

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.347 OF 2022

UMESH S/O DILIP PAWAR
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. S. A. Wakure
APP for Respondent-State : Ms. Vaishali Patil Jadhav
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 05-04-2022

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.60 of 2022, registered with Anandnagar Police Station, Osmanabad, Taluka and District Osmanabad, for the offence punishable under Section 353, 114, 332, 504, 506 of the Indian Penal Code.
2. Heard learned Advocate Mr. S. A. Wakure for the applicant and learned APP Ms. Vaishali Patil Jadhav 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 one Anant Ankushrao Kawade

serving as Transport Inspector in MSRTC, Osmanabad, on 25-02-2022 in respect of the incident that had taken place on the same day. He was on duty of checking the buses and he along with his colleagues were doing the said duty and returned to Osmanabad Bus Stand at about 15.30 hours. The present applicant along with an unknown person went near them and the present applicant directly started abusing one Mr. B. B. Kale who was along with the informant stating that as to how he had made report against his friend. Then the informant told him that since he is under drunken condition, he should not abuse. Even the friend of the applicant had tried to drag him aside, however, the applicant returned and started abusing the senior officers in the depot. The informant was requesting him time and again that he should not abuse, but then applicant started abusing the informant. He started giving threat that since he is the member of Scheduled Castes, nobody will cause harm to him, otherwise he would lodge cases under Atrocities Act against them. Thereafter, the other person along with applicant slapped the informant and gave a fists blow on his back. Thereafter, the applicant by keeping that person aside started assaulting the informant by taking his Chappal in his hand. When informant was giving phone call to the senior, at that time the applicant had thrown

the mobile phone of the informant on the ground. Said B. B. Kale was trying to pick up the phone and handing over it to the informant, at that time the applicant assaulted said Kale on his face with Chappal. When informant was rescuing Kale, the blows of Chappal given by applicant had caused injury to the left hand of the informant and it got swollen. He has also received injury to the last finger. Thereafter, the controller came and intervened.

4. The applicant is now contending that since he is on strike along with other employees working under MSRTC and the high officials are trying to see that their agitation get subsided any how, and therefore, lodging of complaints against those persons on strike and demoralizing their movement is the aim. The entire facts in the case are false. The argument may be eye catching but all those contentions will have to be proved by the applicant because it is his defence, that cannot be taken into consideration at this stage. The fact remains that there are allegations of assault on a public servant by the applicant though he also appears to be a public servant. Question has been raised that the informant is not a public servant within the pervue of Section 353 of IPC, that is also to be proved and disproved at the time of trial. The allegations are such that it

does not require the physical custody for further investigation. That is not the only point which is required to be considered while dealing with an application under Section 438 of Cr.P.C. The other criteria are also there, seriousness of the offence, possibility of the similar offence etc., are also required to be considered, and the relief under Section 438 of Cr.P.C. is totally discretionary. Of course it has been exercised judiciously and also it is of extraordinary nature. There is no possibility of tampering with the evidence of the prosecution taking into consideration the fact that the informant has claimed himself to be the public servant. The applicant is also, as aforesaid, a public servant since he is also employed with MSRTC, and there is no question of his fleeing away. He has a permanent place of abode.

5. The learned Advocate appearing for the applicant has in the alternative submitted that if at all there is any substance in the say of the informant as per the allegations, then the applicant is repenting for his act and he is ready to deposit the amount with any institution to show his bonafides.

6. In view of the reasons aforesaid and the undertaking, the applicant deserves to be released on anticipatory bail. Hence,

following order.

ORDER

- 1) Application is hereby allowed.
- 2) In the event of arrest of the applicant Umesh s/o Dilip Pawar, in connection with Crime No. 60 of 2022, registered with Anandnagar Police Station, Osmanabad, Taluka and District Osmanabad, for the offence punishable under Section 353, 114, 332, 504, 506 of the Indian Penal Code, he be released P.R.Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.
- 3) Applicant shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall not try to commit any other offence.
- 5) Applicant to deposit Rs.5000/- with High Court Legal Services Sub-Committee, Aurangabad, on or before 11-04-2022.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.