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

CRIMINAL APPLICATION NO.5036 OF 2016

Mahendra s/o Hiraman Pimle,
Age: 30 years, Occ: Service,
R/o. Harsh Nagar, Nanded. ..APPLICANT

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Vimantal Police Station,
Nanded, Tq. & Dist. Nanded.
2. District Superintendent of
Police, Nanded.
3. Vithal s/o Abaji Isadkar,
Age: 63 years, Occ: Pensioner,
R/o. Shobhanagar, Nanded. ..RESPONDENTS

Mr S.V. Kurundkar, Advocate for applicant;
Mr C.V. Dharurkar, Addl. Public Prosecutor for
respondent Nos. 1 and 2;
Mr R.B. Dhakane, Advocate for respondent No. 3

CORAM : A.S. CHANDURKAR, J.

DATE : 18th NOVEMBER, 2016

ORAL ORDER :

By the present application moved under
Section 438 of the Code of Criminal Procedure, the
applicant apprehends his arrest in the Crime No.
189 of 2016 registered at Vimantal Police Station,

(2)

Nanded for offences punishable under Sections 323, 427 and 395 of the Indian Penal Code.

2. According to the applicant, on 12th June, 2016 at about 1-00 p.m., he was near the school premises where he was working as a junior clerk, wherein some work for repairing the drainage was going on. He heard some commotion after which the respondent No. 3 and four others came there and abused him on his caste and also gave him threats. On that basis, the applicant lodged F.I.R. No. 101 of 2016 at 6-15 p.m. on 13th June, 2016.

The respondent no. 3 on 12th June, 2016 gave a report with the same police station stating that at about 6-30 p.m. the present applicant and his associates were damaging the compound of the school which was housed in the premises owned by respondent no. 3. The applicant and his associates assaulted the respondent no. 3 and thereafter the gold ring of the respondent no. 3 was removed by the applicant. An offence was however not

(3)

registered. Thereafter, the respondent no. 3 approached the learned Magistrate who passed an order under Section 156(3) of the Code of Criminal Procedure which resulted in Crime no. 189 of 2016 being registered against the applicant for offences punishable under Section 323, 427 and 395 of the Indian Penal Code. Pursuant to this report, the applicant moved Sessions Court under Section 438 of the Code of Criminal Procedure and the said application being rejected, he has approached this Court.

3. Learned Counsel for the applicant submitted that the report filed by present applicant against the respondent no. 3 is first in time and merely as a counterblast, the said private complaint has been filed subsequently merely to implicate him in the said offence without any justifiable cause. In fact, the applicant had himself suffered injuries in the assault by the respondent no. 3. It is submitted that the applicant is Joint Secretary of the Society, which

(4)

is running the said school in the premises owned by another Society of which the respondent no. 3 is the President and hence, he needs protection. He has referred to earlier disputes between the parties and submitted that considering the above referred background, he is entitled to pre-arrest bail.

4. The application is opposed by learned Additional Public Prosecutor by relying upon the police papers. He has referred to the statements of the witnesses who witnessed the altercation between the applicant and the respondent no. 3 who also state about the removal of the gold ring by the applicant. It is further submitted that during pendency of the application before the Sessions Court, the present applicant had misused the interim liberty and Crime No. 55 of 2016 was registered against him during said period.

5. Learned Counsel for the respondent no. 3 while supporting the prosecution has relied upon

(5)

the affidavit in reply and submitted that on 12th June, 2016 itself report was lodged with the police authorities but cognizance of the same was not taken. He was therefore required to move the learned Magistrate in that regard. He submitted that the present applicant was inhabit of fling false cases and he was himself an accused in about three offences registered against him. He, therefore, submits that considering antecedents of the applicant, he is not entitled for any protection.

6. Perused the police papers as well as documents filed by the parties. The initial report filed by the respondent no. 3 dated 12th June, 2016 indicates that the respondent no.3 had on the said date attempted to report the incident in question that had occurred at the behest of the present applicant and his associates in which his gold ring was forcibly removed by the applicant. However, as no cognizance has taken, he filed private complaint after following due procedure under Section 156 of

(6)

the Code of Criminal Procedure. The statements of about eleven witnesses recorded pursuant to the report was lodged against the present applicant indicate that they had witnessed the applicant and his associates assaulting the respondent no. 3 and the applicant thereafter removing his gold ring. Thus, *prima facie* involvement of the applicant insofar as offence under Section 395 of the Indian Penal Code appears on record. The initial report is that of the respondent no. 3 on 12th June 2016 but its cognizance was taken subsequently. The report of the applicant is on 13th June 2016 which is thereafter.

7. The learned Sessions Judge while rejecting the bail application has referred to the fact that when the applicant was granted interim protection, on 28th August, 2016 he breached the order under Section 188 of the Indian Penal Code and Crime No. 55 of 2016 came to be registered against him. From the police papers it can be seen that on 27th August, 2016 offence punishable under Sections 323,

(7)

504, 506 read with Section 34 of the Indian Code vide Crime No. 162 of 2016 has also been registered against the applicant. Similarly, it appears that Crime No. 116 of 2009 for offence punishable under Section 309 of the Indian Penal Code as well as Crime No. 120 of 2009 for offence punishable under Section 353, 332, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code have been registered against the applicant. Hence, antecedents of the applicant are such that they cannot be ignored while considering his application under Section 438 of the Code of Criminal Procedure. In view of the material available on record coupled with the antecedents of the applicant, I do not find any case made out to grant protection to the applicant under Section 438 of the Code of Criminal Procedure. Criminal Application is thus rejected.

8. At this stage, learned Counsel for the applicant seeks continuation of the interim protection granted by this Court on 28th September, 2016. The request is opposed by learned Additional

(8)

Public Prosecutor and learned Counsel for the respondent no.3. However, as protection was operating since 28th September, 2016, same shall operate for a period of two weeks from today and cease to operate automatically after period of two weeks.

(A.S. CHANDURKAR, J.)

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