousness. The discharge summary placed on record by the informant goes to show that he took medical treatment at United CIIGMA Hospital from 09.08.2016 to 13.08.2016 and he was diagnosed as '*probable transient ischemic attack, Hypertension*'.

8. Medical jurisprudence shows that transient ischemic attack is caused due to temporary lack of

adequate blood and oxygen to the brain. '*Transient*' means short-lived, passing and not permanent.

9. Section 308 of the IPC deals with 'an attempt to commit culpable homicide' and the offence is punishable with imprisonment for a term which may extend to seven years. A person who causes bodily injury to another person who is labouring under disorder and disease and thereby accelerate the death of such another person, is deemed to have caused his death.

10. In the case in hand, allegations against the applicants are to the effect that he gave fist blows on chest of the informant and also constrained his neck. Medical certificate shows causing minor injury to muscle sprain to the informant. No external injury on the informant was found by the Medical Officer of the United CIIGMA Hospital where the informant was admitted on 09.08.2016. He is already discharged from the hospital on 13.08.2016. Prima facie no material is found on record to show that lack of supply of blood and oxygen to the brain of the informant was because of so called fist blows and comstraining of his neck by the applicant. Moreover, that issue will have to be examined while adducing evidence at the trial. Prima facie it is seen that the applicant was not having cordial relations with the informant. The documents filed on record by the

applicant shows that the applicant was insisting the informant to do the public work and he was making grievance about working of the informant to the Chief Executive Officer. Averments in the FIR are required to be considered in the backdrop of hostile relations between the applicant and the informant.

11. The incident is alleged to have happened inside chamber of the Vice-President of the Zilla Parishad and, therefore, prima facie it cannot be said that the applicant, who himself is a Member of the Zilla Parishad, had committed criminal trespass with an intention to commit offence. Section 332 of the IPC deals with causing voluntary hurt to the public servant in the discharge of official duties in order to deter that public servant from discharge of official duties. The punishment prescribed for this offence is that of three years. Prima facie this appears to be the offence which can be made out against present applicant.

12. Considering the nature of offence which can ultimately be said to be committed by the present applicant and as nothing is to be recovered from him for carrying out investigation of the crime in question, his custodial interrogation is not warranted. It hardly needs to emphasize that arrest brings humiliation not only to the accused but also to his family members. Noting this aspect, even the

legislature has amended the provisions of the Code of Criminal Procedure and it is left to the discretion of the investigator, whether to arrest an accused in the office which is punishable with imprisonment for a term which may extent to seven years.

13. In this view of the matter, custodial interrogation of the present applicant is not warranted and, therefore, the following order :-

(a) The Application is allowed.

(b) The applicant / accused, in the above crime, in the event of his arrest by Police Station, Kranti Chowk, Aurangabad, be released on bail on his executing P.R. Bond in the sum of Rs. 30,000/- and on furnishing one more solvent sureties of the like amount.

(c) As a condition of this order, the applicant shall attend Police Station, Kranti Chowk, Aurangabad, on every Sunday, in between 11.00 a.m. and 01.00 p.m., till filing of charge-sheet. The applicant shall cooperate the Investigating Officer in investigation of the crime in question.

(d) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to

dissuade them from disclosing such facts either to the Court or to any police officer.

(e) The applicant shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial, in the event of filing charge-sheet, if any, against him.

(f) The applicant shall not repeat commission of similar type of offences in future. Commission of offence of similar nature will result in cancellation of liberty granted to the applicant by this order.

(g) The applicant shall not contact the informant in any manner and he shall not try to influence or pressurize the informant in any manner.

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

(A.M. BADAR)
JUDGE

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