

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

1 ANTICIPATORY BAIL APPLICATION NO.1054 OF 2020

Parvez s/o Abdul Baari Kazi,  
Age; 40 years, Occ; Agri,  
R/o; Dhoki, Tq. & Dist. Osmanabad ...Applicant

VERSUS

The State of Maharashtra,  
Through Dhoki Police Station,  
Tq. & Dist. Osmanabad. ...Respondent

...  
Advocate for Applicant : Shri Shailendra S. Gangakhedkar  
APP for Respondent-State : Shri S.D. Ghayal  
...

**CORAM : M. G. SEWLIKAR, J.**

DATE : 20<sup>th</sup> NOVEMBER, 2020.

ORDER :

1. Taken up for final hearing at the stage of admission with the consent of the parties.
2. The learned A.P.P. waives service of notice for the respondent-State.
3. Heard Shri Gangakhedkar, the learned counsel for the applicant and Shri Ghayal, the learned A.P.P. for the respondent-State.

4. This is an application for anticipatory bail, filed on the allegations that the informant is a Police Constable. On 26.9.2020 at 12.00 noon, informant had been to the Petrol Pump Square, Dhoki, for collecting secret information. At 12.30 p.m. the applicant came there and used indecent words in regard to the Police Sub Inspector, Jadhav, which were not approved of by the informant. The applicant used indecent words "Bahinchot" "Tuza Jadhav Saheb Kai Maze Shete Upatnar Ahet Kai". The informant objected to it. Thereupon, the applicant caught the informant by his collar and jostled him. On these allegations, on 29.9.2020 at 3.30 p.m., offence vide Cr. No.248 of 2020, has been registered with Dhoki Police, District Osmanabad punishable under Sections 353, 332, 504, 506 of the Indian Penal Code, against the applicant.

5. Shri Gangakhedkar, learned counsel for the applicant submitted that the informant was on duty but what kind of duties he was discharging, is not mentioned in the application. He further submitted that the applicant did not deter him from discharging his duty. The applicant was not accused of any offence at the time of the incident. The informant was not discharging his duty towards the applicant. Therefore, Section 353 of the I.P.C. is not attracted. Therefore, offences punishable under Sections 353, 332, 504, 506 of

I.P.C. are not attracted. He further submitted that this F.I.R. is an outcome of the complaint-application forwarded by the applicant against the informant for manhandling him.

6. Learned A.P.P. for the respondent-State submitted that the applicant has criminal antecedents. He submitted that the informant had gone there for collecting secret information. The informant is posted in Crime Branch, therefore, he is not expected to disclose the duties which he was performing. He further argued that it is not necessary for attracting offence under Section 353 of the Indian Penal Code that the criminal force should be used by the person against whom the public servant was discharging his duties. He therefore, prayed for rejection of the application.

7. On perusal of the application, it is noticed that the incident took place in front of Petrol Pump square, Dhoki. The informant admittedly, is posted in Crime Branch. By the nature of his job, it is expected of him not to disclose the duties which he was performing, at the time of incident. Therefore, it cannot be said at this prima-facie stage that the informant was not on duty and the applicant did not use criminal force to deter the informant from discharging his duties.

8. From the F.I.R. it is evident that the applicant assaulted and

used criminal force against the informant.

9. Section 353 of the Indian Penal Code, does not contemplate that the criminal force or assault in discharge of a duty by a public servant, should be from a person accused of an offence. It can be by any person irrespective of whether he is accused of an offence or not. The only aspect that has to be seen is whether a public servant was assaulted or criminal force was used against him, so as to deter him from discharging his duty as such public servant. **Section 353 of the Indian Penal Code** reads as under :

***"353. Assault or criminal force to deter public servant from discharge of his duty. - Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."***

10. Bare reading of this Section 353 of the I.P.C. makes it clear that the assault or criminal force, need not be by a person accused of an offence. It can be by any one. The only requirement of this Section

is that the public servant was discharging his duty and while discharging his duty, he was assaulted by the accused or criminal force was used against him to prevent or deter the public servant from discharging his duty as such public servant. In this view of the matter, the application is bereft of any merit. Hence it is rejected.

11. So far as, the complaint application forwarded by the applicant to the Superintendent of Police, Osmanabad is concerned, it is of the same date i.e. of 26.9.2020. However, it does not mention the time at which this incident took place. Therefore, it is difficult to infer that this incident took place prior to the incident in question. In view of this, the application is bereft of any merit. Hence the application is dismissed.

12. Observations in this application are made for the disposal of this application only. The Trial Court shall not get influenced by these observations and can come to independent conclusion during trial.

**( M. G. SEWLIKAR )**  
**JUDGE**

mahajansb/