

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

CRIMINAL APPLICATION NO. 28 OF 2017

1. Vilas s/o Poonamchand Khandelwal,
Age 53 years, Occu. Business,
R/o 4-19-53, Near Datta Tempal,
Bangara colony, Aurangabad
2. Ganesh s/o Devidas Choudhary,
Age 36 years, Occu. Business,
R/o Municipal H.No.4-10-4,
Aurangpura, Aurangabad
3. Manikchand s/o Asaram Mohtole,
Age 53 years, Occu. Business,
R/o Municipal H.No.5-1-3, Bazar
Osmanpura, Aurangabad .. Applicants

Versus

The State of Maharashtra,
through Police Inspector,
Kranti Chowk, Aurangabad .. Respondent

Mr S.R. Totala, Advocate for applicants
Mr S.D. Ghayal, A.P.P. for respondent

- WITH -

CRIMINAL APPLICATION NO. 49 OF 2017

- . Shrikant s/o Ramrao Deshpande,
Age 47 years, Occu. Service
r/o flat No.D-37, Kailas Flat
Society, N-3, CIDCO,
Aurangabad .. Applicant

Versus

. The State of Maharashtra .. Respondent

Mr N.S. Ghanekar, Advocate for applicant
Mr S.D. Ghayal, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 12th January 2017

PER COURT

1. In Crime No.1155/2016, registered at Kranti Chowk Police Station, Aurangabad for the offences punishable under Sections 286, 336, 337 read with Sec.34 of the Indian Penal Code and under Section 5 of the Explosive Substances Act 1884 and under Section 36 (1) (d) of the Maharashtra Fire Prevention and Life Safety Measures Act, 2006, the applicants are seeking regular bail.
2. All the applicants were arrested on 20th December 2016 and were subjected to custodial interrogation.
3. The prosecution story as appears from the papers, as are produced before the Court is, the Aurangabad City Fire Work Dealers Association registered Association for and on behalf of its members applied to the Commissioner of Police, Department of Fire of the Aurangabad Municipal Corporation for grant of appropriate permits/licence for carrying out temporary sale of crackers during the Deewali season.
4. Such permission was granted in favour of individual members upon accepting appropriate licence/permit fees on certain conditions. Making appropriate safety arrangement and to take precaution so as to avoid any fire at the business place was the responsibility of individual licence holder and that of office bearers of the association.
5. On 29th October 2016, in the late morning hours, suddenly fire erupted in the said market in which 140 cracker shops engulfed in fire resulting into loss and damage to the property of the individual

licence holder. Number of vehicles were also damaged, however, but for injury suffered by few, nobody has lost life in the said tragic incident.

6. After the initial enquiry in the matter made by the Police officials, first information report came to be lodged by the fire Officer alleging that association and the individual members have not taken appropriate pre-caution so as to avoid any incident of fire in the said fire crackers market.

7. Initially, the applicants, after their arrest on 20th December 2016 were subjected to custodial interrogation and I am informed are under M.C.R.

8. In the above background, learned Counsel for the applicants in both the applications would strenuously urge that all the Sections under which offence is registered but for Section 436 of the Indian Penal Code are bailable. Section 436 of the Indian Penal Code prescribes for mischief by fire or explosive substance with an intention to destroy house etc. The said Section provides for a punishment imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

9. In view of the fact that under rest of the Sections, the offences are bailable which is not disputed by learned A.P.P., the Court is required only to deal with the issue under Section 436 of the Indian Penal Code against the applicants for prayer for regular bail.

10. It is required to be noted that each of the individual licence holder, upon investing their own amounts have established stalls so as to earn their livelihood. Though the investigation till date carried out depicts that conditions of permission for running fire cracker shops were not complied with to its entirety, as is apparent from the statement of Raju Sure which was recorded under Section 164 of Cr.P.C. who is serving with the Fire Department of the Aurangabad Municipal Corporation. The said statement, in categorical terms states that inspection was carried out along with Fire Officer on 27th October 2016 wherein certain violation was noticed, however, no notices to that effect were served on the individual licence holders or to the association to that effect.

11. As observed hereinabove, Section 436 of the Indian Penal Code punishes mischief by fire or explosive substance with intend to destroy house etc. Section 425 of the Indian Penal Code defines mischief. The plain reading of the said Section postulates intention to cause or a knowledge that such act is likely to cause wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affect it injuriously, commits offence of mischief.

12. So far as the applicants before this Court are concerned, whether their act is covered within the definition of mischief is an issue which prima facie is required to be tested in the light of above. What is attributed to the applicants is, the applicants are the office

bearers and as such, they have responsibility to comply with the terms of the licence, including that the responsibility with an individual licence holder. There is no material on the record to infer that there was any intention on the part of the applicants to cover their act within the meaning of Section 425 and Section 436 of the Indian Penal Code.

What could be gathered from the record is, it is the applicants who themselves have suffered the damage because of the fire in question and their intention or knowledge to cause such damage cannot be prima facie inferred from the material available on the record against them.

13. So far as the claim of applicant Shrikant Deshpande in Criminal Application no. 49 of 2017 is concerned, allegations are made that because of his smoking activity the fire has erupted. There is statement of individual that he saw said applicant smoking, however, there is no specific attribution that because of the act of smoking, the fire has erupted. Apart from above, it is required to be noted that all the applicants were subjected to custodial interrogation and there is hardly anything remained to be recovered from them, particularly in the offence in question. In my opinion, as such, their further custodial interrogation in the crime in question is unwarranted. But for an isolated statement of a licence holder, there is hardly any material to infer that applicant Shrikant's act is even covered within meaning of Section 425 and Section 436 of the Indian Penal Code.

14. All the applicants are very much available for the investigation and for the purpose of prosecution, if so required.

15. Perusal of the investigation papers also depicts that the investigation is almost at concluding stage. As such, the applicants are entitled to be released on bail.

16. The applicants in both the applications be released on bail in Crime No.1155/2016, registered at Kranti Chowk Police Station, Aurangabad for the offences punishable under Sections 286, 336, 337 read with Sec.34 of the Indian Penal Code and under Section 5 of the Explosive Substances Act 1884 and under Section 36 (1) (d) of the Maharashtra Fire Prevention and Life Safety Measures Act, 2006, upon furnishing P.R. bond of Rs.25,000/- each with one or two sureties in the like amount.

17. The applicants to attend the Investigating Officer as and when called for.

18. The applicants shall not influence the prosecution witnesses or tamper with the prosecution evidence.

19. Criminal Applications stand allowed accordingly.

(N.W. SAMBRE, J.)

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