

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

CRIMINAL APPLICATION NO.3369 OF 2017

Jeevan S/o Laxmanappa Kyatamwar ... Applicant

VERSUS

The State of Maharashtra & another ... Respondents

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Mr.R.J.Nirmal, advocate for the applicant

Mr.S.B.Joshi, A.P.P for respondent-State.

Mr.D.M.Shinde, advocate for respondent no.2.

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CORAM : K.L.WADANE, J.

DATED : 26th JULY, 2017

O R D E R :

Heard the learned counsel for the applicant and the learned A.P.P. for respondent no.1.

2. One Prakash Baliram Mukade lodged a complaint to the police station on 11.6.2016 alleging that his father purchased a land from the brother of the present applicant and that land is given to one Madhav Mukade for its cultivation. On 10/06/2016 his brother Madhav Mukade informed the informant that the present applicant has cut

nilgiri tree. Therefore, the informant, his elder brother Vasant Mukade with his friend went to the spot and enquired the applicant as to why he has cut the tree, at that time the applicant and his son abused the informant and his brother as 'andhodya'. They have also assaulted the informant and his brother.

3. On the basis of information, offence came to be registered against the present applicant at Crime No. 142/2017 at Kalamnuri police station, District Hingoli for the offences punishable under Sections 323, 324, 504, 506 of the Indian Penal Code and under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4. The learned counsel appearing for the applicant has pointed out relevant portion of the actual abuses given by the applicant and his son, which reads as follows:

" जीवनअप्पा यांचा मुलगा नाव माहित नाही हा देखील सोबत होता वरील दोघांनी मला व माझे भावास अंधोड्या तुमच्याने काय होते ते करून घ्या "

5. By referring to the above contents of the first information report, the learned counsel submits that the abuses by 2 persons in one voice appear to be improbable. He, therefore submits that there are no specific allegations against each of the accused. Therefore, he relied upon the observations in the case of **Shashikant Ramhari Tambe & Ors. Vs. State of Maharashtra** reported in **2008 BCI 418 : -**

"5. Useful reference may be made to a decision of the Supreme Court in the case of Mukesh Kumar Saini Vs. State (Delhi Administration) reported in 2002 ALL MR (Cri) JOURNAL 41. In the said case, it was observed that there must be specific accusation alleged against each of the accused and Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating word may not be enough. In the present case there is no specific accusation alleged against each of the accused. Looking to the above facts, I am inclined to grant anticipatory bail to the applicants."

He also relied upon the unreported Judgment in Criminal Application No.3021/2017.

6. Looking to the observations in the above cited authority, there must be specific allegation

against each of the accused about particular abuses given by them. In the present case, it is highly impossible to have abused by two persons in one voice. Therefore, the statement to that effect is vague. In such circumstances and in view of the observations of above cases, I am of the opinion that the applicant is entitled for pre-arrest bail.

7. From the record it appears that there is dispute between the present applicant, his brother and the informant on account of boundaries of respective fields. The present applicant has also filed first information report regarding the same incident on 12/06/2017. In view of above, no custodial interrogation of the present applicant is necessary.

8. Hence, the following order.

- (i) Criminal Application is allowed.
- (ii) In the event of his arrest, the applicant shall be released on bail in connection with Crime No. 142 of 2017, registered at Kalamnuri police station, District Hingoli, on furnishing P.R. bond

of Rs. 5,000/- with one solvent surety in the like amount.

9. Criminal Application is disposed of.

(K.L.WADANE, J.)

dbm