



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3171 OF 2023

Ashim Deb & Anr.

... Petitioners.

V/s.

The State of Maharashtra & Anr.

... Respondents.

Mr. Ashim Deb, Petitioner No.1 in-person.

Mr. A.R. Patil, APP for the Respondent-State.

**CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.**

DATE : 20th September, 2023.

P.C.:

1. Present Petition under Article 226/227 of the Constitution of India is filed for seeking direction to the Principal Secretary and Remembrancer Legal Affairs to terminate the services of the Respondent No.4-Assistant Public Prosecutor and Respondent No.5-Public Prosecutor and to lodge First Information Report against them and also for a direction to Respondent No.3-Bar Council of Maharashtra & Goa to cancel the license granted to them to practice law.

2. In a narrow compass, the case of the Petitioners is that the Respondent Nos.4 and 5, who are the Assistant Public Prosecutor and Public Prosecutor, opposed the Application for bail of the Petitioners and the allegation is that forged and fraud matters were brought before the Court by Respondent Nos.4 and 5, while opposing the bail of the

Petitioners.

3. The Respondent Nos.4 and 5 have been appointed under the provisions of Sections 24 and 25 of the Code of Criminal Procedure, 1973 by the State Government. In discharge of their duties, the Respondent Nos.4 and 5 appears to have opposed the Bail Application of the Petitioners and it is a matter of common knowledge that, the submissions are advanced based on the instructions given to the Assistant Public Prosecutor and the Public Prosecutor. The allegations which have been levelled by the Petitioners appears to be allegations of disgruntled litigant whose bail application have been opposed by the Respondent Nos.4 and 5.

4. In spite of above, in event there is any complaint against the Respondent Nos.4 and 5, the remedy of the Petitioners is to adopt appropriate proceedings before the Appointing Authority i.e. State Government. The issue is, if the State Government is satisfied with the performance of the Assistant Public Prosecutor and Public Prosecutor, the scope of interference under Article 226 of the Constitution is limited.

5. Considering the facts of the case, we do not find any reason to exercise the extraordinary writ jurisdiction and pass any direction in that regard.

6. As regards the direction to the Bar Council of Maharashtra

and Goa, the provisions of the Advocates Act, 1961, provide for necessary complaint to be made to the Bar Council of Maharashtra and Goa by the aggrieved person and as such, considering the alternate remedy which is available to the Petitioners, we are not inclined to interfere.

7. By reserving the appropriate legal remedy in favour of the Petitioners in accordance with law, the Petition is disposed off.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)