

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1953 OF 2016

Javed Yousuf Qureshi.] ... Applicant

Versus

State of Maharashtra.] ... Respondent

Smt. Mallika Ingale for Applicant.
Smt. Rutuja Ambekar, APP for State.

CORAM :- N. W. SAMBRE, J.
DATE :- DECEMBER 20, 2016

P. C. :-

1. The applicant is seeking pre-arrest bail in C.R.No.123/16 registered with Shivaji Nagar Police Station, Mumbai, for the offences punishable under Sections 269, 285, 427, 435, 436, r/w 34 of IPC.

2. Except offence punishable under Section 436 of IPC, the offences under the remaining sections are bailable.

3. The prosecution story qua attracting the offence punishable under Section 436 of IPC, as has been narrated in the FIR, is that in the Deonar dumping ground, fire was caused by the present applicant, who deals in scrap, so as to extract wires from the disposable items. It is claimed that a chowki constructed with

bamboo which is used to provide shadow to the guards posted there, was burnt in fire, which would attract Section 436 of IPC.

4. The learned Counsel for applicant submits that apart from 3 panchanamas on record, there is hardly any material to infer the *prima-facie* involvement of the applicant in the crime punishable under Section 436 of IPC so as to prompt custodial interrogation.

5. The learned APP opposed the claim on the ground that the applicant who deals in scrap, has criminal antecedents and there is sufficient material to infer the applicant being beneficiary as he used to get clear scrap as outcome of the fire. The learned APP submitted that there is a case for custodial interrogation.

6. It is no doubt true that upon dumping the garbage, chemical reaction results into emission of methane gas. The said gas emitted having maximum temperature of 58 degrees and there is material on record to infer that the fire at the dumping ground could have been caused by natural process.

7. Be that as it may, even if presuming that the applicant was the person who is responsible for causing fire, still whether the provisions of Section 436 of IPC are attracted in the present case, is a moot question to be analyzed.

8. As per the prosecution story, what is alleged is a temporary chowki on the dumping ground for manning the security

guards got burnt because of fire as at the relevant time, the speed of the wind has increased. It is to be noted that the said bamboo chowki, in any case, cannot be construed as a house meant for residing or a place of worship, even as per Section 436 of IPC. There is a serious doubt as to whether the said provisions are attracted as against the present applicant.

9. Just because there are criminal antecedents, the same cannot be a consideration for denying pre-arrest bail to the applicant in the present crime. In view thereof, in my view, the application needs to be allowed. Hence the following order :-

- (i) In the event of arrest of the applicant in C.R.No.123/16 registered with Shivaji Nagar Police Station, Mumbai, for the offences punishable under Sections 269, 285, 427, 435, 436, r/w 34 of IPC, the applicant shall be released on executing PR Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (ii) The applicant shall attend the concerned police station from 26st to 29th December, 2016 between 10 a.m. to 12 noon and thereafter as and when called.
- (iii) The applicant shall not tamper with the prosecution evidence and / or influence the prosecution witnesses.

(N. W. SAMBRE, J.)