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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 576 OF 2017

Mohd. Hussain Shamshuddin Jabali .. Applicant
Vs.
The Sr. Police Inspector & Anr. .. Respondents

Mr. Abad Ponda i/b Mr. Mateen Abdul Rahim Shaikh for the Applicant.
Mr. Ajay Patil, APP for the Respondent-State.
Mr. Hankare, PI, Trombay Police Station present.

CORAM : A.S. GADKARI, J.
DATE : 4th APRIL, 2017.

P. C. :

1. This is an application under Section 438 of the Code of Criminal Procedure. The applicant is apprehending arrest in C. R. No. 66 of 2017 registered with Trombay Police Station, Mumbai under Sections 307, 120(B), 353, 332, 435, 336, 337, 114, 112, 143, 144, 145, 147, 148, 149 of the Indian Penal Code read with Sections 3, 4 of the Prevention of Damages to Public Property Act read with Sections 3, 7 of the Criminal Law Amendment Act.

2. The First Information Report is lodged by Shri Mahesh M. Toraskar, Assistant Police Inspector attached to Trombay Police Station, Mumbai. It is stated in the said report that on 18.03.2017 at about 10.00 p.m. a mob had gathered at Sector E, Chittah Camp, Trombay. When police reached there, it was informed to the police that a person by name Arvind Balkrishnan Arundudhiyar has circulated a morphed picture of the

holy Makka on the social media and, therefore, it hurt the religious feelings of the persons from the said locality and they were searching him. The police after sensing the seriousness of the matter, requested the persons therein to lodge FIR. Accordingly, the applicant, an Advocate and other persons including Mr. Khwaja Mohd. Irshad Ahmed Khan went to the Trombay Police Station and registered C. R. No. 65 of 2017. The said person, namely, Arvind Arundudhiyar came to be arrested and was brought to the Trombay Police Station. When the complaint of Shri Khwaja Mohd. Irshad Ahmed Khan was being recorded by the police, a mob of 100-125 persons including the applicant and other named persons came at the police station. The mob started giving slogans that *“hand over the accused to them; Court will release him; we will kill him”*. The police tried to pacify the said persons. That after lodging of the said crime No. 65 of 2017 under Sections 153(A), 295(A) of the Indian Penal Code, the applicant and other accused persons went out of the police station and informed the mob, which was standing outside the police station, that a complaint has been recorded. The said mob went away and stood at a distance from the police station. The said mob was then still demanding that the accused in C.R. No. 65 of 2017 be handed over to them as they wanted to kill him. That on 19.03.2017 at about 00.40 a.m. all of sudden a mob of about 100-150 persons came from Dindayal Upadhyay Ground and was demanding the custody of the accused Arvind Arundudhiyar. The persons from the mob were having wooden sticks, Bamboo sticks, paver

blocks, stones and glass bottles in their hands and started pelting it at the police. The said mob damaged more than three police vehicles. Somebody from the mob also threw burning cloth balls which caused fire to the police van. The police tried to pacify the mob on Megaphone. However, the mob was not in a position to listen the police. The police, therefore, resorted for firing tear gas shells and lathi charge. The police arrested about 15 persons from the spot. Because of the said attack by the mob, substantial property of the Government was damaged. In the premise, FIR is lodged.

3. Mr. Ponda, the learned counsel appearing for the applicant submitted that, the applicant is a practicing Advocate and is President of Kurla Metropolitan Magistrate Courts Advocate's Bar Association; that it is not the applicant who instigated the mob, but perusal of the FIR would reveal that since beginning the mob was harbouring the said feeling and was demanding the custody of the said accused, namely, Arvind Arundudhiyar and therefore, there is no question of instigating the mob by the applicant. He has submitted that the applicant was present when Crime No. 65 of 2017 was registered against the accused Arvind Arundudhiyar and thereafter he left the police station. That the present crime is registered at about 00.45 a.m. on 19.03.2017 when the applicant was neither present at the police station nor was a part of the mob which attacked the police station. He has submitted that after leaving the police station on 18.03.2017 after lodging of Crime No. 65 of 2017, the applicant

did not returned to the police station, and therefore, there was no question of instigation by him. He submitted that assuming for the sake of argument, the mob was giving slogans that, "*accused be handed over to them; Court will release him; we will punish him/we will kill him*" does not amount that the applicant has instigated the said mob and according to him it is not an abetment to commit the crime. He further submitted that the applicant is not a conspirator in attacking the police station and/or causing damage to the public property. That in view of the ratio laid down by the Supreme Court in the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors., (AIR 2011 SC 312)** and in particular para 122, the Court should be very slow in granting or rejecting the pre-arrest bail application as the prosecution has also applied Section 149 of the Criminal Procedure Code to the present case. He lastly submitted that no purpose will be served by taking the applicant into custody and he therefore, prayed that the applicant may be released on pre-arrest bail.

4. Learned APP has produced for my perusal the original record of investigation of present Crime No. 66 of 2017. The facts giving rise for lodging of the present crime are in brief mentioned in the foregoing paragraph No.2. It is to be noted here that the allegation against the applicant is that he in conspiracy with other accused persons instigated the mob to attack the police station and caused damage to the public property. Though the name of the applicant as an instigator is not mentioned in the FIR, the statements of two witnesses recorded

immediately on 20.03.2017 clearly mention that after the lodgment of the first crime (Crime No. 65 of 2017) when the mob had gathered at Dindayal Ground, the applicant along with other named accused persons, namely, Shahanawaz Shaikh (Corporator), Ahmed Ali and his brother Aayub, reporter A. Raja, Farooque Kazi, Farooque Mevati and other accused persons were present there and when the mob was giving slogans that *“the accused be handed over in their custody; Court will release him; we will kill him”*, the applicant instigated the mob by saying that *“I am an Advocate of Court; I know everything; Court will release the said accused tomorrow and therefore, we must take him in our custody”*, and thereafter the co-accused Farooque Kazi, press reporter A. Raja and Mevati said that *“we will not leave the said accused, we will kill him”*. That after the aforestated statement made by the applicant, the mob marched on police station and attacked it as stated in the FIR.

It is, thus, clear that the applicant after lodging Crime No. 65 of 2017 went to the said Dindayal Ground and instigated the mob in taking custody of the said accused which ultimately resulted into attacking the police and causing damage to the public property. According to me, the applicant being a practicing Advocate, it was in fact his duty to pacify the mob by advising them that the criminal law has already set into motion, the law will take its own course and for which the custody of the accused need not be demanded in illegal and unlawful manner. It is to be noted here that the police have applied Section 120-B of the Indian Penal Code to the present

crime. After perusing the record of investigation, it appears to me that the applicant is one of the main conspirators in the present crime and, therefore, the ratio laid down by the Supreme Court in the case of **Siddharam Mhetre** (supra) and particularly in para 122 is of no avail to the applicant.

5. After taking into consideration the serious allegations against the applicant, the gravity of the offence and the larger interest of the public, in considered view of this Court, the applicant does not deserve to be granted pre-arrest bail.

6. The application is, accordingly, rejected.

[A. S. GADKARI, J.]