



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

ANTICIPATORY BAIL APPLICATION NO. 1654 OF 2023

MAHESH NARAYAN JAGTAP

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Parvezhasnath H. Kagzi, Advocate for Applicant

Mr. S.D. Ghayal, APP for Respondents - State

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23rd JANUARY, 2024

PER COURT :

1. Applicant apprehends arrest in Crime No.222/2023, registered with Nandurbar City Police Station, Nandurbar, for offence punishable under Sections 307, 308, 353, 333, 332, 143, 148, 149, 147, 427 of the Indian Penal Code, Sections 3, 7 of the Prevention of Public Property Act, 1984 and Section 135, 37(1)c) of the Bombay Police Act, 1959 and Section 3 of the Criminal Law (Amendment) Act.

2. It is alleged in FIR that, on 04/04/2023, at about 11:15 p.m. accused Nos.1 to 57 along with 90 to 100 unknown accused persons including present applicant, formed unlawful assembly in the area of Maharashtra Gymnasium to Ali Sahab Mohalla, in Nandurbar City, on the ground of inter religion marriage between one Heena and accused No.22. They conspired common object to cause damage to public property and kill police officers and police

officials on duty. They pelted stones, bricks, glass bottles and caused grievous injuries to police officers and also caused damage to public property.

3. Heard learned advocate for applicant and learned Additional Public Prosecutor for State. Perused the investigation papers.

4. Learned Additional Public Prosecutor opposed the application contending that as mob of 100 to 150 persons involved in present crime, Section 149 is applied in present matter. Therefore, there is no need of attributing overt act to present applicant.

5. Though Section 149 is made applicable, however, mere presence of applicant on the spot, *prima facie*, does not mean that he has actively participated in alleged offence and he shared common object of the mob.

6. In the present matter charge-sheet is filed on 29/09/2023 and the case is numbered as R.C.C. No.278/2023. Though name of applicant is mentioned in FIR, there is no specific overt act attributed to him. Similarly situated co-accused is released on anticipatory bail by this Court in Anticipatory Bail Application No.1238/2023, vide order dated 03/10/2023. Applicant is, therefore, entitled for relief on the ground of parity.

7. For the aforestated reasons, present application is allowed by confirming interim protection granted to applicant vide order dated 05/10/2023.

(NITIN B. SURYAWANSHI, J.)