

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.33 OF 2022

(SAMIR AHEMAD SHEIKH BARKATULLAH & ANR....VS.. STATE OF MAH. THR. PSO PS
HIVERKHED, DIST. AKOLA)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.M.Daga, Advocate for Applicants.
Shri S.D.Sirpurkar, A.P.P. for Non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 14, 2022.

1. Heard.
2. The complainant one Shri S.K. Rajique Sk. Rahim lodged a report with Police Station, Hivarkhed, District : Akola on 15/12/2021, stating therein that he is the President of Dr. Jakir Hussain Education Social Welfare Society, which runs Urdu Higher Secondary and Primary School at Adgaon (Bk.). It is alleged in the complaint that on 15/12/2021 in the night at about 02:00 a.m. there was a birthday celebration of applicant No.1 in which both the applicants and 8 to 10 other persons were present and under the influence of liquor they entered into the school premises and set on fire the school record, chairs and tables causing loss of Rs.5,000/-. Thereupon, the crime was registered as Crime No. 0391 of 2021 for the offences punishable under Sections 143 and 436 of the Indian Penal Code.

3. By the present application, filed under Section 438 of the Code of Criminal Procedure, the applicants are praying for grant of bail in the event of their arrest in the aforesaid offence.

4. Shri Daga, learned counsel for the applicants submits that except the names of the applicants appeared in the First Information Report (FIR) there is no incriminating material collected by the police till date to show the involvement of the applicants in the alleged offence.

5. It is submitted that there is an enmity between the applicants and the complainant and for this purpose he has drawn attention to the applications moved by the applicant No.1 seeking information regarding mismanagement of the school of the complainant under the Right to Information Act, 2005. He thus, submits that out of rivalry the applicants have been falsely implicated in the alleged offence.

5. Shri Daga, learned counsel for the applicants, has invited attention to the additional affidavit filed by the State on 01/02/2022, wherein in paragraph No.2 it is stated that the CCTV Footage is not clear enough to conclude the presence of the accused in the same. It is submitted that in absence of any evidence as regards the presence of the applicants, more particularly, looking to

the rivalry between the applicants and the complainant, arrest of the applicants will amount to taking away their liberty.

6. Lastly, he argued that even on the face of the allegations made in the FIR, Section 436 of the Indian Penal Code does not attract in the present matter. At the most, Section 435 will attract and Section 435 is the bailable offence. He, therefore, submits that this Court may consider to grant bail to the applicants on certain conditions like attending the Police Station and to cooperate the police in investigation.

7. On the other hand, Shri Sirpurkar, learned A.P.P. strongly opposed the application and submits that the offence is serious and if the applicants are granted bail, they may repeat the crime and may also threaten the witnesses. It is further submitted that the present applicants have criminal antecedents and earlier two offences were registered against the applicants and as such he prays for dismissal of the application.

8. I have gone through the FIR and the case diary which was made available by the learned A.P.P.

9. In this case no allegations are made about destruction of building which comes within one of the three classes referred to in the section i.e. place of worship

or as a human dwelling or as a place for the custody of property. Thus, from the allegations made in the FIR, *prima-facie*, I find substance in the contention of the learned counsel for the applicants that the offence under Section 436 of the Indian Penal Code does not attract in this matter, but Section 435 would attract, which is a bailable offence.

10. Moreover, the fact stated in the additional affidavit dated 01/02/2022 by the State that CCTV footage is not clear enough to conclude the presence of the accused.

11. As such, presently, except the fact that the names of the applicants appeared in the FIR, there is no other material to show their presence.

12. No doubt, the investigation is going on and during the investigation the police may come across any material which could show the involvement of the applicants in the alleged offence.

10. In that view of the matter, I am of the opinion that the applicants are entitled for grant of anticipatory bail in the event of their arrest on certain conditions. Accordingly, I pass the following order:

- i) The application is allowed.

- ii) It is directed that, in the event of arrest of the applicants, they be released on bail in Crime No.391 of 2021 registered with Non-applicant No.1 Police Station for the offences punishable under Sections 143 and 436 of the Indian Penal Code, on executing P.R. bond for the sum of Rupees Twenty Five Thousand each with one solvent surety in the like amount, for each of the applicant.
- ii) The applicants shall attend the concerned Police Station on every Monday, Wednesday and Friday between 10:00 a.m. and 12:00 noon, for two weeks.
- iii) The applicants shall cooperate the Investigating Agency in the investigation.
- iv) The applicants shall not tamper with the prosecution witnesses.
- v) The Non-applicant/ State is at liberty to file application for cancellation of the bail, in case, the Investigating Agency finds any incriminating material against the applicants.

The application stands **disposed of** accordingly.

JUDGE

RRaut..