

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

ANTICIPATORY BAIL APPLICATION NO.694 OF 2020

- 1.Dwarkabai Ramakant Hingmire.
- 2.Ashabai Nanduappa Chincholkar.
- 3.Chayabai Bhaurao @ Dagduappa Futhankar.
- 4.Vaishali Ganeshappa Hingmire.
- 5.Sharda Kailas Gabale.
- 6.Sangita Ravi Hingmire.
- 7.Ramesh Shivmurtiappa Jitkar.
- 8.Rameshwar Shivmurtiappa Jitkar.
- 9.Ramakantappa Ganagadharappa Hingmire.
- 10.Manmathappa Wamanappa Daruwale.
- 11.Ganesh Bhauappa @ Dagduappa Futhankar.
- 12.Shubham Ravindra Daruwale.
- 13.Shailesh Kailash Deshmane.
- 14.Balu Rajappa Daruwale.
- 15.Swapnil Shankarappa Daruwale.
- 16.Shiva Ramakant Hingmire.
- 17.Gajanan Shankarappa Komte.
- 18.Ganesh Ramakant Hingmire.
- 19.Ramappa Babanappa Komte.
- 20.Sunil Babanappa Komte.
- 21.Bharat Shankarappa Komte.
- 22.Gajanan Digambar Aaglave.
- 23.Sandeep Vasantappa Daruwale.
- 24.Bhimashankar Manmatappa Daruwale.
- 25.Kailas Kashinath Pungale.

26.Manohar Babarao Dhonde. .. APPLICANTS

VERSUS

The State of Maharashtra. .. RESPONDENT

...
Ms.P.S.Talekar, Advocate for the applicants.
Mr.P.K.Lakhotiya, APP for the respondent-
State.

...
CORAM : V.L.ACHLIYA,J.
DATE : 13.10.2020

P.C.

1] Apprehending arrest in connection with the Crime No.154/2020, dated 01.08.2020, registered at Hasnabad Police Station, District Jalna, for the offences punishable u/s. 353, 120-B, 143, 147, 149, 188, 186, 447, 332, 109, 269 and 270 of the Indian Penal Code, Section 51 (b) of the Disaster Management Act, 2005, Section 37 (1) (c) and 135 of the Maharashtra Police Act, 1951, the applicants have preferred this application seeking pre-arrest bail.

2] Heard learned counsel for the

applicants and learned APP representing the respondent-State. Perused the papers of investigation.

3] In brief, it is the contention of the learned counsel for the applicants that the applicants are innocent and falsely implicated in the case on the basis of false and frivolous complaint lodged by informant Santosh Balaji Shinde, Village Development Officer, who was not present on the spot of incident. It is submitted that the complaint has been lodged on account of political rivalry in the village.

4] It is submitted that on 01.08.2020 at about 6.00, a woman, namely, Mankarnabai belonging to Veerashaiva Lingayat community died. Since it was a holiday on account of 'Bakra-i-Eid', the relatives of deceased Manakarnabai telephonically requested the Village Development Officer to identify a

portion of land for performing last rites and allow them to bury her dead body on any portion from Gat No.129. However, the Village Development Officer insisted to perform fire cremation on account of non-availability of the land. The suggestion given was not acceptable to their community as it was against rituals in their community.

5] It is submitted that in the village Rajur, there are 70 families belonging to Veerashaiva Lingayat community. They are residing there for ages together. In spite of that, no burial ground provided for the members of their community by the State Government. The members of their community were using small portion of land belonging to Ganpati Mandir Trust as burial ground for the members of their community. However, from the year 1995, said trust stopped the use of their land for said purpose. Since thereafter

the persons having their own agricultural land started to bury dead bodies of their family members in their own agricultural lands. However, 75% members of their community are landless and they have no land of their own to be utilized for the said purpose. They used to bury the dead bodies of their relatives in the village *gaothan* land or roadside land. The officials of the village panchayat and police patil were objecting for the same.

6] In the background of the aforesaid fact, the learned counsel submitted that as the officials of the State Government failed to respond to their request and provide the land for performing last rites on dead body of the Manakarnabai, the process was delayed for more than 6-7 hours. People were waiting response from Government Authority. The relatives and the family members of the

deceased and the members of the Veershaiva Lingayat community developed a feeling of helplessness and caused anguish, pain, sorrow amongst those people. Therefore they decided to bury the dead body of deceased Manakarnabai in Gat No.154.

