

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**ANTICIPATORY BAIL APPLICATION NO.304 OF 2022**

CHANDRAKANT S/O PANDURANG JONDHALE  
AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA

.....  
Advocate for Applicants : Mr. S. K. Chavan  
APP for Respondent-State : Mr. B. V. Virdhe  
.....

**CORAM : SMT.VIBHA KANKANWADI, J.**  
**DATE : 28-03-2022**

**ORDER :**

1. The applicants are apprehending their arrest in connection with Crime No.264 of 2021, dated 13-06-2021, registered with the Police Station Pathri Tq.Pathri District Parbhani, for the offences punishable under Section 353, 153(A), 188, 269 of IPC and under Section 135 of Bombay Police Act.
2. Heard learned Advocate Mr. S. K. Chavan for applicants and learned APP Mr. B. V. Virdhe for respondent-State. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.
3. The FIR has been lodged by Police Head Constable Ashok Sodgir

attached to Pathri Police Station Tq. Pathri District Parbhani. He states that one offence vide Crime No.250 of 2021, for the offence punishable under Section 294, 295-A, 341, 504 r.w.34 of IPC with Section 3 (1) (r) (s), 3 (2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act was registered on the basis of FIR lodged by one Vikas Gangadhr Wahel. It is being investigated by SDPO, Selu Shri R. R. Pal. It is then stated that by giving message on What's App by one Bhim Army, the officials of that institution had plan to meet the informant therein and the message was given that in order to teach lesson to one Patil that rally was organised at 12.00 p.m. on 13-06-2021. Taking into consideration the said event, the border of the district was sealed and the roads going towards village Kherda were also sealed. The police party was at the check post. Around 13.19 hours, a vehicle bearing No.MH-02/DR-5040 came and it was asked to be stopped by the informant. However, the vehicle was not stopped there but it went speedily from the police party and stopped at a distance. Police party went near the vehicle and asked the persons occupying the vehicle as to whether they are members of Bhim Army. They answered in the affirmative and also told that they want to go to village Kherda. The police party told that since there is orders

passed by Collector, Parbhani, that people should not gather in view of the pandemic situation, they will not be allowed to proceed towards village Kherda. However, those persons started abusing and arrogantly behaving stating that they should not be stopped. They called informant Vikas Wahel and other members from village Dhalegaon at that place and all of them started arguing with the police party, thereby they obstructed the official duty of the police party and also thereby tried to create disharmony in two sections of people. Thereafter, Tahsildar Pathari was called at the check post and then the Bhim Army gave written requisition to him. From the said written requisition, names of ten persons could be revealed and offence has been registered against them.

4. Taking into consideration the contents of the FIR as aforesaid, it is to be noted that whether arguing with the police would amount to "criminal force" as is required under Section 353 of IPC, is a question. Some physical contact appears to be needed taking into consideration the definition of word "force" in Section 349 of IPC and definition of "criminal force" under Section 350 of IPC. Section 349 of IPC prescribes that, the person causing the motion, or change of motion, or cessation of motion, can do it in one of the three ways

those have been enumerated in the section itself. The first is by his own bodily power which is not there in the present case. Secondly, by disposing any substance in such a manner that the motion or change of cessation of motion takes place without any further act on his part, or on the part of any other person. This also is not prima facie fulfilled under the facts of the present case. Thirdly, by inducing any animal to move, to change its motion or to cease to move. Again this is also not the fact of the case. Therefore, prima facie it can be opined that the ingredients of Section 353 of ICP are not attracted. Same is the case as regards Section 153 A of IPC. Section 153-A of IPC deals with those offences which are created by promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony. Here, in this case the word used which has been tried to be connected to this offence are "पाटलाचा माज उतरवण्यासाठी". It depicts against particular person that it is used singularly. When it is singularly used, there is no question of bringing disharmony in two groups of persons, and therefore, it can also be further opined that prima facie the offence under Section 153-A of IPC is also not made out. Section 188 of IPC deals with

disobedience to order duly promulgated by public servant. The punishment that is provided is simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both, and in the circumstance that that disobedience tends to cause danger to human life, then that imprisonment may go up to six months and increased fine amount. Definitely, that is a bailable offence. Section 269 of IPC provides for, negligent act likely to spread infection of disease dangerous to life and the imprisonment that is provided is up to six months or with fine, it is also bailable. Under the said circumstances, definitely, the applicants liberty need to be protected. Hence, following order.

### **ORDER**

- 1) Application is hereby allowed.
- 2) In the event of arrest of the applicants Chandrakant s/o Pandurang Jondhale, Manohar s/o Mariba Kamble, Prashant s/o Somnath Jogdand and Bhimrao s/o Dnyandeo Mane (alleged in FIR as Ranjit Mane), in connection with Crime No.264 of 2021, dated 13-06-2021, registered with Police Station, Pathri, Taluka Pathri District Parbhani, for the offences

punishable under Section 353, 153-A, 188, 269 of IPC and Section 135 of Bombay Police Act, they be released on PR Bond of Rs.30,000/- each and two solvent sureties of Rs.15,000/- each.

3) They shall not tamper with the evidence of prosecution in any manner.

4) They shall attend the police station on every Monday between 10.00 a.m. to 02.00 p.m., till filing of charge-sheet.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

*vjg/-.*