

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 876 OF 2021

1] Lal s/o. Miskin Shaikh
Age 77 years, Occ. Business,

2] Javed s/o. Lal Shaikh
Age 43 years, Occ. Occ. Business.

3] Iqbal s/o. Lal Shaikh
Age 44 years, Occ. Business.

4] Ansar s/o. Lal Shaikh
Age 44 years, Occ. Business.

5] Sarfaraz s/o. Lal Shaikh
Age 41 years, Occ. Business.

6] Masrat s/o. Lal Shaikh
Age 48 years, Occ. Business.

All r/o. Peth Mohalla, Parli, Tq. Parli,
Dist. Beed.

.. APPLICANTS.

Versus

The State of Maharashtra.

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Mr. R.N. Dhorde, Senior Advocate i/b. Mr. Sayyed Tauseef
Advocate for applicant,
Mr. A.V. Deshmukh, APP for the respondent-State.

CORAM : V.G. BISHT, J.

ORDER RESERVED ON : 27th August.2021.
ORDER PRONOUNCED ON : 7th September, 2021.

PER COURT:

1] This is an application under Section 438 of Cr.P.C. preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No.0025 of 2020, registered with Police Station, Parli City, Dist. Beed for the offences punishable under Sections 353,332,324,323,143, 147, 149, 504 and 506 of IPC.

2] The prosecution case, in short, is that the informant is Head Master of Imdadul Ulema Primary School , Parli. On 26th January, 2020, at about 7.35 p.m. there was a flag hoisting ceremony. All teachers, staff, parents, students and others were present. The flag hoisting was to be done at the hands of Mr. Syed Iftekar Syed Ahmed, being the senior-most teacher.

3] The prosecution alleges that all of a sudden, all the applicants came and applicant No.1 started telling that, he being the President of the society, he will hoist the flag. When syed Hanif Syed Karim, Senior Clerk, objected the applicant Shaikh Sarfaraj Shaikh Lal beat him by means of hands. He also assaulted Syed Yasin Syed Hanif and one Syed Yakub Syed Hussain. The other applicants having belt and sticks started abusing and beating them. The informant accordingly lodged report.

4] Mr. Dhorde, learned Senior Counsel at the very outset submits that Sections 353 and 332 of IPC could not have been applied as the clerk and Head Master of the said school could not have restrained the President of the society i.e. applicant No.1 from performing the Flag Hoisting ceremony, he being the administrative head of the school and

under his control and supervision, the staff members perform their duties. Moreover, they cannot be termed as public servant as it is a private institution and, therefore, the applicability of said sections is out of question.

5] Apart from above, there is nothing to be recovered from the applicants and hence, no purpose would be served in putting the present applicants behind bars.

6] Learned Senior Counsel also placed reliance on the judgment of the Kerala High Court, in Writ Petition(C) Nos. 40144 of 2016 and 11920 of 2018 dated 28th February, 2019.

7] The learned Senior Counsel also invited my attention to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and would submit that the informant or for that matter, any of the employees cannot be termed as public servant.

8] On the other hand, learned APP, opposed the submissions by contending that the said school is a Government aided school and has been approved by the Education Officer. Since the informant and others were performing public function, the relevant sections were appropriately applied. Not only there was obstruction, but the applicants used criminal force against the public servants . As such, there being no merit in the application, the same is liable to be rejected.

9] As far as the controversy regarding the nature of employment of the informant or for that matter other employees is concerned, that is to say, whether they are public servants or not, that

cannot be looked into at this stage, inasmuch as, according to learned APP, the school in question is a Government aided school and with due approval of the Education Officer, everything is done. As of now, there is nothing on record to substantiate that and it would require oral and documentary evidence. Therefore, the determination of said question is not required to be gone into at this stage. Since the citation relied upon by the learned counsel for the applicants pertains to that aspect, in view of the above, same cannot be helpful to the learned counsel at this stage.

10] Coming to the main question, it appears that all the applicants used criminal force against the witnesses named in the FIR and used belt and sticks while assaulting them. Learned APP has filed on record the medical certificates of those witnesses. I have carefully read the medical certificates. These certificates pertain to Syed Yakub Syed Hussain and Syed Yaseen Syed Haneef. Out of them, no injury was found on the person of Syed Yakub Syed Hussain. Similarly, only contusion injuries were found on Syed Yaseen Syed Haneef and they were of simple nature.

11] Having regard to the facts and circumstances of the case and as also keeping in mind the injury certificates of the witnesses, in my considered view, the applicants are not required for the purpose of custodial interrogation.

12] In view of above, I am inclined to allow the present application. Hence, the following order :-

: O R D E R :

In the event of arrest of the applicants in connection with Crime No. 0025 of 2020, registered with Police Station, Parli City, Dist. Beed for the offences punishable under Sections 353,332,324,323,143, 147, 149, 504 and 506 of IPC, the applicants be enlarged on bail on their furnishing PR Bond in the sum of Rs. 20,000/- each, with one or two sureties in the like amount.

13] The application stands disposed of in aforesaid terms.

**[V.G. BISHT]
JUDGE.**

grt/-