

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

Criminal Application No. 5346 of 2016

District : Ahmednagar

Mahendra s/o. Govindrao Garje,
Age : 37 years,
Occupation : President of
Zilla Parishad,
R/o. Maha Sangvi,
Taluka : Patoda,
District : Beed.

.. Applicant.

versus

The State of Maharashtra,
Through Police Inspector,
Police Station, Jamkhed,
Taluka : Jamkhed,
District : Ahmednagar.

.. Respondent.

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*Mr. Siddheshwar S. Thombre, Advocate, for the
applicant.*

*Mr. A.B. Girase, Public Prosecutor, for the
respondent.*

*Mr. Nikhil S. Tekale, Advocate, for the
original complainant.*

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CORAM : A.M. BADAR, J.

DATE : 1ST OCTOBER 2016

ORAL ORDER:

The applicant, who is Member of Zilla

Parishad, Beed, is an accused in Crime No. 138/2016 registered with Police Station, Jamkhed, District Ahmednagar, for offences punishable under Sections 307, 395, 143, 147, 148, 149 of the Indian Penal Code; under Section 4/25 of the Arms Act; under Sections 37 & 135 of the Maharashtra Police Act as well as under Section 3 of the Prevention of Damage to Public Property Act, 1984. By this application, the applicant is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. After taking me through the FIR, the learned Counsel argued that incident in question allegedly took place on account of passing of 'no confidence motion' against Sarpanch of Village Panchayat, Nahuli. The learned Counsel further argued that the actual incident is alleged to have taken place at Jamkhed. The applicant is resident of Maha Sangvi in District Beed. He was not concerned with the alleged offence nor he was present on the spot of the incident at the time of the incident. The learned Counsel argued that the present applicant belongs to Nationalist Congress Party whereas motion of no confidence was against Sarpanch who is belonging to Bhartiya Janata Party. Therefore, because of political rivalry, as an act of vengeance, name of the applicant is falsely implicated in the crime in question. The applicant had no occasion to go to Jamkhed on the date of the incident.

3. The learned Counsel for the applicant further argued that on the same day, two FIRs came to be lodged against members of prosecuting party by Vikas Ralebhat and Bharat Saur. By drawing my attention to those FIRs, the learned Counsel argued that members of accused party are assaulted by members of the prosecuting party on the very same day and accordingly crimes are registered against members of the prosecuting party. Therefore, in submission of the learned Counsel for the applicant, possibility of false implication because of enmity and charged atmosphere due to passing of 'no confidence motion' cannot be ruled out.

4. By taking me through the FIR and injury certificate of the informant, it is argued by the learned Counsel that even if averments in the FIR are taken as it is, then also no offence punishable under Section 307 of the IPC is made out prima facie against the present applicant. No dangerous weapon is attributed to him in the FIR nor the seat of blow allegedly given by the applicant depict his intention to commit murder.

5. It is further argued that no link is established by the prosecution to connect the applicant to either of the political parties at the relevant place and therefore, the applicant is

entitled for pre-arrest bail.

6. The learned Public Prosecutor opposed the application by contending that the entire episode is captured in CCTV installed at the official residence of the Chairman of Panchayat Samiti, Jamkhed. The learned Public Prosecutor further argued that there are four eye witnesses to the incident in question. Injury certificate of the informant as well as spot Panchanama corroborates his version regarding the incident. The offence alleged is also under Section 149 of the IPC and therefore, according to the learned Public Prosecutor, collective act reflecting common object are required to be seen rather than examining the individual role of each of the accused persons.

7. I have also heard the learned Counsel appearing for the informant. He opposed the application by contending that all accused persons have formed an unlawful assembly and committed the crime in question. According to the learned Counsel for the informant, considering the nature of offence, the applicant is not entitled for anticipatory bail.

8. I have carefully considered rival submissions. I have also perused papers of investigation. The crime in question is registered on the basis of report lodged by Bhagwan s/o.

