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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1344 OF 2021

Kirankumar s/o Bhagwanrao Bakale
Age – 44 years, Occ – Service
R/o Tirupati Nagar, Taluka – Buldhana
District - Buldhana

APPLICANT

VERSUS

The State of Maharashtra

RESPONDENT

.....
Mr. Nilesh S. Ghanekar, Advocate for the applicant
Mr. D. R. Kale, Public Prosecutor for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st OCTOBER, 2022

ORDER :

1. The applicant, who is serving as Police Inspector in Local Crime Branch, Jalgaon, is accused of commission of offence punishable under sections 153-A, 153-B, 166, 294, 500, 509 of the Indian Penal Code, and under section 67 of the Information Technology Act.
2. In short, it is alleged in the FIR that the clip of conversation of 3 minutes 30 seconds between the applicant and his subordinate Assistant Sub Inspector is made viral on the social media in which the applicant has used indecent, insulting

and defamatory language against a particular caste. The offending statements made in the said clip are reproduced in the FIR. It is therefore, alleged that the applicant has committed offence punishable under sections 153A, 153B, 166, 294, 500, 509 of the Indian Penal Code.

3. Subsequent to the filing of the FIR, by reports dated 21st September, 2022 and 23rd September, 2022, the Assistant Sub Inspector – Ashok Mahajan, with whom the applicant had the conversation, is made accused in the crime and sections 120B, 353A of the Indian Penal Code and section 67 of the Information Technology Act is added.

4. Apprehending arrest in connection with the FIR in question, the applicant seeks bail in the event of his arrest.

5. Heard learned advocate for the applicant and learned Public Prosecutor for the State. Perused the FIR and the investigation papers.

6. Learned advocate for the applicant submits that, no ingredients of sections 153-A and 153-B of the IPC are made out in the FIR against the applicant. He submits that it is a private conversation between the applicant and his subordinate officer. Necessary *mens rea*, required to attract sections 153-A and 153-

B of the IPC is absent in the present case. By relying on the decisions in "*Manzar Sayeed Khan V/s State of Maharashtra and Another*" 2007 Criminal Law Journal (Bom) 2959; "*Ms. Sunaina Holey V/s State of Maharashtra and Others*" 2021 ALL MR (Cri) 2945 and "*Amab Ranjan Goswami V/s State of Maharashtra and Others*" 2021 ALL MR (Cri) 229, he submits that no offence punishable under sections 153-A and 153-B of the IPC is made out against the applicant. He further submits that the applicant is ready to surrender his cell phone and co-operate in the investigation. Custodial interrogation of the applicant is, therefore, not necessary. He, therefore, prays for grant of anticipatory bail to the applicant.

7. Per contra, learned Public Prosecutor, strenuously opposed the prayer of the applicant. He submits that the applicant, being senior police inspector serving in local crime branch, has violated the oath of his office and has made objectionable, derogatory, defamatory, insulting and obscene statements against members of a particular caste. The applicant has indulged in antisocial act and has hurt sentiments of the people belonging to a particular caste. Further submission is that the statements of the applicant have disturbed the harmony between two different castes, i.e. one to which the applicant belongs to and the other against

which offending statements are made by the applicant. He submits that there was huge outcry in the society after the audio clip of the conversation of the applicant with his subordinate officer went viral on social media and there were large scale protests against the applicant and the police department. There was law and order situation in Jalgaon district. Social peace was disturbed and with great efforts the peace could be restored. He further submits that the applicant is trying to destroy evidence, which is clear from the fact that the co-accused, Assistant Sub Inspector – Ashok Mahajan, within two hours of registration of the FIR has given a written complaint that his cell phone, in which the offending conversation is recorded, is lost. He submits that custodial interrogation of the applicant is required for recovery of mobile and collecting his voice samples and if protection is granted to the applicant, it will hamper the investigation and the applicant will tamper the evidence. He, therefore, submits that the application may be rejected.

In support of his submissions, he relied on "***R. V. Bhasin Vs State of Maharashtra***" 2012 Cri.LJ 1375; "***Bijumon V/s State of Kerala***" Laws (Ker) 2018-7-635 and "***Aparna Purohit V/s State of UP***" (2021) 3 ALLLC 634.

8. The applicant, who is holding responsible post of senior police inspector, is not denying that he has made the offending statements, quoted in the FIR. It is clear from the investigation papers and the report of the investigating officer that there were large scale protests against the applicant and the police department in Jalgaon district and peace and harmony in the society was seriously disturbed. With great efforts, the law and order situation was brought under control. It is thus clear that the applicant has affected social harmony and public peace.

9. In "**Manzar Sayeed Khan**" (*supra*), "**Ms. Sunaina Holey**" (*supra*) and "**Amab Ranjan Goswami**" (*supra*) are followed. In "**Bijumon**" (*supra*), it is held that -

"10. Mens rea is a necessary ingredient of the offence under Section 153A IPC. It is necessary that at least two groups or communities should be involved. Merely inciting the feelings of one community or group without any reference to any other community or group cannot attract the offence (See Bilal Ahmed Kaloo V. State of A.P. (1997) AIR SC 3483). The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153A IPC (See Manzar Sayeed Khan V. State of Maharashtra (2007) AIR SC 2074)"

10. In the case laws relied upon by the applicant, it is further held that *mens rea* is necessary ingredient. Both these citations are followed in other rulings relied on by the applicant.

11. In the facts of the present case and considering the stage of investigation, it cannot be held that no ingredient of sections 153A and 153B of the IPC are made out against the applicant.

12. The apprehension of the prosecution that the applicant being police officer, is trying to destroy the evidence in the matter appears to be well founded. It is clear from the fact that within two hours from the registration of the FIR, the Assistant Sub Inspector, who had recorded the conversation of the applicant, has lodged a report that he has lost his mobile phone in which the offending conversation was recorded. It is to be noted here that at that point of time, the Assistant Sub Inspector was not even made accused and he was subsequently added as accused in the present crime.

13. Custody of the applicant is necessary for recovery of his mobile phone and for collecting his voice samples and for effective investigation. The utterances of the applicant reeks of hatred for one caste. The statements of the applicant are derogatory and are defamatory and they insult the feelings of

the people of a particular caste.

14. Taking into consideration the accusations levelled against the applicant, who is a responsible police officer, who by his act has disturbed the peace and harmony in the society and in view of the fact that custodial interrogation of the applicant is necessary in the facts of the present case, I am of the opinion that this is not a fit case to exercise discretion under section 438 of the Criminal Procedure Code in favour of the applicant. The application, therefore, is rejected.

[NITIN B. SURYAWANSHI]
JUDGE

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