

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

CRIMINAL APPLICATION (ABA) NO. 592 OF 2017

(Pawan Jairam Jadhav..vs..State of Maharashtra, through PSO.PS.Bibi,Tahsil-Lonar,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 P.S.Sadavarte, Advocate for applicant.

Shri Indranil Damle, A.P.P. for State-non-applicant.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 31, 2017

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

2] This is an application for grant of pre-arrest bail since the applicant is apprehending his arrest in connection with crime No.52/2017,registered with P.S.Bibi, Tahsil-Lonar,District-Buldhana, for the offence punishable under Sections 353,332, 448, 186 r/w Section 34 of the Indian Penal Code and Section 3 of the Prevention of Damage to the Public Property Act.

3] The F.I.R. is dated 24/7/2017, and it is alleged by one Tukaram Malhari Aadwane, the Center Incharge. The F.I.R. is in respect of the occurrence dated 22/7/2017. Merely because, there is a delay that by itself is not necessary to bring the prosecution case under the lens of suspicion, however the Court cannot be mute spectator and can always lift the veil.

4] According to the prosecution case, on 22/7/2017, incident of ruckus occurred in a school i.e. Zilla Parishad Primary School, Pimpari Khandare, Tahsil-Lonar in between Jairam Jadhao, Head Master of the said school who happens to be the

father of the present applicant and one Assistant Teacher of the said school Prakash Mansing Tagwale. Both Jairam Jadhao and Prakash Tagwale approached to P.S.Bibi and lodged their respective reports against each other. The police station officer of the said police station registered those reports as non-cognizable offences by registering N.C.R.Nos. 234/2017 and 235/2017, so also registered an istegasa against both of them vide Istegasa Nos. 164/2017 and 165/2017. The investigation papers further show that on 22/7/2017 itself the P.S.O.P.S.Bibi sent a communication to B.D.O.Panchayat Samittee Lonara. Under the said communication the fact of lodging of report against each other by Jairam Jadhao and Prakash Tagwale, so also registration of non-cognizable offences were also mentioned. The police officer also expressed his opinion in the said communication that the education authority should consider about the transfer of the teacher and also expressed concern about the breach of public tranquility.

5] It appears that after receipt of this communication from P.S.O.Bibi the first informant received direction from his superior to conduct an enquiry and after that the F.I.R. was lodged.

6] In the F.I.R. the allegations are that the present applicant along with his brother Sawant and his father Jairam assaulted Prakash Tagwale. The said assistant teacher was examined medically. No injuries were found. Be that as it may, his statement is also silent that, he was having a bodily pain. This is more important in the light of his statement recorded during the course of investigation of this crime on 25/7/2017 that he was assaulted by kicks and fists. However, his such statement is belied

by the medical evidence.

7] In so far as the present applicant is concerned, if the report by Prakash Tagwale on 22/7/2017 to P.S.Bibi resulting into registration of non-cognizable offence is perused, his report is totally silent that present applicant made any type of assault or has entangled with him. The entire accusations are against his father Jairam and other brother of the applicant Sawan. The report only shows that when Prakash Tagwale was proceeding towards police station he was followed on motorcycle by the present applicant, Jairam and Sawan. This in my view, is not in any way helpful to the prosecution in as much as thereafter immediately Jairam lodged report against Prakash Tagwale, proceeding towards P.S.Bibi cannot be circumstance which can be used against the present applicant.

8] The learned A.P.P. invited my attention to a police statement of one sarpanch. He claims that he witnessed the incident of slapping of Prakash Tagwale by the present applicant, his father Jairam and his brother Sawant. Further, for the reasons best known to this sarpanch he kept mum about the said incident upto 30/7/2017. If really such incident occurred in the presence of sarpanch, normally the sarpanch will not miss the said and will not fail to report the matter to the police.

9] Further learned A.P.P. has invited my attention to paragraph no.3 of the reply filed on behalf of the investigating officer which shows that according to the prosecution at the time of incident on 22/7/2017, the brother of applicant namely Sawan a police head constable discharging his duty at Bhandara was found under the influence of liquor and he also relied on the medical report of said Sawan of 27/7/2017. With the assistance

of the learned A.P.P. I have gone through the said medical report which clearly shows that the said person was not found under the influence of liquor. All the aforesaid cast serious doubt above the prosecution and therefore the delay caused in lodging report assumes importance.

10] In view of the fact that at the threshold the name of the present applicant was not appearing in the report by Prakash in my view the personal liberty of the applicant cannot be allowed to be curtailed by the investigating agency. That leads me to pass the following order.

ORDER

- I) The application is allowed.
- II) In the event of arrest of applicant Pawan Jairam Jadhav in crime No.52/2017, registered with P.S.Bibi, Tahsil-Lonar, District-Buldhana, for the offence punishable under Sections 353, 332, 448, 186 r/w Section 34 of the Indian Penal Code and Section 3 of the Prevention of Damage to the Public Property Act, he be released on bail on he executing P.R. of Rs.5000/- with solvent surety in the like amount
- III) The application is disposed of.

JUDGE