

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

CRIMINAL APPLICATION NO.6861 OF 2015

Syed Yousufoddin s/o Syed
Raheemoddin, Age 41 years,
Occu. Legal Practitioner,
R/o Behind Zee Corner,
Peth Mohalla, Parli Vaijnath,
Taluka Parli Vaijnath,
District Beed

..Applicant

Versus

The State of Maharashtra,
through Parli Vaijnath City
Police Station, Taluka Parli
Vaijnath, Dist. Beed

..Respondent

Mr M.S. Deshmukh, Advocate for applicant
Mr S.Y. Mahajan, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 14th January 2016

PER COURT

Heard.

2. The applicant, who is a legal practitioner is seeking pre-arrest bail in Crime No.258 of 2015 registered on 1st December 2015, for the offences punishable under Section 307, 326, 323, 504 and 506 read with sec.34 of Indian Penal Code and under Section 4/25 of the Arms Act.

3. Learned Counsel for the applicant would urge that the applicant is falsely implicated in the crime in question. The issue revolves around the management of Masjid, (trust) of which the present applicant is office bearer. According to him, the complainant is trying

to have control over the management of Masjid. He would then urge that the complainant, who was called upon to remain present for recording statement under Section 164 of Cr.P.C. remained absent. According to applicant, in view of he being an Advocate by profession, his arrest would lead to serious consequences to his family members and also to his professional life. In support of his contention, learned Counsel for the applicant placed reliance upon the judgment of Apex Court in the matter of **Bhadresh Bipinbhai Sheth Vs. State of Gujarat and anr.**, reported in **2015 AIR (SCW) 4988**.

4. While opposing the application, learned A.P.P. who is assisted by learned Counsel for the complainant has invited attention of this Court to the injury certificate, which speaks of two simple injuries caused by sharp weapon. He would then urge that there are two eye witnesses whose statements under Section 164 of Cr.P.C. are recorded and who have specifically named the applicant in commission of crime. He further urged that the custodial interrogation of the present applicant is necessary in view of his prima facie involvement in commission of crime in question.

5. Perused the investigation papers. It is noticed that there are two eye witnesses to the incident, however, fact remains that after the complainant was called upon to remain present before the Court below for recording statement under Section 164 of the Cr.P.C., he remained absent. Apart from above, it is not in dispute that there exists dispute in the matter of management of Masjid, which is

already subjudice before the competent authority under the Maharashtra Public Trusts Act and it is admitted position on record that applicant is one of the trustees. There are no criminal antecedents as against the applicant and the applicant, who is a lawyer by profession, in my opinion could not have involved in the offence.

6. It will be appropriate to rely upon the judgment of the Apex Court in the matter of Bhadresh Bipinbhai Sheth Vs. State of Gujarat and anr. (cited supra). Paragraph 23 (I) to (iii) and (g) will be of worth referring here.

“23. The principles which can be culled out, for the purposes of the instant case, can be stated as under :

(I) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly old that if the complaint is found to be false or Criminal Appeal Nos.1134-1135 of 2015 frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only to the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage of post-conviction stage.

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even grater care and caution, because over-implication in the cases is a matter of common knowledge and concern.”

7. In view of above, in my opinion, it will be appropriate to order release of the present applicant. Hence, I proceed to pass the following order.

8. In the event of his arrest in Crime No.258 of 2015 registered on 1st December 2015, for the offences punishable under Section 307, 326, 323, 504 and 506 read with sec.34 of Indian Penal Code and under Section 4/25 of the Arms Act, the applicant be released on bail, upon furnishing P.R. Bond of Rs.15,000/- (Rs.Fifteen thousand) with one surety in the like amount.

9. The applicant shall attend the concerned Police Station from 20th to 22nd January 2016 between 10.00 a.m. and 12.00 noon and thereafter as and when called by the Investigating Officer.

10. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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