

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 528 OF 2017

(Mohit Ramesh Rao Deshmukh..vs..State of Maharashtra, through P.S.Mehkar, District-Buldhana)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Y.J.Maheshwari, Advocate for applicant.

Shri V.P.Gangane, A.P.P. for State-non-applicant.

CORAM : V.M. DESHPANDE, J

DATED : AUGUST 11, 2017

Heard learned counsel for applicant and learned
A.P.P. for State-non-applicant.

2] Since the applicant is apprehending his arrest in connection with Crime No.159/2017, registered with P.S. Mehkar, District-Buldhana, for the offence punishable under Sections 307,143,147,148,149,323,504,506 of the Indian Penal Code and Sections 3(2)(5) and 4(i)(1)(s) of the Prevention of S.C. and S.T.Offences Act, the applicant has approached to this Court by filing an application under Section 438 of the Code of Criminal Procedure after such application was rejected by learned Special Judge and Additional Sessions Judge(Link Court,Mehkar),Buldhana on 4/7/2017.

3] This Court on 25/7/2017, granted interim protection in favour of the present applicant. By the order dated 1/8/2017, this Court directed the applicant to attend P.S.Mehkar on 2nd, 3rd and 4th August, 2017.

4] The State has filed reply.

5] The F.I.R. is lodged by Vishal Yashwantao Dabhade who is neighbour. The F.I.R. is lodged on 20/6/2017. The occurrence is dated 19/6/2017. As per the F.I.R. on 19/6/2017 at about 11.30 in the night when he was sitting in a Indica Car on Nanefal Road, in front of one Jagdamaba Hotel, with his friend Swapnil Madhukar Kale that time 4-5 persons on motorcycle came there and one Ashwin Vijay Pawar, Yogesh Thakur , Mohit Deshmukh(complainant) and other 12 to 13 persons came there. Out of them Ashwin Vijay Pawar abused the complainant in the name of his caste and thereafter stabbed in his chest for 7-8 times. When his friend Niranjan Galsing Rathod tried to intervene in the said assault he was also assaulted. Thereafter all ran away. The statement of the complainant was recorded on 20/6/2017 which is treated as an F.I.R.

6] From the perusal of the F.I.R. it is crystal clear that there are no allegation against the present applicant that he has used the abusive language in the name of caste of complainant. So also, no role of assault is attributed against the present applicant. The role that is attributed to the applicant that he was one of the member of said unlawful assembly. Even, learned A.P.P. submits during the course of argument that further investigation also does not reveal any role that can be attributed to the present applicant except that he was member of unlawful assembly. The question of vicarious liability of course will be decided by the Court during the course of trial. In my view, when there are no specific allegations against the present applicant his

application can be considered sympathetically. Further the applicant has also attended the police station as directed by this Court. That leads to me pass the following order.

ORDER

- I) The application is allowed.
- II) In the event of arrest of applicant Mohit Ramesh Rao Deshmukh in Crime No.159/2017, registered with P.S.Mehkar, District-Buldhana, for the offence punishable under Sections 307,143,147, 148,149, 323,504,506 of the Indian Penal Code and Sections 3(2)(5) and 4(i)(1)(s) of the Prevention of S.C. and S.T. Artocities Act, he shall be released on his executing P.R. Bond of Rs. 20,000/- with one solvent surety in the like amount.
- III) The applicant shall attend P.S.Mehkar twice a week i.e. on 3rd Tuesday and 3rd Saturday in between 3.00 p.m. to 5.00 p.m. till the filing of the chargesheet.
- IV) It is made clear that if the applicant failed to attend the police station as directed by this Court, the investigating agency shall be at liberty to file application for cancellation of bail.
- V) The applicant shall maintain the diary showing his attendance.
- VI) He shall not tamper the prosecution witnesses.
- VII) With this the application is disposed of.

JUDGE