

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
ANTICIPATORY BAIL APPLICATION NO.373 OF 2022**

Sayyed Imran Allahbakash
Age: 25 years, Occu.: Labour,
R/o. Asar Mohalla, Basmath,
Tq.Basmath, Dits.Hingoli.

..Applicant
(Orig. Accused)

VERSUS

The State of Maharashtra,
Through the Police Officer,
Basmath (Urban) Police Station,
Tq.Basmath, Dist.Hingoli.

..Respondent

Advocate for Applicant : Ms.Sunita G. Sonawane
APP for Respondent : Mr.A.M.Phule

CORAM : SMT. VIBHA KANKANWADI, J.

DATE: 12th April, 2022

ORDER :-

1. The applicant is apprehending his arrest in connection with Crime No.0031 of 2022, registered with Basmatnagar City Police Station, District Hingoli, for the offence punishable under Sections 500, 501 of the Indian Penal Code (IPC) and Section 3 of the Police (Incitement to Disaffection) Act, 1922 (hereinafter referred to as "the Act of 1922").

2. Heard Ms.S.G.Sonawane, learned Advocate for the applicant and Mr.A.M.Phule, learned APP for the respondent-State.

3. It has been vehemently submitted on behalf of the applicant that informant - Chandrashekhar Aanandrao Kadam is serving as Police Inspector with Vasmatnagar City Police Station, Tq.Vasmat, Dist.Hingoli. He received one video on his WhatsApp on 28th January, 2022, which was approximately of 1 minute and 2 seconds. That video is stated to have been got prepared by the present applicant and in that video he was found saying that he is Auto Rickshaw Driver and the informant is unnecessarily demanding bribe of Rs.1,000/- per month i.e. *Hafta* for running the Auto Rickshaw and then the applicant was making allegation by giving reasons as to how the informant is behaving and he was alleging that the informant is unnecessarily harassing the Auto Rickshaw Driver or those vehicle owners who are hardly earning. The informant says that there was no evidence with the applicant to state that the informant was asking money still in order to defame the Maharashtra Police and to generate disaffection he had prepared the said video. It has been further submitted that the applicant is innocent. There is huge delay in lodging the FIR. To attract the provisions of Section 3 of the Act of 1922, there should have been allegation against the Government and not against the Police. The custodial interrogation of the applicant is not required. Learned Advocate for the applicant relied on the decision in *Mr.Ravindra s/o.*

Baliram Dhawale Vs. The State of Maharashtra and Others (Criminal Application No.356 of 2020, decided by the Division Bench of this Court on 23rd November, 2020). It has been held in this case that in view of the wording of Section 3 of the Act of 1922, the intention should be to induce or incite the Police against the Government. Reliance was placed on the decision of the Hon'ble Apex Court as well as this Court while coming to the said conclusion. Learned Advocate for the applicant, therefore, submitted that since the applicant is a poor Auto Rickshaw Driver, his rights under the Articles 19 and 21 of the Constitution of India deserve to be protected.

4. Learned APP for the respondent-state has strongly objected the application and submitted that the applicant has no right to defame the honest Police Officer. Unless he has certain evidence with him, he cannot say that somebody is asking for bribe. It is also not the way to record something and to make it viral. Definitely in order to protect the image of Police in the eyes of common man, discretionary relief need not be granted in favour of the applicant. His custodial interrogation is necessary.

5. Perusal of the FIR would show that the present applicant had created certain video in which he had alleged that the

informant is asking for bribe/*Hafta* and he has also tried to say as to how the informant is high-handedly behaving. Even if for the sake of arguments we take that everything that stated by the applicant in the Video is blatantly false and amounts to defamation yet whether the remedy for the informant can be by filing FIR under Section 154 of the Code of Criminal Procedure is a question here. The Sections which have been included are 500 and 501 of the IPC but for that purpose definitely we will have to read Section 199 of the Code of Criminal Procedure. Sections 500 and 501 of the IPC are the offences from Chapter XXI of the IPC. When it is to be read alongwith Section 199 of Code of Criminal Procedure then it states that unless there is a complaint, no cognizance of the same can be taken of such offences. Here we should take complaint means a complaint which is defined under Section 2(d) of the Code of Criminal Procedure. Therefore, it should be a private complaint when it comes to Sections 500 and 501 of the Indian Penal Code. Such person who is alleged to be defamed cannot have resort to Section 154 of the Code of Criminal Procedure. Therefore, in view of the bar, the applicant deserves to be protected when a wrong procedure has been adopted.

6. Now, turning towards Section 3 of the Act of 1922, the point is not *res integra* and the Division Bench of this Court in the aforesaid case of *Mr. Ravindra Baliram Dhawale* (Supra) had taken into consideration the statement of objects and reasons as to why the said Act was passed. It has been specifically stated that the said Act was made/promulgated in British era and in view of the attempts those were made or those would be made by means of threats, intimidation to induce the members of Police force to be refrained from their duties and also to spread disaffection amongst them, the then Government passed the said Act. Section 4A of the said Act of 1922 provides that offences committed under the said Act are to be cognizable and non-bailable but they are to be tried summarily by the Judicial Magistrate First Class. The Maharashtra Amendment to the said Act shows that the maximum punishment which can be given for the offence is imprisonment of three months. The decision of the Gujarat High Court in Criminal *M.A. No.7536 of 2008* decided on 18th April, 2012 (*Bharat Desai, Editor, Times of India and Anr. Vs. State of Gujarat and Anr.*), decision of Hon'ble Apex Court in *Civil Appeal No.4815 of 2013 (N.Sengodan Vs. the Secretary to Government Home (Prohibition and Excise) Department, Chennai and Others* and decision of this Court in *Criminal Application No.3613 of 2012 (Vijay Harakchand Tatiya and Others Vs. The*

State of Maharashtra) decided 3rd December, 2012, were considered. In all these cases, it has been specifically held that the comments/quotes questioning wisdom of the State Government or any such act done against the Police cannot be covered under Section 3 of the Act of 1922. The disaffection which is contemplated under this Act needs to be created amongst the Police and it should be against the Government. Therefore, ingredients of the said offence are not attracted in the present case and therefore, the application deserves to be allowed.

7. This Court had granted interim protection to the applicant on 30th March, 2022, it deserves to be confirmed and accordingly it is confirmed.

(**SMT. VIBHA KANKANWADI**)
JUDGE

SPT