7] At about 1.30 on 01.08.2020, Sarpanch, Tahsildar, Block Development Officer, Police Inspector, Police Station, Hasnabad and Deputy Superintendent of Police, Bhokardan reached on the spot. They tried to pressurize the relatives of deceased and other person to exhume the dead body of deceased Mankarnabai. It is submitted that as per the religious practices and tenets of Veershivaiya Lingayat community, once the dead body put in a pit dug for burial of dead body, the body cannot be removed. Therefore, the applicants and other persons present on spot expressed their inability to remove the

dead body from the pit/graveyard. The officials who attempted to exhume the body and threatened the office bearers of their organizations to stay out of it otherwise they would be booked for obstructing public servant in discharge of official duties. It is submitted that due to threats given by the local authorities and attempts to exhume the dead body several persons from their community gathered to express their anguish over the sinister plan of the authorities to exhume the dead body. After realizing the mood of the relatives and other persons present there, the authorities allowed them to bury the dead body in Gat No.154. The Government officials as well as the relatives of the deceased left the place. No incident inviting registration of offence has been committed on the day of incident. The Inspector of Police, Hasnabad Police Station made application before the Judicial

Magistrate First Class, Bhokardan seeking permission to exhume the dead body. In the application filed, there is no reference of use of criminal force by the family members of deceased or the office bearers of the Sanghatana against Government officials to deter them from discharge of their public duty. The application made by the Inspector of Police came to be rejected by learned Judicial Magistrate First Class, Bhokardan. Thereafter, the complaint has been lodged by informant.

8] In the background of above-referred facts of the case, learned counsel for the applicants submitted that the complaint against the applicants is false and frivolous and by way of afterthought. The offences have been registered against the applicants out of vengeance and to settle the personal score against the President and Office bearers of

their organization at the behest of the Sarpanch of village belonging to other community. It is further submitted that there was no criminal conspiracy hatched on the part of the accused to commit any offence. The deceased died around 6 am and burial ceremony took place at around 1 pm. In that view, it cannot be inferred that the accused have hatched criminal conspiracy. The dead body has been buried in open *gairan* land. The allegations that the dead body has been buried in front of the Grampanchayat or the Government office are incorrect and baseless.

9] By referring to acts attributed to the applicants in commission of offence, learned counsel submits that there is no case of use of criminal force or assault on the part of the applicants so as to attract offence u/s. 353 of the IPC. At the time of incident, the applicant no.26 President of

the Organization was not present still he has been implicated in the case as an accused. Although the applicant no.25 not belongs to Veerashaiva community still his name has been mentioned in the FIR as an accused. It is submitted that the applicant no.26 is residing at Aurangabad. He is President of the Shiva Sanghatana, which has more than 5000 branches in the country. He is serving as a Professor in Deogiri College at Aurangabad.

10] It is submitted that the applicants are falsely implicated in the case by informant to cover-up their inaction in allotment of land to Veerashaiva Lingayat community. It is submitted that the applicants are poor labourer and agriculturists with no criminal antecedents. The grant of anticipatory bail to them would not hamper on-going investigation. The

custodial interrogation of the applicant is not required. The applicants are ready to abide any conditions that may be imposed in the event they are granted anticipatory bail.

11] On the other hand, learned APP opposed the application with contention that there is strong *prima facie* case to connect the applicants with the offences registered against them. It is submitted that names of the applicants are mentioned in the first information report. In spite of showing alternate place for burial of the dead body of the deceased Manakarnabai, the applicants and other accused persons brought JCB machine and dug a pit in the premises of the village panchayat. Kailas Daruwale brought his JCB No. MH-21/601 for the purpose of digging the pit for burial of dead body. The accused no.31, namely, Shailesh Appa Deshmane, who was operating JCB, dug a pit in the premises

of village panchayat. The accused persons involved in burial of dead body of deceased Mankarnabai. When the officials of the village panchayat and Government officials reached on the spot, the applicants started raising shouts. When the officials tried to persuade them not to bury the body in the premises of the Grampanchayat, they refused to pay any heed to them. They have told the officials that they have been instructed by their President, namely, Manohar Dhonde i.e. applicant no.26 to bury the body of Manakarnabai within the premises of village panchayat only. They refused to accept the request of the officials to bury body in Survey No.129. They told the officials that unless the applicant no.26 Manohar Dhonde asked them to bury the body then only they will take dead body to other place. By showing force the accused person performed last ritual on the body of deceased

Mankarnabai and buried her dead body in the premises of the village panchayat. The applicant no.23, namely, Sandeep Daruwale posted the message on face-book and instigated the people to follow the same as Latur pattern to be followed in other place. In the background of overall facts of the case and the post circulated on the face book by the said accused much before incident, learned APP submitted that the incident was outcome of well planned criminal conspiracy hatched by the Shiva Sanghatana of which the applicant no.26 is the President.

12] In the background of overall facts of the case, learned APP submits that there is *prima facie* case to connect the applicants with the offences registered against them. In order to conduct proper investigation, custodial interrogation of the applicants is necessary. The applicant no.26 is the

President of the Organization. He is absconding since the date of commission of offence. The involvement of the other persons in commission of the offences is to be ascertained by interrogation the applicants. In case the applicants are enlarged on bail, they may pressurize the prosecution witnesses and urged to reject the application.

