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

CRIMINAL APPLICATION 112 OF 2017

Hanumant s/o Mahadu Shinde,
Age: 27 years, Occu: Labourer,
R/o Mochi Galli, Ambejogai Town,
Tq. Ambejogai and Dist. Beed

..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station: Ambejogai(City),
Dist. Beed

..RESPONDENT

Mr K. A. Kadam, Advocate for applicant;
Mr V. S. Badakh, Addl. Public Prosecutor for respondent;
Mr A. A. Nimbalkar, Advocate to assist Addl. Public Prosecutor

CORAM : N. W. SAMBRE, J.

DATE : 24th January, 2017

ORAL ORDER

By the present application under Section 438 of the Code of Criminal Procedure, the applicant seeks his release on bail, in connection with F.I.R. No.M-85 of 2016, registered Ambajogai City Police Station, for offences punishable under Sections 326, 324, 323, 441 read with Section 34 of the Indian Penal Code and Sections 3 (1) (x) and 3 (1) (xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. The applicant is named as accused no.2 in the crime in question. He has made a categorical statement that by way of Criminal Application No.5755 of 2016, he along with other accused has approached this Court

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with a prayer for quashing of the first information report, which has been allowed insofar as accused no.3 and 4 and as such, prosecution to their extent has been quashed.

3. The case of the prosecution, as appears from the contents of the first information is, the applicant along with his brother and other family members, entered the house of the complainant, caught hold of complainant Gajanan, brought him outside the house, assaulted him and also uttered caste based insulting words.

4. It is then claimed that initially complaint came to be lodged with the police station, however, as no cognizance was taken, a complaint case came to be filed and the crime is registered.

5. It is also brought to my notice that accused no.1 Sunil, younger brother of the present applicant is already released on regular bail.

6. In the above background, while trying to make out a case for grant of pre-arrest bail, learned Counsel appearing on behalf of the applicants submits that in the complaint case, what has been stated by the complainant before the learned Court below has prompted registration of crime in question is, after the complainant was assaulted by accused no.1 Sunil, adjoining owners of the property came out and witnessed the incident.

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7. If the statements of the other witnesses are perused, according to him, the case of the prosecution is falsified. In addition, a submission is made that there is nothing to be recovered from the applicant and the alleged utterances are not in public view, though outside the house and in a public place.

8. Learned Addl. Public Prosecutor, who is assisted by the learned Counsel appearing on behalf of the complainant, would submit that custodial interrogation of the applicant is necessary as the witnesses have specifically named the applicant as an accused, who has assaulted complainant Gajanan with iron rod. According to him, Gajanan having suffered grievous injury and the applicant having uttered caste based insulting attributions, bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act would attract for grant of pre-arrest bail. Learned Counsel then submits that the applicant was absconding and his custodial interrogation is necessary for recovery of iron rod in question and prayed for rejection.

9. Perused the investigation papers. It is the case of the complainant in the complaint case, that the applicant, his brother and other two family members entered the house of the complainant, dragged him outside the house, assaulted him and also uttered caste based insulting words.

10. If the said complaint is minutely perused, role attributed to the present applicant is only that of his physical presence and uttering of caste

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based insulting words. Specific role of assault by iron rod is attributed to co-accused Sunil, who is already released on regular bail.

11. Though in the statements of the eye-witnesses the present applicant is referred to as the person who has assaulted the complainant with iron rod, still looking to the major contradictions and the fact that all family members of the applicant are named as accused in the crime in question, in my opinion, there is reason to infer that there is every likelihood of false implication of the applicant in the crime in question.

12. In the above background, even if the incident of uttering of caste based insulting words had taken place at a public place, in my opinion, it cannot be termed to be in public view, as it is only the family members of the complainant were present at the spot and as such, the issue as to whether the offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is made out or not is under doubt.

13. In view thereof, the application deserves to be allowed. Hence, following order :-

In the event of arrest of the applicant, in connection with F.I.R. No.M-85 of 2016, registered Ambajogai City Police Station, for offences punishable under Sections 326, 324, 323, 441 read with Section 34 of the Indian Penal Code and Sections 3 (1) (x) and 3 (1) (xv) of the Scheduled

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Castes and Scheduled Tribes (Prevention of Atrocities) Act, he be released on bail, on furnishing P.R. Bond of Rs.15,000/- with one or two sureties in the like amount.

The applicant shall attend the Investigating Officer on 30th and 31st January, 2017, between 10.00 a.m. and 12 noon and thereafter as and when called.

Criminal Application stands allowed in above terms.

(N. W. SAMBRE, J.)

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