

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

16 ANTICIPATORY BAIL APPLICATION NO. 833 OF 2020

1. Babasaheb s/o Bhaurao Jadhav
Age : 50 Yrs., Occ. Service,
R/o : RX6/10, New Kamal Pushpa
Housing Society, Ayodhya nagar,
MIDC Waluj, Aurangabad.
2. Sow. Vandana w/o Babasaheb
Age : 45 Yrs., Occ. Household,
R/o : RX6/10, New Kamal Pushpa
Housing Society, Ayodhya nagar,
MIDC Waluj, Aurangabad.
3. Vishal s/o Babasaheb Jadhav
Age : 28 Yrs., Occ. Student,
R/o : RX6/10, New Kamal Pushpa
Housing Society, Ayodhya nagar,
MIDC Waluj, Aurangabad.
4. Akshay s/o Babasaheb Jadhav
Age : 23 Yrs., Occ. Student,
R/o : RX6/10, New Kamal Pushpa
Housing Society, Ayodhya nagar,
MIDC Waluj, Aurangabad. **APPLICANTS**

VERSUS

1. The State of Maharashtra
Through Commissioner of Police,
Aurangabad.
2. Police Inspector
MIDC Waluj Police Station,
Aurangabad. **RESPONDENTS**

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Mr. S.S.Kazi, Advocate for Applicants.
Smt. R.P.Gaur, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 01/12/2020

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ORAL ORDER :

1. The applicants apprehending arrest in connection with the offences punishable u/s 153-A, 295 read with section 34 of Indian Penal Code registered vide Crime No. 0412/2020 with MIDC Waluj police station, Aurangabad preferred this application seeking pre-arrest bail.

2. Heard learned counsel for applicants and learned A.P.P. representing the State. Perused the F.I.R. and Order passed by learned Additional Sessions Judge. Also perused the papers of investigation.

3. In brief, it is the contention of learned counsel for applicants that the applicants are innocent and falsely implicated in the case at the behest of informant and others against whom the applicants had lodged complaint leading to registration of offences u/s 323,504,506 read with section 34 of Indian Penal Code and section 3 (1) (r) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 vide Crime No. 413/2020. It is submitted that F.I.R. has been lodged against applicants by the police official on the basis of hear-say information alleged to be provided by persons against whom the

applicant have lodged complaint. It is submitted that applicants are innocent having no criminal antecedents. Applicant No. 1 is in service. Applicant No. 2 is wife of applicant No. 1. Applicant No. 3 is preparing for M.P.S.C. examination. Applicant No. 4 is law student.

4. By referring to allegations made in the F.I.R., learned counsel for applicants submits that the allegations made in the complaint prima facie do not attract the commission of offences u/s 153-A as well as section 295 of Indian Penal Code. It is submitted that as per the facts mentioned in complaint the incident was occurred in the house of applicants and not in public place. The applicants themselves belong to Scheduled Caste. In that view there is no question of throwing Idol of Lord Budha and photograph of late Dr. Babasaheb Ambedkar as well as flag on their part to create a false case against the persons against whom the applicants have lodged complaint. It is submitted that for the purpose of investigation, the custodial interrogation of applicants is not required. Grant of anticipatory bail to them would not hamper the on-going investigation. The applicants are ready to co-operate in investigation.

5. On the other hand, learned A.P.P. opposed the application with the contention that there is strong prima facie case to connect the applicants with the

offences registered against them. By referring the F.I.R., the panchanama and statement of witnesses, learned A.P.P. submits that the deliberate attempt was made on the part of applicants to disturb the social order and harmony in the society and promote enmity between different groups/classes on the ground of religion, race. The applicants have deliberately thrown the Idol of Gautam Budha and late Dr. Babasaheb Ambedkar as well as Panchasheel flag in front of their house to create a scene that same has been thrown by the persons named in the F.I.R. belonging to upper caste thereby to create clash between two groups of religions and thereby affect the peace and harmony in the society. In that view, strong prima facie case exist to attract the offence u/s 153-A and section 295 of Indian Penal Code against the applicants. It is submitted that in order to conduct proper investigation, the custodial interrogation of the applicants may be required.

