

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

CRIMINAL APPLICATION NO. 3453 OF 2017

VISHAL ANANTRAO DESLE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Advocate for Applicant : Mr Chatterji Joydeep
APP for Respondent : Mr A S Shinde

...
CORAM : V.K. JADHAV, J.
Dated: September 13, 2017

PER COURT :-

1. The applicant is seeking pre-arrest bail in connection with Crime No.112/2016, registered at Sakri Police Station, District Dhule, for the offences punishable under sections 323, 504, 506 of IPC and Section 4 (1) (r) (s) of Prevention of Scheduled Caste and Schedule Caste (Atrocities Act) 2015 and u/s 7 (1) (D) of Protection of Civil Rights Act. His application with similar prayer bearing Criminal Bail Application No.592/2017 came to be rejected by the Additional Sessions Judge, Dhule by order dated 4.7.2017.

2. Brief facts, giving rise to the present application

are as under :-

a] On the basis of the complaint lodged by Kamlakar Mohite dated 30.7.2016, aforesaid crime came to be registered. It has been alleged in the complaint that, on 9.5.2016 the present applicant had abused the informant on his caste and also beaten him with the help of fist and kick blows. On the basis of these allegations, the applicant apprehends his arrest at the hands of the police.

3. Learned counsel for the applicant submits that, though the incident had taken place on 9.5.2016 at about 11.30 am, the complaint came to be lodged after 83 days i.e. on 30.7.2016. Learned counsel submits that, after filing of the complaint the investigating officer has issued notice to the applicant under section 41-A of the Criminal Procedure Code, and in response to the said notice, the applicant has attended the police station and co-operated the investigating officer. The applicant has complied and continued to comply with the notice and this Court has granted interim pre-arrest

aaa/-

bail to the applicant on that ground alone. Investigating Officer has not expressed that he wanted to effect arrest of the present applicant in connection with this crime. However, the learned Additional Sessions Judge has made observations incorrectly to that effect in paragraph No.7 of the order.

4. Learned A.P.P. submits that, as per report submitted by the Investigating Officer, the applicant has complied with the terms of the notice and he has co-operated the Investigating Officer to carry out the investigation.

5. On perusal of the complaint and charge sheet, it appears that, due to political reasons, this complaint came to be lodged. It further appears that due to intervention of some persons, the informant has decided not to lodge the complaint, however, belatedly that is after 83 days of the alleged incident, informant has lodged the complaint in the concerned police station. Thus, considering the same, Investigating Officer has

issued a notice as provided under section 41-A of the Cr.P.C. and as per the report of the Investigating Officer, the applicant has responded to the said notice and complied with the terms of the notice. At present, the investigation is over and charge sheet has been submitted against the applicant. It is thus clear that in terms of sub-section (3) of section 41-A, the Investigating Officer is not of the opinion to effect arrest of the applicant and even it is not brought to the notice of this Court that, the Investigating Officer has recorded his opinion to that effect in tune with the provisions of sub-section (3) of Section 41-A of the Cr.P.C. Furthermore, it also appears that antecedents of the applicant are clear. He has fixed place of residence. So far as tampering of the prosecution evidence is concerned, that can be taken care by imposing certain conditions. Hence, following order.

O R D E R

1. Application is hereby allowed.

2. Interim pre-arrest bail granted by this Court dated 12.7.2017 stands confirmed on the following conditions :-

a] The applicant shall not tamper with the prosecution evidence in any manner.

b] The applicant shall attend the concerned police station once in a week i.e. on Every Sunday between 09.00 am to 11.00 am for a period of one month.

3. Application is accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

...