

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

CRIMINAL APPLICATION NO. 5792 OF 2015

Ajinath s/o Ambu Tupe,
Age: 50 years, Occ: Service as
Head Master with Zilla Parishad,
Kendriya Prathmik Shala, Nathapaur,
Tq. & Dist. Beed, R/o. Namdeo Ngar,
Beed, Tq. & Dist. Beed.

...Applicant

versus

The State of Maharashtra
through the Police Inspector,
Shivaji Nagar Police Station, Beed,
Taluka & Dist. Beed & ors.

...Respondents

.....
Mr. R.S. Deshmukh, Advocate for applicant
Mr. K.D. Munde, A.P.P. for respondent Nos. 1 & 2
Mr. H.U. Tungar, Advocate for respondent No. 3
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CORAM : N.W. SAMBRE, J.

DATE : 11th FEBRUARY, 2016

ORAL ORDER :

This application is for cancellation of bail under the provisions of Section 439(2) of Code of Criminal Procedure. Learned Sessions Court granted pre-arrest bail to respondent No. 3 in Crime No. 257 of 2015 for the offence punishable under Section 341, 327 of Indian Penal Code and under Section 3(1)(10) of Atrocities Act.

2. While seeking cancellation of bail, learned Counsel for

the applicant-complainant made two-fold submissions; (a) that since provisions of the Atrocities Act are invoked in the present case, bar under Section 18 of the Atrocities Act will operate and it was not open for learned Sessions Court to exercise powers under Section 438 of the Code of Criminal Procedure, (b) the second submission is that, it is observed that offence punishable under Sections 341 and 327 of Indian Penal Code are bailable, whereas said observations are incorrect.

3. I have perused the order passed by learned Sessions Court. Learned Sessions Court has relied upon the judgment of this Court in the matter of ***Mahesh Sakharam Patole vs. State of Maharashtra*** reported in ***2009 ALL MR (Cri) 1601*** so as to observe that bar under Section 18 of Atrocities Act will not be attracted in the present case. Apart from above, it is required to be noted that offence punishable under Section 341 of Indian Penal Code is bailable, whereas offence punishable under Section 327 of Indian Penal Code is concerned, it is claimed by applicant in his complaint that his mobile was snatched. In my opinion, there appears to be differences between the applicant and respondent No.3-accused, as respondent No. 3 was working as Assistant Teacher, whereas the applicant was working as Head Master. The said differences between them appears to be cause for lodging F.I.R. in question.

4. The investigation in the matter is already complete and proposal for filing the charge sheet is pending approval.

5. In that view of the matter, custodial interrogation of respondent No.3-accused is not necessary. There are no compelling circumstances which contemplate invoking of powers under Section 439(2) of Code of Criminal Procedure. As such, the application fails, stands rejected.

[N.W. SAMBRE, J.]