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

ANTICIPATORY BAIL APPLICATION NO. 148 OF 2019

Sarfaraz Abdul Latif Halai

..Applicant

Vs

The State of Maharashtra

..Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 149 OF 2019

Idris Yakub Kharodia & Anr

..Applicants

Vs

The State of Maharashtra

..Respondent

Mr. Prakash Wagh for Applicant in ABA No.148 of 2019.

Mr. Gaurav Bhawnani I/b A.W. Khan for the Applicants in ABA No.149/2019.

Mr. Amit Palkar, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 19th March 2019.

P.C.:

1] These are applications under Section 438 of Cr. P.C. for pre-arrest bail in CR No.4 of 2019 dated 2nd January 2019 registered with Amboli Police Station, Mumbai under Sections 353, 332, 333, 186, 143, 147, 109, 114, 323, 504, 427 of the Indian Penal Code.

2] Heard the learned counsel for the respective applicants and the learned APP. Perused the record of investigation.

3] The present case depicts the sorry state of affairs in the society and the rise of assaults on the public servants performing lawful duty. The first information report is lodged by Shri Sagar Kondvilkar, a Police Constable attached to Mumbai Police. On 2nd January 2019 at about 12.30 p.m. when he was performing his lawful duty, he noticed one person riding motorcycle without helmet. He therefore stopped the said motorcycle and asked the rider of the motorcycle to pay the fine. He also demanded licence from the concerned person. The said person under the guise of bringing papers, tried to run away from the said place. The first informant along with his colleague Police Constable Buckle No.091902 stopped the said person and demanded licence from him to which he showed a photocopy of the licence. When the informant demanded original licence from the said person, he again started fleeing away from the scene of offence and also refused to pay fine and therefore the informant and the other police on duty were left with no alternative but to accost him and charge for the said offence. When the said person was being apprehended and taken to the Beat Chowky, he assaulted the Police Constable on the middle finger of left hand with a sharp edged weapon and tried to run away. When the informant tried to catch hold of the said person with his left hand, his shirt

torn during the scuffle and blood which was oozing from the injury of the informant splashed on the shirt of the accused person. The informant thereafter with the help of Constable (Buckle No.06.1902) namely Shri Manoj Govari chased the said person and apprehended him with the help of other people who were present at the scene of offence. It is further stated that, at the relevant time some people gathered at the scene of offence. One of the persons told the police on duty that he is a News Reporter and stated that, the police are harassing Muslim persons only and unless and until the police releases the said person, serious situation will be created there. The said person also assaulted informant with kicks. In the meantime, the motorcycle rider Noaman showed his blood splashed shirt to the people gathered there and instigated them saying that, the police have assaulted him. Due to the said instigation 100 to 150 people gathered there and raised slogans against the Police and abused them in filthy language. It is the further prosecution case that, the said people also assaulted the police officer on duty and freed away the said Noaman from the scene of offence. Thereafter additional police force arrived at scene of offence and brought the situation under control.

In the said assault the Police Constable Shri Sagar Kondvilkar

has suffered stiches to his said finger and other police officer suffered fracture to his finger. In the premise the first information report is lodged.

4] The learned counsel for the respective applicants submitted that, the names of the applicants are not mentioned in the first information report. It is submitted that, except general reference, there is no specific allegation against the applicants. The learned counsel further produced on record a copy of the Order dated 8.2.2019 granting bail to the principal accused Noaman Mussa Kharodia, wherein the learned Additional Sessions Judge has observed that, the detention of Noaman by the Constable would amount to unlawful confinement. The Trial Court further observed that, factual matrix is that the police machinery itself took law into its own hands and caused grievous hurt to applicant/Noaman. The learned counsel for the respective applicants therefore prayed that the applicants may be granted pre-arrest bail.

5] At the outset, it is to be noted here that, the concerned Constable Shri Sagar Kondvilkar with other Police personnel were performing their lawful duty, however, it is only because the said Noaman refused to show his licence and to pay fine for not wearing helmet, the first informant made him to wait and therefore the observations of the Trial

Court that, the said Noaman was unlawfully detained by the Police Constable is ex-facie bad in law. Moreover, the observations made by the Trial Court that, police machinery itself took the law into its own hands required to be expunged from the said Order, as the concerned Judge without hearing the Police machinery and/or the concerned Police Officer who controlled the riotous situation was not heard in that behalf. This Order of expunging remarks is passed in view of the ratio laid down by the Apex Court in the case of V.C. Shukla Vs. State reported in 2008 Cri.L.J. 1333 and Om Prakash Chautala Vs. Kanwar Bhan & Ors reported in (2014) 5 SCC 417. Even otherwise, the Trial Court was not to decide whether the detention of the applicant therein was illegal or not. The application was simply for regular bail and the observations made in para Nos.7 and 8 of the said order are out of contest.

6] As noted herein above, the first information report is self-eloquent and requires no further elaboration. The Police have rightly applied Section 149 of the Indian Penal Code to the present crime. The allegation against the applicants is of being part of unlawful assembly and assaulting police who were performing their lawful duty. This itself requires thorough investigation at the hands of Police. It is hereby observed that,

now-a-days the instances of assault on public servants performing their lawful duty are on rise and it needs to be dealt with sternly and without showing leniency to such accused persons.

7] In view of the above and after taking into consideration the gravity of offence and the serious allegations against the applicants, this Court is of the opinion that, the applicants do not deserve to be protected by pre-arrest bail.

8] Both applications are accordingly rejected.

(A.S.GADKARI, J.)