

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.144 OF 2020

Asgar Bashir Sayyad and another

Applicant

versus

The State of Maharashtra

Respondent

Mr.Gaurav Parkar for applicant.

Mr.S.S.Pednekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 20th January 2020

PC :

1. This is an application for anticipatory bail in CR No.2 of 2020 registered with Alibag Police Station for offences under Sections 353, 504, 506 r/w 34 of Indian Penal Code. The applicants had preferred application for anticipatory bail before Sessions Court, which has been rejected vide order dated 7th January 2020.

2. The case of prosecution is that on 4th January 2020 the applicant no.2 came to Dr.Babasaheb Ambedkar Samajik Nyaya Bhavan where complainant worked as Superintendent and started collecting construction material lying in the compound of the building and taking it by tempo. The complainant confronted applicant no.2. She stated that one Asgar Bashir Sayyad (applicant no.1) had told her to collect the construction material and he will be coming to the site shortly. The applicant no.1 came to the office and started abusing senior officer of complainant and thereafter started abusing officer outside his cabin. Applicant no.1 also pushed peon who was present in the office. Hence complaint was lodged for the aforesaid offences.

3. Learned counsel for applicants submitted that the applicants are falsely implicated in this case. The applicant no.1 is working as supervisor with the company which was authorized to carry out construction. There was work order issued for construction in favour of the company. The applicants had right to enter into premises and collect their articles. The complainant and other officers working in the office were not discharging their duties. They were not concerned with the construction work. They are employees of Social Welfare Department. He relied upon the decision of Kerala High Court in case of Poulse Vs. The State reported in 1985-CRI.L.J.-222. It is submitted that in the said decision the Court had held that Section 353 postulates that public servant has jurisdiction to execute and insist that he should be in the process of execution of his duty when he is assaulted or criminal force is used. Legality of execution of duty is sine-qua-non.

4. Learned APP submitted that the applicants had obstructed the public servant in discharge of their duty. Both were aggressive. The applicant no.1 had even charged with public servant. He abused the public servant. He charged into the office of Social Welfare Department. Learned APP pointed out the panchanama relating to CCTV footage wherein it is mentioned that the incident is recorded in CCTV which shows the overt act of the applicants having aggressively talking to public servants and charging at them.

5. I have perused the FIR. The complainant and other officers were working in Social Welfare Department. Their office was situated in the same premises. When accused no.2 was confronted about taking away the material, she stated that applicant no.1 had

instructed her and he would be visiting the place. Applicant no.2 thereafter committed the acts as stated above. There is material to indicate that applicant no.1 had abused and charged at public servant. The decision relied upon by advocate for applicant was delivered after recording evidence and while appreciating the evidence. The Court has given the said finding. As far as applicant no.2 is concerned, she is a labourer and lady. The primary role of obstruction to perform duty of public servant is attributed to applicant no.1. Hence, applicant no.2 can be protected u/s 438 of Cr.P.C. However, applicant no.1 is not entitled for such relief.

6. Hence, I pass following order :

ORDER

- (i) Anticipatory Bail Application qua applicant no.1 Asgar Bashir Sayyad stands rejected;
- (ii) Anticipatory Bail Application of applicant no.2 Smt.Shantabai Hiru Jadhav is allowed and it is directed that in the event of arrest of applicant no.2 Smt.Shantabai Hiru Jadhav in connection with CR No.2 of 2020 registered with Alibag Police Station, she be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant no.2 shall attend the investigating officer on 23rd and 24th January 2020 between 10 am and 12 noon;
- (iv) Criminal Anticipatory Bail Application No.144 of 2020 is disposed of in above terms.

(PRAKASH D. NAIK, J.)