Sadashiv Murumkar, Chairman of Panchayat Samiti, Jamkhed, on 29.08.2016. The prosecution case as reflected from the FIR as well as statement of witnesses is to the effect that there was 'no confidence motion' against one Shakuntala Baban Garje, Sarpanch of Grampanchayat Nahuli. To oversee the proceedings, the informant and his associates had been to Nahuli from Jamkhed on that day. In return journey, there was an attempt to obstruct their vehicle by an unruly mob. Thereafter, the informant and his associates returned to Jamkhed.

9. According to the prosecution case, at about 05.30 p.m. of that day, informant Bhagwan Murumkar, Block Development Officer Sandip Kotkar, Ravindra Survase and other activists of the political outfit of the informant were in the official residence of the informant discussing some subject. At that time, all of a sudden there was heavy stone pelting on the vehicles as well as the official residence of the Chairman of Panchayat Samiti, Jamkhed. The informant and other occupants of the official residence were taken by surprise and therefore, door of that official residence was closed. It is prosecution case, that accused persons broke open the door and made their entry in official residence of the Chairman of Panchayat Samiti, Jamkhed. It is further averred that accused persons indulged in rioting and in that process, they assaulted informant Bhagwan

Murumkar by means of sword, iron pipe, iron rod, sticks and pipes. So far as present applicant is concerned, it is averred that he had assaulted the informant by means of stones. It is further averred that during that riot, cash and gold ornaments of the informant were robbed by accused persons.

10. Perusal of injury certificate of the informant shows that he had suffered about seven injuries in the nature of contusions, abrasions and blunt trauma over his body including head and lower limbs.

11. During the course of investigation, the investigator has recorded Panchanama of the spot of occurrence. Perusal of spot Panchanama goes to show that official vehicle was found in badly damaged condition. All its window panels were found broken. Stones and bricks were found inside that vehicle probably because of penetration after breaking glass panels of that vehicle. Side mirrors of that vehicle were also found broken. Hall of the official residence of Panchayat Samiti, Jamkhed, was found ransacked. Articles in that hall were found helter-skelter. Glass panels of windows were found in broken condition.

12. Apart from the informant, Block Development Officer Shri Sandip Kotkar was one of the inmate of

that house. He is an independent person not connected with any of the political outfit. His statement reveals that when he was sitting with the informant in the said house, there was heavy pelting of stones. The informant then locked the door of that house. Witness Kotkar stated that then accused persons broke open that door and caused their entry in the house and started assaulting the informant and other activists of Bhartiya Janata Party. Witness Kotkar stated that at that time he got horrified and therefore, he took shelter in a hall at the backside of the residence and closed its door from inside. Statement of other witness named Kantilal @ Chandrakant Varat also shows that when they were sitting in the bungalow of the informant, accused persons caused their entry by breaking open door of that bungalow and indulged in rioting by assaulting inmates of the bungalow.

13. Though the investigator has not invoked the relevant Section while booking the offence, prima facie it appears that accused persons indulged in house breaking by causing their entries through a passage fastened against such entry. Prima facie averments of witnesses and the informant shows commission of offence of house breaking after preparation for hurt and this offence is punishable with rigorous imprisonment for ten years. The informant as well as eye witnesses are categorically

naming the applicant as one of the accused person who caused entry in that bungalow though the passage was fastened against such entry. Apart from this, statements of witnesses goes to show that accused persons had formed an unlawful assembly and with common object they entered inside the official residence of the Chairman of the Panchayat Samiti and by indulging in rioting, they had injured the informant and robbed him of his valuables.

14. In this view of the matter, individual act of the applicant pales into insignificance. Once membership of an unlawful assembly is established, it is not incumbent to establish whether any specific act has been committed by any accused person. Mere membership of an unlawful assembly is sufficient. Every member of such unlawful assembly is vicariously liable for acts done by other members in prosecution of common object of members of such unlawful assembly or such acts which the member of an unlawful assembly knew were likely to be committed. In the case in hand, the conduct of accused persons in conjointly raiding the official residence of Chairman of the Panchayat Samiti and indulging in rioting apart from assaulting inmates of the house prima facie depicts their common object. The official bungalow was found ransacked and official car was also found damaged.

15. Considering the nature of evidence against

the applicant, no case for pre-arrest bail is made out.

16. The Application is accordingly rejected.

17. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

(A.M. BADAR)
JUDGE

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