

Anand

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

ANTICIPATORY BAIL APPLICATION NO. 1143 OF 2022

Gunaratna Nivruttirao Sadavarte .Applicant

Vs.

**ANAND
SUDHAKAR
SUDAME**

The State of Maharashtra .Respondent

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Mr. Niranjan Mundargi a/w Mr. Advait Shukla, Advocate, for
the Applicant
Mrs. A. S. Pai, Public Prosecutor, for the Respondent – State
Mr. Ravindra A. Godase, PSI, Bharati Vidyapeeth Police
Station, Pune present

CORAM : VINAY JOSHI, J.

DATE : 26.04.2022

P. C.

. Heard learned counsel for the Applicant and the
learned Public Prosecutor for the Respondent – State.

2. Registration of C. R. No. 1067 of 2020 with the
Bharati Vidyapeeth Police Station, Pune for the offences
punishable under Sections 153-A, 153-B, 504, 295-A &
505(2) of the Indian Penal Code led the Applicant to
approach this Court for grant of pre-arrest protection in
terms of Section 438 of the Code of Criminal Procedure.

Though earlier the Applicant has applied for the same relief to the Court of Sessions, however, it has declined to exercise judicial discretion in his favour.

3. At the instance of report dated 09.10.2020 lodged by one Amar Pawar, crime was registered. Precisely, he contended that on 07.10.2020, in the evening, around 7.00 p. m., he was watching debate arranged and aired by IBN LOKMAT T. V. news channel. The Applicant had participated in the debate. It is alleged that during discussion, the Applicant has uttered certain objectionable words showing dis-respect to a certain class of people. It is alleged that the Applicant has intentionally made such remarks for promoting disharmony in between different groups. The informant felt it to be objectionable and felt that those remarks are of such nature that it may create dis-harmony in the class of community. On that basis, the report has been lodged with concerned police station.

4. The Applicant claimed bail on usual grounds. Besides that it is contended that for the same incident,

already one Rajendra Nikam had filed a report with the Satara City Police Station which was culminated into registration of C. R. No. 781 of 2020. It is submitted that in the said crime, the Applicant was arrested, faced custodial interrogation and has been released by the Jurisdictional Magistrate on bail. According to the Applicant, for the same incident, he cannot be put to face the custody or trial, as it amounts to double jeopardy. More over, it is submitted that in the earlier crime based on same facts, he has been thoroughly interrogated and now, nothing has remained to put him in custody. The Applicant showed his willingness to co-operate with the investigating agency.

5. In resistance, it is submitted that in existing crime, the Applicant was served with a notice of appearance in terms of Section 41(A) of the Code of Criminal Procedure. However, he did not co-operate. The Applicant tend to make such statements on and often and therefore, there is likelihood of repetition of crime. The police yet to collect voice sample of the Applicant, as a part of investigation. Various statements have been recorded to indicate that the

Applicant intended to create dis-harmony in the class of people.

6. It is informed that though in earlier crime, learned Magistrate has passed the order of bail, however, the Applicant is in Magistrate custody, since he has not complied the conditions of bail. Learned PP submitted that the investigating agency has applied for transfer of the Applicant in existing crime, however, upon instructions, she would submit that till this time, the Applicant has not been arrested in this crime. Therefore, I find no difficulty to entertain this Application for grant of pre-arrest protection.

7. Perused earlier FIR dated 09.10.2020 lodged by one Rajendra Nikam. It is evident that for exactly same incident (television debate), the existing FIR has been registered at Pune by someone else i. e. Amar Pawar. It is not in dispute that the allegations made in the earlier FIR were about the Applicant's objectionable utterances in public debate on IBN LOKMAT news channel whilst, the same allegations are in the existing FIR. Therefore, serious

question arises as to whether a person can be put to trial or investigation for more than once for the same act. On prima facie basis, the said aspect can be looked, since it relates to the life and personal liberty of individual. I could not get explanation on this point from State as to how the said action is in tune with law.

8. The Applicant was initially arrested by the Gamdevi Police Station from which he was transferred and then arrested by the Satara City Police Station in earlier C. R. No. 781 of 2020. In the said crime, he was remanded to police custody till 18.04.2020 and thereafter, he is in the Magistrate custody. Undisputedly, for the same allegations, he has already faced custodial interrogation.

9. Pertinent to note that existing FIR has been lodged on 09.10.2020 and after a gap of near about six months, a notice under Section 41A of the Code of Criminal Procedure was issued. The Applicant has responded the notice and showed his willingness to co-operate as well as to appear as & when called. The alleged incident dates back

prior to 18 months meaning thereby hardly there could be repercussions after long passage of time. It reveals from the order passed by the learned Sessions Court that the police have recorded the statements of material witnesses from the private channel. The only reason appears to have been canvassed that the Applicant's voice sample was to be obtained. The Applicant has pleaded that already Satara City Police have obtained his voice sample. The learned PP has no instructions to that effect. Be that as it may, the Applicant's learned counsel would submit that the Applicant is ready to give his voice sample to facilitate the course of investigation.

10. In order to constitute an offence of promoting enmity between the classes and intentional act of hurting religious feelings, it requires adequate mens rea. It is a matter of inference to be drawn at the time of trial. All the charged offences would attract punishment of imprisonment which may extend to three years of imprisonment. All offences are exclusively triable by the Court of Magistrate. Having regard to the nature of accusation, nothing is to be

seized at the instance of the Applicant. The police have already collected the alleged objectionable conversation in the pendrive. The Applicant is a practising Advocate and a social worker. He has permanent place of abode. Having regard to all above facts, the Applicant's liberty can be protected by putting him on certain terms.

11. Hence, the following order.

ORDER

- (i) The Application stands allowed;
- (ii) In the event of arrest, the Applicant namely - Gunaratna Nivruttirao Sadavarte in C. R. No. 1067 of 2020 registered at the Bharati Vidyapeeth Police Station, District - Pune for the offences punishable under Sections 153-A, 153-B, 504, 295-A & 505(2) of the Indian Penal Code, be released on bail on his furnishing P. R. Bond of Rs. 25,000/- with one or two sureties in the like amount;
- (iii) The Applicant shall not commit similar type of offence in future;
- (iv) The Applicant shall attend the concerned police station on 4th, 5th & 6th May, 2022 in between 10.00 a. m. to

12.00 noon and thereafter, as & when called for by the investigating officer;

(v) The Applicant shall provide his cell number and residential address to the concerned investigating officer;

(vi) The Applicant shall provide his voice sample as and when called;

(vii) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

12. The Application stands disposed of.

(VINAY JOSHI, J.)