

**Criminal Application No. 5064 of 2016**

.. Applicant.

.. Respondent.

**DATE : 26TH SEPTEMBER 2016**

The applicant / accused in Crime No. I-104/2016 registered with Kopergaon City Police Station, Taluka Kopergaon, District Ahmednagar, for

offences punishable under Sections 465, 468 and 420 of the Indian Penal Code, at the instance of informant Chandrashekhar s/o. Suresh Kulthe, by this application, is seeking pre-arrest bail.

2. Heard the learned Senior Counsel appearing for the applicant / accused. He argued that according to the prosecution case, as reflected from the FIR, the caste certificate bearing No. 1261/2015 issued by the Sub-Divisional Officer, Shirdi, on 11.06.2015, is a forged caste certificate. The learned Senior Counsel further argued that caste of the applicant is 'Kunbi' which falls under Other Backward Classes. The learned Senior Counsel drew my attention to the certificate of validity issued on 29.01.2016 and submitted that the Caste Certificate Scrutiny Committee has validated the claim of the applicant to be belonging to 'Kunbi' which is falling under Other Backward Classes and as on date, the validity certificate in favour of the present applicant is in existence. The learned Senior Counsel argued that on the basis of this caste claim, the applicant had filed the nomination paper for contesting election of the Member of the Grampanchayat and subsequently he was also elected as Sarpanch of the village.

3. The learned Senior Counsel appearing for the applicant drew my attention to Section 11 of the

Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes And Special Backward Category (Regulation of Issuance & Verification Of) Caste Certificate Act, 2000 [**For short, "Act of 2000"**] and relying on Sub-Section 2 thereof, the learned Senior Counsel submitted that even after filing of the charge-sheet, the Court is not competent to take cognizance of the offence registered on the basis of report lodged by the Avval Karkun as this special Act provides for lodging of complaint by the Scrutiny Committee. In the case in hand, according to the prosecution case, the applicant had allegedly obtained a caste certificate by other fraudulent means and therefore taking the FIR as it is, the Court will not be in a position to take cognizance of the offence. Therefore, the prosecution has incurred patent legal infirmity.

4. The learned Addl. Public Prosecutor opposed the application by contending that Section 11 of the Act of 2000 has no application to the case in hand as, according to the prosecution case, the applicant had not obtained the caste certificate by any other fraudulent means but he himself has prepared a forged caste certificate and contested the election claiming to be a persons belonging to Other Backward Classes. The learned Addl. Public Prosecutor drew my attention to the statement of the Sub-Divisional Officer,

Shirdi, namely Kundan Sonawane, so also photo-copies of the outward register of the office of the Sub-Divisional Officer showing that caste certificate bearing No. 1261/2015 was never issued on 11.06.2015. The learned Addl. Public Prosecutor further argued that the said caste certificate placed on record by the present applicant, if perused, then forgery in signature of the Sub-Divisional Officer is visible to the naked eye.

5. I have also heard the learned Senior Counsel appearing for applicant in Criminal Application No. 5076 of 2016 - Santosh s/o. Laxmanrao Dawange, who has allegedly lodged complaint to the authorities in respect of the forged caste certificate. The learned Senior Counsel by taking me through the caste certificate of the applicant / accused submitted that the same is forged one. The learned Senior Counsel further submitted that the validity certificate also appears to be forged one because there is no order to issue validity certificate and that the complainant to whom he represent has already filed a petition before this Court challenging the validity certificate of the present applicant. The learned Senior Counsel drew my attention to pleadings of the applicant and submitted that the applicant / accused is changing his stand. That, which is pleaded is not being relied and some new case is sought to be made out.

6. I have carefully perused papers of investigation including the FIR as well as statement of Sub-Divisional Officer Shri Kundan Sonawane. Informant - Chandrashekhar Suresh Kulthe, Avval Karkun, has reported in the FIR that the certificate bearing No. 1261/2015 was not issued by the office of the Sub-Divisional Officer, Shirdi. Prima facie it appears that the said certificate was never issued by the Sub-Divisional Officer, Shirdi. Photo-copies of the outward register does not reflect issuance of the caste certificate bearing No. 1261/2015 in favour of the applicant on 11.06.2015. Prima facie it appears that the signature thereon of the issuing authority i.e. Sub-Divisional Officer is a forged signature. The Sub-Divisional Officer, Shirdi, in his statement has categorically mentioned that said certificate bearing No. 1261/2015 was never issued by his office.

7. In this backdrop, according to the pleadings of the applicant, it appears that the applicant had engaged an agent named Vishal Dawange who had supplied the caste certificate to the applicant. Parties are not on dispute that the Caste Certificate Scrutiny Committee, Nashik, had issued a validity certificate thereby validating caste claim of the present applicant as a member of Other Backward Class by validity certificate dated 29.01.2016. Though it appears that the petition challenging this validity

certificate is filed, the same is stated to be pending for adjudication.

8. When the caste claim of the applicant in respect of 'Kunbi' caste is validated by the competent Scrutiny Committee and certificate to that effect is still in force, in my considered opinion, custodial interrogation of the present applicant is not warranted. This is particularly so because it appears that because of interim order passed by this Court, the applicant has joined the investigation and it is not the grievance of the learned Addl. Public Prosecutor that the applicant has not cooperated the investigator. Considering the fact that the applicant is Sarpanch of a village, there is no possibility of his absconding. So far as investigation part is concerned, the applicant can further be directed to cooperate the investigator by submitting himself before the investigator. Even otherwise the crime in question is based on documentary evidence and the applicant, as per prosecution case, is beneficiary of this forgery. As the case is based on documentary evidence, there cannot be any chances of tampering with the prosecution evidence. The investigator is already in possession of the alleged forged caste certificate.

9. So far as arguments of the learned Senior Counsel appearing for the applicant / accused, that

in view of Section 11(2) of the Act of 2000, even the Court will not be in a position to take cognizance of the crime in question after filing of the charge-sheet is concerned, this aspect does not require adjudication while deciding the application for anticipatory bail.

10. In this view of the matter, I pass the following order :-

(a) The Application is allowed.

(b) The order dated 8th September 2016, granting ad interim anticipatory bail to the applicant, is confirmed on the same terms and conditions.

(c) In addition, the applicant shall attend the concerned Police Station as and when reasonably called by the Investigating Officer for the purpose of investigation of the crime in question.

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

( A.M. BADAR )  
JUDGE

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