6. Perusal of F.I.R. spell out that first informant reached on the spot after receiving communication that some quarrel was going-on in New Kamal Pushpa Housing Society. When the first informant reached on the spot, he found some persons gathered in front of house of applicants and Idols of Dr. Babasaheb Ambedkar and Lord Gautam Budhha and the flag was lying in front of house of applicant No. 1. During the course of enquiry some of the persons from the

society disclosed that the applicants were making illegal construction of stair case which was objected by some of the members of society. On that count, quarrel has taken place amongst applicants and few members of society. In order to give different colour to said quarrel, the applicants and co-accused thrown the said Idols and flag in front of their house to create a scene that the same has been thrown by the accused persons belonging to upper caste. It is further alleged that applicant No. 1 himself pelted stone and broken the glass window of his own house to create a scene that the persons belong to upper caste have attacked him and his family and pelted stones on his house. On the basis of said complaint lodged, the aforesaid offences came to be registered.

7. Applicant No. 1 has also lodged complaint in respect of same incident leading to registration of offence u/s 323,504,506 read with section 34 of Indian Penal Code and u/s 3 (1) (r) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the complaint lodged, the applicant No. 1 has alleged that he belongs to Scheduled Caste. He has purchased the house in the year 2016 in a society dominated by upper caste people. They did not like the purchase of house by applicant in their society and, therefore, to harass him and force to leave their society deliberately started to harass him. He has started additional construction on the back side of his

house. The President of society and others objected to the construction. They were taking photographs of construction. When applicant objected from taking photographs of his house, the President and Secretary of society assaulted him and also abused them. Pursuant to said complaint, offences u/s 323,504,506 read with section 34 of Indian Penal Code and section 3 (1) (r) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 came to be registered vide Crime No. 413/2020.

8. Thus, there are cross complaints registered on account of same incident giving two different versions in respect of same incident. Applicant No. 1 is claimed to be in service. Applicant No. 2 is wife of applicant No. 1. Applicant No. 3 is claimed to be student and preparing for M.P.S.C. examination. Applicant No. 4 is law student. In the facts and circumstances of the case, the custodial interrogation of applicants is not required. The veracity of allegations and counter allegations can be tested only during the course of trial. Investigation of the case is substantially completed. The grant of anticipatory bail to applicants would not hamper the on-going investigation. It is arguable case to be considered on merit as to whether the offences u/s 153-A and 295 read with section 34 of Indian Penal Code are attracted or not. At this stage, it is not desirable to make any observations as to merit of the case of

prosecution against the applicants. There is nothing to show that applicants are having criminal antecedents and may commit offence of similar in nature. In the facts and circumstances of the case, I am inclined to allow the application subject to certain conditions. Hence, the following order.

ORDER

[i] The application is allowed.

[ii] The interim order passed earlier is made absolute and confirm on following conditions.

[a] The applicants shall attend the M.I.D.C. Waluj police station, Aurangabad from 07/12/2020 to 09/12/2020 in between 11.00 a.m. to 3.00 p.m. and make available for investigation.

[b] After 09/12/2020 the applicants shall attend the M.I.D.C. Waluj police station, Aurangabad on every Sunday between 10.00 a.m. to 11.00 a.m. till conclusion of investigation and filing of charge sheet against them.

[c] After filing of charge sheet and pending hearing and decision of case the applicants shall attend the M.I.D.C. Waluj police station, Aurangabad on last day of each month between 10.00 a.m. to 11.00 a.m. to record appearance before the Investigating Officer.

[d] The applicants shall not indulge into commission of offence of similar in nature.

[e] The applicants shall not cause any threat or pressurize any prosecution witness.

[iii] In the event of applicants committing breach of any condition, the prosecution will be at liberty to move the Court for cancellation of anticipatory bail.

9. The application is disposed of in above terms. It is clarified that the observations made in order are prima facie observations made for limited purpose of deciding the present application. None of the observation made to be treated as observation made as to merit of the case of prosecution against the applicants.

[V.L.ACHLIYA]
JUDGE

KNP