

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.694 OF 2022

Pravin @ Bhaiyya Gorakshanath Kandalkar ...Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.R.N. Gite for the Applicant.

Mr.S.R. Agarkar, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 16 MARCH 2022

P.C.

. The Applicant, apprehending arrest, in connection with the investigation of Crime No.413 of 2021 registered with Wavi Police Station, Taluka-Sinnar, District-Nashik, under Section 294 and 501 of Indian Penal Code and Section 3 of the Police (Incitement to Disaffection) Act 1922 ('the said Act' for short) is seeking anticipatory bail.

2. I have heard learned counsel for the parties. Perused record.

3. The aforesaid crime is registered on the basis of the complaint dated 23 December 2021 lodged by API Sagar Balasaheb Kote, attached to Wavi Police Station, District-Nashik.

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4. A perusal of the FIR shows that on 21 December 2021 the informant was on election duty on the polling booth at Zilla Parishad School at Village Sonewadi. The allegation is that the Applicant went near 100 meters of the polling booth, although the Applicant was not a voter at the pooling booth. The informant accosted the Applicant as to why he has come to the polling booth as he was not a voter.

5. The material allegation is that on 22 December 2021 the Applicant made certain derogatory remarks against the informant on his whats-app status which are set out at serial No.1 to 6 in the complaint.

6. Indisputably the offence under Section 294 and 501 of the Indian Penal Code are bailable offences.

7. The learned counsel for the Applicant has pointed out that as per Maharashtra Act XXIII of 1983, (w.e.f. 18-1-1983) Section 3 of the said Act of 1922 has been made non-bailable.

8. Section 3 of the said Act read as under:-

“Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause disaffection towards the Government established by law in India amongst the members of a Police force, or induce or attempts to induce, or does any act

which he knows is likely to induce any member of a police force to withhold his services or to commit a breach of discipline, shall be punished with imprisonment which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Explanation-Expressions of disapprobation of the Government with a view to obtain their altercation by lawful means or disapprobation of the administrative or other action of the Government do not constitute an offence under this section unless they the cause or are made for the purpose of causing or are likely to cause disaffection.”

It can thus be seen, that the gist of the offence under section 3, is an act or an attempt to incite the Police Force to act against the Government.

9. A perusal of the remarks on the whats-app status of the Applicant, which are reproduced in the complaint, *prima facie* show that they are derogatory in nature. However, there is a serious doubt whether any such remarks against the Police Officer/s would attract the offence under Section 3 of the said Act. I would hasten to add that the remarks cannot be justified by any standards.

10. The learned counsel for the Applicant submits that the Applicant shall delete the remarks on the whats-app status

and would desist from publishing, circulating any such remark against the Police Officers. The statement so made is accepted.

11. The learned counsel for the Applicant further submits that the mobile phone of the Applicant has been seized by the Police which aspect is disputed by the learned Additional Public Prosecutor.

12. Be that as it may considering the fact that Section 294 and 502 of IPC are bailable and having regard to the fact that Section 3 of the said Act cannot *prima facie* be attracted, I find that the Applicant deserves protection on conditions.

13. Hence, the following order.

ORDER

(i) In the event of his arrest in connection with investigation of Crime No.413 of 2021 registered with Wavi Police Station, Taluka-Sinnar, District-Nashik, the applicant-Pravin @ Bhaiyya Gorakshanath Kandalkar shall be released on bail on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

(ii) The applicant shall report to the Investigating Officer on 21 and 22 March 2022 between 11.00 am

to 1.00 p.m. and as and when called by the investigating officer and shall co-operate with the Investigating Agency.

(iii) The applicant shall surrender his mobile phone, if required by the Investigating Officer and if not already seized.

(iv) The Applicant shall delete the whats-app status containing any derogatory remarks against the informant and shall desist from publishing, circulating any such remarks against the Police Officers.

(v) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.