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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.728 OF 2020

Bhagaji s/o Namdeo Dighe
Age: 83 Yrs., occu. Agril./farmer
R/o Chitoda, Tq. Badnapur,
District Jalna. = **APPLICANT**

VERSUS

The State of Maharashtra
Through Police Station,
Chandanzira, Tq. and Dist.
Jalna = **RESPONDENT**

Mr.AB Ghule-Patil & DM Wagh-Patil,Advocates for
Applicant;

Mrs.Vaishali Jadhav-Patil,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 20th October, 2020.

PER COURT:-

1. Present applicant, who is 83 years old person, is apprehending his arrest in connection with CR No.158/2020 dated 14.5.2020 registered with Chandanzira Police Station, Tq. Badnapur, District Jalna for the offences punishable under Sections 188, 269, 270, 294, 307, 332, 353, 504 read with 34 of IPC and Section 51(b) of Disaster Management Act, 2005.

2. Heard learned Advocate and learned APP for respective parties.

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3. It has been vehemently submitted on behalf of the applicant that the applicant is an illiterate agriculturist, aged 83. The allegations set out in the FIR against him do not require his physical custody. Though the allegations by the police officer show that the present applicant had intercepted them; yet because of illiteracy, he might have acted so. The applicant is having immovable and movable properties in the village and, therefore, there is no question of he getting absconding. No recovery is contemplated. He is, therefore, ready to abide by any terms and conditions that may be imposed.

4. Learned APP strongly opposed the application and submitted that even in such pandemic situation, the police have been protecting the spreading of virus, discharging their duties at the cost of their health. As per the contents of the FIR, when it was noticed that daughter and grand son of the present applicant had come from Aurangabad to stay with the applicant and they were asked to get their medical examination done, they refused to do so. In fact, that was in the

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interest of the applicant as well as his family members. When the police party informed the said fact to the police officers, they went to the house of the applicant. The arrogance of the grand-son of the applicant can be seen from the acts described in the FIR. Further, he refused to put mask and get himself medically examined. When the police tried to explain, son of the present applicant came from outside, went inside the house and brought an axe. With the axe, he rushed towards the police party and he had given blow. Fortunately, it was avoided by the informant. Thereafter there were abuses given by him. Even the present applicant had caught hold collar of one of the police persons; abused and gave threat. The statements of the witnesses recorded, especially wife of the applicant and his daughter, would reveal that the present applicant had caught hold of collar of the police persons. When the relatives had come from Red zone area, without seeking permission from the appropriate authority in the pandemic situation when there was restrictions on the movement of the public and people from one district to another district, such behaviour need

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not be protected. The applicant deserves no sympathy at all though he is aged 83.

5. The Courts are aware about the situation that was required to be handled by the police authority and other agencies in Health Department and Revenue Department etc. Definitely, they were taking continuous efforts to restrict the spread of the virus and the disease. The citizens were duty bound to observe and follow the restrictions those were imposed, which were, in fact, in the interest of their health. When the procedure was prescribed for taking prior permission from the Police/Revenue authorities before entering in another district, then that should have been strictly followed. It is the contention in the FIR that daughter and grand-son of the applicant went to the house of the applicant without taking any such permission. However, we are required to concentrate on the allegations or role attributed against the present applicant. Definitely Section 307 of IPC is not attracted to him. It is stated that the present applicant had caught hold collar of police person; abused and threatened him. The said police officer

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was on duty and, therefore, there was restriction upon the applicant. On the basis of these allegations, at the most, offence under Sections 353 and 504 of IPC would be attracted, which does not require custody for further investigation. As aforesaid, the applicant is aged 83, definitely concession will have to be given to him, taking into consideration the allegations though it may appear that prima facie case has been made out. Bail is rule and jail is exception. When presence of the applicant can be secured by imposing conditions and when there is no question of any recovery against the applicant, he need not be sent to jail in such pandemic. Section 438 of Cr.P.C. requires the Courts to exercise the discretion in a judicious manner and the situation that has been brought on record shows that such discretion should be exercised in favour of the applicant. Under such circumstance, the application deserves to be allowed. Hence following order, -

ORDER

i. In the event of arrest of the applicant in connection with CR No.158/2020 dated 14.5.2020 registered

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with Chandanzira Police Station, Tq. Badnapur, District Jalna for the offences punishable under Sections 188, 269, 270, 294, 307, 332, 353, 504 read with 34 of IPC and Section 51(b) of Disaster Management Act, 2005, he be released on PR and SB of Rs.15,000/-.

ii. The applicant shall not commit similar offence and shall cooperate with the police during investigation.

iii. The application stands allowed and disposed of.

(SMT. VIBHA KANKANWADI,J.)

BDV