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

CRIMINAL APPLICATION (APPLN) NO.4 OF 2016

Gautam S/o Vishwanath Gawai,
Aged 32 years, Occu. Service,
R/o Mangalmurti Nagar, Ghatpuri
Road, Khamgaon, District Buldhana ..APPLICANT

VERSUS

1. The State of Maharashtra
Through P.S.O., P.S.
Hiwarkhed, District Buldhana
2. Vinayak Prabhakar Tikar,
Aged 30 years, Occ.Agriculturist,
R/o Shirajgao Tah Khamgaon,
District Buldhana ..RESPONDENTS

Mr S.V. Sirpurkar, Advocate for applicant;
Mr S.A. Ashirgade, Addl. Public Prosecutor for respondent no.1;
Mr A.V. Bhide, Advocate for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 21st March, 2017

ORAL ORDER

Heard learned Counsel for the parties.

2. By the present application under Section 439 (2) of the Code of Criminal Procedure, the applicant – original complainant seeks cancellation of pre-arrest bail granted to respondent no.2 by learned Special Judge, Khamgaon vide order dated 23rd October, 2015, passed in ABA No.270 of 2015, in connection with C.R. No.3022 of 2015, registered with police station, Hivarkhed, District Buldhana, for offence punishable under Section 3 (1) (viii) and (ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

(2)

3. It is the case of the prosecution that respondent no.2 – accused was a primary member and also office bearer of a co-operative society of which the present applicant was also a member and office bearer. It is claimed that respondent no.2, after his resignation from the primary membership of the said society started making false and frivolous complaints to the various authority alleging mismanagement and misappropriation of the funds of the said society by the present applicant. The said complaints were investigated into and the authority under the Maharashtra Co-operative Societies Act is informed to have forwarded a report that the said complaints to the authority by the respondent no.2 were out of vengeance against the applicant. It is in this background, the offence in question came to be registered.

4. Learned Counsel appearing on behalf of the applicant submits that the learned Court below, while granting pre-arrest bail to respondent no.2 has ignored the bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in the matter of grant of pre-arrest bail. In addition, according to him, there is another offence registered against respondent no.2 – accused for extortion punishable under Section 384 of the Indian Penal Code, in C.R. No.1 of 2016. As such, according to him, pre-arrest bail granted to respondent no.2 needs to be cancelled.

(3)

5. In addition to the issue of filing of charge-sheet, learned Counsel appearing on behalf of respondent no.2 would invite attention of this Court to the order dated 7th September, 2016, passed by the Divisional Joint Registrar, Co-operative Societies, Amravati, whereby the directions were issued to District Deputy Registrar, Co-operative Societies, Buldhana to re-inspect the conduct of the society headed by the applicant.

6. Learned Addl. Public Prosecutor supports the claim for cancellation of bail.

7. On perusal of the record, it could be inferred that there are no findings by the authority, particularly in the backdrop of the order of the Divisional Joint Registrar, Co-operative Societies, Amravati that the complaints initiated by respondent no.2 were false, frivolous and moved only out of vengeance against the applicant.

8. After release of respondent no.2, the investigation into the offence is complete and charge-sheet against him is filed on 1st December, 2015.

9. In the backdrop of allegations against respondent no.2, in my opinion, there is hardly any material to infer that prima facie the offence punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) attracts against him, particularly when there are no findings that the complaints moved by respondent no.2 were false, malicious or vexatious or the information given by him was frivolous.

(4)

10. In view thereof, no case for cancellation of bail under Section 439 (2) of the Code of Criminal Procedure is made out. In the result, Criminal Application stands rejected.

(N.W. SAMBRE, J.)

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