

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

CRIMINAL APPLICATION (ABA) NO.599 OF 2017

(Omprakash @ Ombabu S/o Ramharak Mishra..vs..State of Maharashtra,through
 PSO.PS.Dharni,District-Amravati)

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

Court's or Judge's orders.

Shri K.B.Zinjarde, Advocate for applicant.

Shri T.A.Mirza, A.P.P. for State- non-applicant.

CORAM : V.M. DESHPANDE, J.
DATED : SEPTEMBER 5, 2017

This is an application for pre-arrest bail. The applicant is apprehending his arrest in connection with Crime No.5/2017, registered with P.S.Dharni, District-Amravati, for the offence punishable under Sections 147,148,149,342,504, 506, 279, 324 and 325 of the Indian Penal Code and Sections 3(1)(r)(s) and 3(2)(v) and (v-a) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)Act, 1989.

2] As per the prosecution case, complainant Rameshwar Manaji Kasdekar lodged a report that on a day of incident i.e. 4/1/1917, he alongwith his son Ajay were proceeding from their village to Raitalai in afternoon for attending a kabaddi match. After the festival was over when he had his son were proceeding towards their village, it is alleged that accused no.1 Pummy who was the driver of pick up van gave a cut to the motorcycle on which the applicant and his son were riding. Due to the said, complainant and his son fell on the ground. Thereafter, complainant and his son chased the said pickup vehicle which was spotted at village Sawlikheda. There the complainant put the question to

accused no.1 Pummy as to why he is indulged in such activities. According to prosecution case, due to the verbal altercation in between complainant and Pummy , Pummy's relatives including the present applicant gathered there and started assaulting complainant. Though, different roles are attributed against the different accused persons, in respect of the nature of the weapons, which were holding by the respective accused persons, as per the prosecution case, the present applicant has given fist blow. As per the prosecution, that time the present applicant and other also used abusive language in the name of caste of the complainant. He was also confined in the house is the prosecution case.

3] All other accused persons are already released on either regular bail or anticipatory bail by the learned Court of Sessions Judge or by this Court. As per the prosecution case, the present applicant was not holding any dangerous weapon in his hand nor it is attributed against the present applicant in respect of any overtact with the help of dangerous weapon . What is stated against the present applicant is that he has used fist blow. The main contention so far as the present applicant is concerned that he has used abusive language in the name of caste.

4] Undisputedly, the applicant is resident of Sawlikheda whereas the complainant resides at Dhulghat Railway a different and distinct place. The F.I.R. is totally silent that the present applicant was in know of the caste of the complainant and therefore intentionally in order to humiliate him has used the abusive language in the name of the caste. When the caste of the complainant was not within

the knowledge of the applicant it is really hard to believe that a person who is resident of different village will use the abusive language in the name of the caste. In that view of the matter the bar as pressed into service under the provisions of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)Act, 1989 by learned A.P.P. in my view cannot operate against the present applicant.

5] In view of the role that is attributed of giving only fists blow in my view the applicant has made out a case for anticipatory bail. Further this Court has granted at-interim bail in favour of the present applicant on 22/8/2017. While granting at -interim bail in favour of the applicant this Court has directed that the applicant shall attend police station on 25/8/2017, 26/8/2017,30/8/2017 and 31/8/2017 and was directed to remain with the investigating officer right from 11.00 a.m.to 5.00 p.m. The applicant has attended the police station and was with the investigating officer right from 11.00 a.m. to 5.00 p.m. on the aforesaid dates. The learned A.P.P. has concurred the aforesaid submissions made by the learned counsel for the applicant.

6] In view of the above, further custodial presence of the applicant is not all required or necessary for investigating officer. That leads me to pass the following order.

ORDER

- I) The application is allowed.
- II) In the event of arrest of applicant Omprakash @ Ombabu S/o Ramharak Mishra in Crime No.5/2017, registered with P.S.Dharni, District-

Amravati, for the offence punishable under Sections 147,148,149,342,504, 506, 279, 324 and 325 of the Indian Penal Code and Sections 3(1)(r) (s) and 3(2)(v) and (v-a) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)Act, 1989, he be released on bail on he executing P.B. of Rs.25000/- with one solvent surety in the like amount.

With this the application is disposed of.

JUDGE

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