

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 1574 OF 2023

**VIKAS S/O TANAJI PATIL JAGDAMBE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. G. G. Kadam, Advocate for the applicant
Mr. G. O. Wattamwar, APP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 27th OCTOBER, 2023

P.C. :-

1. Applicant apprehends arrest in connection with Crime No. 197 of 2023 registered with Dharmabad Police Station, District Nanded for the offence punishable under Section 505(2) of the Indian Penal Code (for short 'IPC').
2. Informant Gautam reported to the police that on 7th August, 2023 applicant posted a comment on his facebook profile with an intention to create or promote enmity or ill will between two castes or communities.
3. Learned counsel for the applicant submits that the offence alleged against present applicant is punishable only upto three years or with fine or with both and hence he is entitled for pre arrest bail. It is his contention that in fact his account was hacked and therefore, he is not responsible for said post. By relying upon the judgment of Hon'ble Apex

Court in case of ***Bilal Ahmed Kaloo Vs. State of Andhra Pradesh, MANU/SC/0861/1997***, it is submitted that care has to be taken while considering such offences so that the liberty of the citizen is not lightly interfered with. He also placed reliance on the order of Division Bench of this Court in case of ***Pawandeep Vs. State of Maharashtra and Ors., MANU/MH/4074/2021*** wherein a reference is made to the judgment in case of ***Bilal Ahmed Kaloo*** (supra) to argue that the post in question does not pertain to two casts or communities but it is individual centric. It is submitted that the offence under Section 505(2) of IPC does not get attracted in the present case. A reference is also made to the judgment of division Bench of this Court in case of ***Ashok and Ors. Vs. The State of Maharashtra and Ors., MANU/MH/2634/2018***. While he placed reliance on the judgment of Hon'ble Apex Court in case of ***Siddharth Vs. The State of Uttar Pradesh and Ors., MANU/SC/0600/2021*** to contend that having regard to the nature of offence and as the applicant is ready to submit himself for investigation, his custody is not required.

4. Learned APP opposed the application by contending that in the present situation the offence committed by the applicant clearly indicates his intention to create or promote enmity on the ground of caste of community. It is submitted that the comment posted by the applicant itself is sufficient to indicate his intention and in order to ascertain the

real aim/purpose for same his custodial interrogation is necessary.

5. There is no denial of the fact that from the Facebook account of the present applicant apparently objectional comment has been posted. This Court only with a view to ensure that there is no unwanted publicity to the said comment through this order, it is not reproduced here. However, perusal of the first information report as well as the investigation papers clearly shows that the nature of comment in the post is apparently promoting hatred, enmity or or ill will between two classes. In the surcharged social atmosphere such post can never be taken lightly and the Investigating Agency is certainly entitled to know real intent behind it.

6. Though it is now sought to be claimed by applicant that his Facebook account is hacked however, nothing is placed on record to show that in complaint is made by the applicant in this regard since 7th August, 2023 i.e. the date on which the comment was posted on his Facebook profile till date. Thus, prima facie this Court finds no substance in the said claim of the applicant.

7. As far as the contention of the learned counsel for the applicant about the post being individual centric and not aimed at creating hatred between two classes is concerned, perusal of the post does not indicate

so or support his contention. The reliance placed on the case of **Bilal Ahmed Kaloo** (supra) and the judgment of Division Bench of this Court in case of **Pawandeep Vs. State of Maharashtra** (supra) shows that repentance was shown by the accused therein by issuing clarification in respect of the said post. There is no repentance from the applicant herein nor any clarification is posted till date. As far as the judgment of **Ashok and Ors.** (supra) is concerned, Division Bench of this Court in the facts of the said case has held that in India due to absence of humor the tolerance level has gone to shocking down. By no stretch of imagination post in question can be accepted even in humour. Similarly, in case of **Siddharth** (supra) the Hon'ble Apex Court was dealing with the issue as to whether at the time of filing of the charge-sheet and for that purpose the custody of accused is necessary or not. In considered view of this Court the applicant is not entitled to get any benefit from the above judgments.

8. Section 505(2) of IPC reads thus:

"505.

(2) **Statements creating or promoting enmity, hatred or ill-will between classes.**—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional

groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

9. This provision clearly shows that making, publishing or circulation of any statement with intent to create or promote or even if it is likely to create or promote on the ground of caste, community etc. or even any other ground whatsoever, feelings of enmity, hatred or ill will between the groups, castes or communities, such as act becomes punishable offence. Prima face perusal of the comment posted by the applicant clearly fulfills essential ingredients to constitute offence under this section. Investigation is in progress. The Investigating Agency is within its right to find out real aim/purpose of the applicant behind such post in today's charged social atmosphere. Having regard to these facts, applicant has failed to make out case for grant of anticipatory bail. Hence, application stands dismissed.

(R. M. JOSHI, J.)

ssp