13] I have carefully considered the submissions advanced in the light of overall facts of the case, nature of accusations made against the applicants, the circumstances under which the incident in question was occurred and criminal antecedents of the applicants. If we consider the offences registered against the applicants then except the offence u/s. 353 of the IPC, all other offences are bailable and triable by the Magistrate. It is the contention of the learned counsel for the applicants that in

order to attract offence u/s. 353 of the IPC, there must be an act of assault or use of criminal force on the part of the applicants to deter public servant from discharge of his official duty. It is contended that the first information report discloses no act of assault or use of criminal force committed on the part of the applicants. In fact, the applicant no.26 was not present on the spot as per the version of incident given by the informant.

14] If we perused the first information report then in brief it is the case of the prosecution that on the day of incident i.e. 01.08.2020, the applicants along with other persons gathered on the spot to bury the dead body of the deceased Mankarnabai in the premises of village panchayat. When they were asked not to bury the dead body in the premises of the village panchayat and

suggested to perform last rites on the dead body in Survey No.129, they refused to follow instructions given by the informant and other officials; they raised slogans. One of the accused brought JCB machine and dug pit in the premises of village panchayat and against directives of the Government officials buried the dead body of Mankarnabai in the premises of the village panchayat. In short, it is the case of the prosecution that the applicants formed unlawful assembly and performed the last rites on the dead body of Mankarnabai in the premises of the village panchayat during the orders, prohibiting the assembly of the people issued by the District Disaster Authority was in force.

15] If we perused the complaint then *prima facie* there are no allegations that the applicants or any one amongst them assaulted or use criminal force against the public

servant to deter them from discharge of their public duty. Sections 350 and 351 of the IPC defines the meaning of words 'criminal force' and 'assault' respectively. Section 349 of IPC provides meaning of word 'force' referred in Section 350 of the IPC. If we consider the allegations as such then there is no specific act attributed against the applicants as to use of criminal force or assault to deter public servants from discharge of their duty. Forming assembly against the orders of District Disaster Authority attract offence u/s. 188 of IPC. Mere raising of slogans or to bury the dead body against directives of public servant itself not sufficient to attract offence u/s. 353 of IPC against the applicants.

16] In the instant case though the acts of the applicants to form unlawful assembly in defiance of the orders issued by the

District Disaster Management Committee to raise slogan, to perform last rites on the dead body of the deceased in the premises of village panchayat, to post messages on the face-book and to instigate the people may invite registration of offences u/s. 109, 143, 147, 149, 186, 188, 269 and 270 of IPC. But it is doubtful as to whether the offence u/s. 353 of IPC can be attracted against them. As discussed above that in order to attract u/s. 353 of IPC, there must be an act amounting to assault or use of criminal force committed on the part of the accused to deter the public servant from discharge of their duty. The complaint discloses no use of criminal force or act of assault on the part of the applicants and other persons with an intention to deter public servant from discharge of public duty. The act of applicants to defy the orders of the public servant and to perform last rites on the dead

body of the deceased Mankarnabai in the premises of village panchayat itself not sufficient to treat the act as an offence inviting offence u/s. 353 of IPC. In that view, there is arguable case to be considered on merit as to applicability of Section 353 of the IPC in the facts and circumstances of the case.

17] The incident in question has taken place on 01.08.2020, occurred on account of not making available separate land as graveyard for burial of dead body of a person belonging to the community to which the applicants belong. The nature of accusation and the offences registered against the applicants spell out that no recovery be made from the applicants. So also the custodial interrogation of the applicants is not necessary. So also there is no case showing their criminal antecedents. The grant of

anticipatory bail to the applicants would not hamper on-going investigation. I am, therefore, inclined to allow the application and grant protection to them from arrest on certain conditions. Hence the following order :

ORDER

i] The application is allowed.

ii] In the event of arrest of the applicants in connection with Crime No.154/2020, dated 01.08.2020, registered at Hasnabad Police Station, District Jalna, for the offences punishable u/s. 353, 120-B, 143, 147, 149, 188, 186, 447, 332, 109, 269 and 270 of the Indian Penal Code, Section 51 (b) of the Disaster Management Act, 2005, Section 37 (1) (c) and 135 of the Maharashtra Police Act, 1951, the applicants be released on each of them furnishing bail in the sum of Rs.25,000/-, with one or two surety in the like amount on following conditions :

a] The applicants shall appear before the Investigating Officer from 16.10.2020 till 18.10.2020 in

between 11.00 a.m. to 4.00 p.m.
and co-operate in investigation.

- b] The applicants shall not indulge into any act amounting to pressurizing the prosecution witnesses.
- c] Pending disposal of case against the applicants, the applicants shall not indulge into commission of offences of similar in nature.
- d] Pending disposal of case against the applicants, the applicants shall appear and record their appearance before the Officer incharge of the Police Station, Hasnabad, in between 10.00 a.m. to 11.00 a.m. on last day of each month for the period of one year or conclusion of trial, which ever is earlier.
- e] In the event of breach of any conditions imposed, the prosecution will be at liberty to move the Court for cancellation of bail of the applicants.

iii] The application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE