

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1509 OF 2016**

1. Bandu Shivaji Kondhare
2. Shivaji Bhau Kondhare
3. Ganesh Shivaji Kondhare
4. Sagar Hanumant Kondhare ... Applicants
Versus
State of Maharashtra ... Respondent

Mr. Ranjit Pawar i/b Mr.Satyavrat Joshi, for the Applicants.

Mr.Prashant Jadhav, APP for the State.

Mr. V.M.Mhamoutkar, API Bharati Vidyapeeth Police Station.

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : SEPTEMBER 26, 2016.

P.C.:

1. Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers.
2. This is an application under section 438 of Cr.P.C.. The applicants are apprehending their arrest in crime No. 420 of 2016 registered at Bharati Vidyapeeth Police Station for the offence punishable under sections 454, 380, 384, 379, 341, 412 and 414 r/w 34 of the Indian Penal Code and Sections 3(I), 3(x) and 3(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is the case of the prosecution that the complainant herein had filed complaint before Judicial Magistrate First Class,

Pune, on 13th June, 2016. According to the complainant he is running a hotel in the name of 'Royal Cafe' at survey No.10, Hissa No. 14, Sinhagad College, Ambegaon. He is running the said hotel in a tin shed. The present applicants are running a stall of Sugarcane juice in a bamboo shed. According to the complainant the applicants herein had humiliated the complainant by referring to him by his caste. It is alleged that on 23rd March, 2014 the complainant had taken the said shed on leave and license basis. The applicants herein were not letting the complainant run the hotel on the ground that they belong to the scheduled caste. It is alleged that in May, 2015 the applicants have told the customers that they should not visit the said hotel as it belongs to a person belonging to scheduled caste. It is also alleged that the applicant had cut the connection to the borewell and threatened the complainant that he shall not touch the water. On 11th September, 2015 they could not find the water tank or the electric motor. It is alleged that the original accused No. 5 Annaswami had cut the water connection. It is also alleged that the applicant had thrown mud in the water tank and that according to the complainant he alongwith Amar Jedhe had been to the house of the applicant No.1 requesting him to return the utensils which were taken away from hotel Royal Cafe. According to the complainant applicant has stolen the utensils and other things from hotel Royal Cafe.

3. In the course of investigation the scene of offence panchanama was recorded on 1st July, 2016, which clearly shows that the utensils were very much there in the cupboard of the complainant. The photographs of the scene of offence, panchanama also show that the water tank was also there. It does not appear that the applicants had stolen anything from hotel Royal Cafe.

4. It prima facie appears that there appears to be some animosity as complainant as well as the applicants are running hotel which are adjacent to each other. The incident is of the year 2015 and the complaint has been filed on 13th June, 2016. The statement under section 164 of Cr.P.C. is recorded of witness Kailash Jagtap, which shows that the applicants had humiliated the complainant in the year 2015. The papers of investigation do not reveal that any report was filed to the police in the year 2015.
5. The learned Counsel for the applicants rightly submits that there is no plausible explanation for inordinate delay in lodging the FIR.
6. Learned APP submits by virtue of embargo under section 18 of the said Act, the applicants would not be entitled for pre-arrest bail. However, the scene of offence, panchanama clearly indicates that no articles were stolen from the hotel Royal Cafe. That the other witnesses are interested witnesses. It may not be a fit case for custodial interrogation. Hence, the applicants deserve grant of pre-arrest bail.
7. The observations are restricted to application under section 438 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR and discharge application or at the time of trial.

ORDER

- i) The Application is allowed.
- ii) In the event of their arrest, the applicants be enlarged on bail on

furnishing PR bond in a sum of Rs.25,000/- each with one or more solvent sureties in the like amount.

iii) The applicants shall report to the concerned police station from 1.10.2016 to 5.10.2016 every day between 10.00 a.m. to 12.00 noon and co-operate the Investigating Officer to the best of their capacity.

iv) The application is allowed and disposed of accordingly.

(SMT.SADHANA S.JADHAV, J.)