

A.B.A. 2843/2022.

MHCC020173482022



IN THE COURT OF ADDITIONAL SESSIONS JUDGE MUMBAI,

AT GR. BOMBAY

ANTICIPATORY BAIL APPLICATION NO. 2843 OF 2022.

IN

C.R. NO. 578 OF 2022

Javed Raza Shroff

... Applicant

Versus

1. The State of Maharashtra  
(At the instance of Dongri Police Station),

2. Chayya Ravindra Nirbhavane.

... Respondents

**Appearances :-**

Ld. Adv. Dr. Yusuf Iqbal Yusuf a/w Adv. Mr. Parth Sangharajka  
for the applicant.

Ld. APP Mr. Sukhdeve for the State/Respondent No.1.

Ld. Adv. Mr. Satish Muley a/w Adv. Zaki Shaikh  
for the Respondent No.2.

**CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE  
DR. A. A. JOGLEKAR (C.R.NO.37)  
(Incharge Court of C.R.No. 60)**

**DATED : 29<sup>TH</sup> DECEMBER, 2022.**

**ORDER**

By this application the applicant **Javed Raza Shroff** has sought for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure, (In short, "Cr.P.C"), as he apprehends arrest by Dongri Police Station in C.R.No. 578/2022, for the offences punishable under Sections 509, 504, 506 of the Indian Penal Code, (hereinafter referred to as, "IPC"), Alongwith Sections 3(1)(r)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

2. It is the case of the prosecution that, the informant was engaged under the Services of the Trust of which the applicant is Chairman. It is stated that, informant was engaged with the Trust since 2005 until 2020 as a sweeper at the Habib Hospital which functions under the Trust namely Habib Ismail Hospital and Medical Trust. The general duty hours of the informant were from 2.00pm until 10.00pm. The applicant is Managing Trustee and he took over the charge since 2020. It is stated that, the applicant used to call upon the workers and used to threaten them with regard to their salaries and also used to hurl abuses. It is stated that, the informant and the other such old employees were removed from the services without notice. Hence, the informant protested against such act. It is stated that, when the workers were removed from their services and when they asked for their wages at that time the applicant used to hurl abuses and also used to call the workers late night by 2.00 or 3.00am and without giving any wages used to drag them out. If any worker protested against the same the applicant used to insult him.

3. Informant alongwith the co-workers Ruksana Khan, Pramila Pathak and Shankar Sharma as on August 2021 had been to the office of the Habib Education Trust at Hazi Mohammad Building at the instance of the applicant late night for getting such wages, and when the informant urged for her salary, she was insulted by the applicant by using such filthy language and making such caste related remarks infront of the colleagues and thereafter all of them were dragged outside the office. It is categorically stated that, the informant had filed such complaint with Dongri Police Station accordingly and hence, the informant was fired from her job on the very next day. Thus, inspite of such complaint no any action was taken by the police. Further, on 01.11.2022 informant had given such application against the applicant and thereafter also an application pertaining to life threats was tendered by the informant with the police station as on dated 07.12.2022. Considering the initial application offence was registered against the applicant under the sections *ibid*. Thereafter, upon initial investigation by the ACP panchnama was conducted and statements were recorded. Also, the statement of the witnesses under Section 164(5)(A) of Cr.P.C. are proposed for recording.

4. Ld. Advocate for applicant states that, the FIR in itself is mischievously filed against the applicant, more especially when the alleged incident is of August, 2021. It is the specific contention of the informant that, she is an Ex-employee and that admittedly the incident took place infront of three co-employees who are disgruntled by the applicant and that they were also dismissed from the services. Hence, the said persons cannot be considered as independent

**A.B.A. 2843/2022.**

witnesses. Moreover, it is stated that, considering the allegations in the FIR as per the contention of the informant the alleged incident took place on some day in the August 2021 during late night hours when she alongwith her three colleagues visited the office of the trust at the instance of the applicant and that the said incident was within four walls of the office and which cannot be held under the public view. It is also stated that, considering the alleged time of incident the FIR is delayed and it smacks of afterthought and a concocted version. And lastly, it is stated that, the FIR is a part of conspiracy in order to implicate the applicant as similar such case was filed by another employee in which the applicant is already enlarged on pre-arrest bail by the Hon'ble High Court. Thus, upon the aforesaid set of facts the Ld. Advocate for applicant prayed for enlarging the applicant on pre-arrest bail.

5. Per contra the prosecution has filed their reply vide Exh.3 and *inter alia* have resisted the application on various grounds. It is categorically stated that, the applicant is the Chairman of Habib Ismail Hospital Trust and that there is every possibility that, he might threaten the witnesses from giving any such statement. Further, the CCTV Footage is yet to be retrieved and recovered. Also, that the prosecution apprehends for abscondance and tampering of evidence. The Ld. Prosecutor categorically states that, there is no such provision of law providing for such grant of pre-arrest bail, more especially in the light of the fact that, there is an expressed bar under Section 18(A)(2) of the SC ST Amendment Act, 2018 and therefore, although the Ld. Advocate for applicant has stated for the fact that, the applicant is enlarged by the Hon'ble Bombay High Court in another

case of similar nature that will not have bearing upon the present application. Hence, the Ld. Prosecutor prayed for rejection of application.

6. My Ld. Predecessor in office had called upon the reply of the victim as per the mandate of law and accordingly the victim has filed her reply vide Exh.5 and *inter alia* has strongly resisted the application upon various grounds. It is vehemently stated that, although the applicant has stated for belated FIR, the informant as per her knowledge had immediately informed the alleged incident of August 2021 to the police authorities and that they paid no heed to the same and therefore, it was the inaction on the part of the police machinery and not that of the informant. As such the said fact with regard to the such complaint being filed by the informant at the relevant time is well agitated and stated in the reply of the prosecution and therefore, the same deserves consideration. So also, inspite of such complaint pertaining to the incident, the informant was threatened by certain elements, wherein the informant as on 07.12.2022 again filed such written complaint with the agency and that investigation pertaining to the same is pending. Thus, in view of the same the Ld. Advocate for the informant also argued congruently with that of the Ld. Prosecutor and prayed for rejection of application.

7. Heard Ld. Advocate for applicant, the Ld. APP for the State and Ld. Advocate for victim. Perused the application and reply.

8. On meticulous examination of the case record it evinces to myself that, the factum of the informant agitating the alleged incident of August 2021 apparently seems to be corroborated as the prosecution in their reply have categorically stated for such complaint filed by the informant against the applicant at Dongri Police Station. Therefore, the said contention pertaining to filing of complaint by the informant post such relevant incident of August, 2021 is apparently fortified in prima-facie. Ld. Advocate for applicant has stated that, no such incident had occurred at the relevant time and that it was in the month of March 2021 when the informant had hurled such abuses against the applicant and the same is available by way of electronic record. In this regard, the Ld. Advocate for applicant also has placed such transcription vide Exh.E in order to buttress his contention. It is also stated by him, that the informant was also given such notice under section 149 of Cr.P.C. and in order to substantiate the same a station diary entry of Versova Police Station dated 23.03.2021 is placed on record. On perusal of the said entry it transpires that, certain action was taken against the individuals gathered under the Union and they were released inclusive of informant. Thereafter, certain individuals including the informant is shown to have been given such notice under Section 149 of Cr.P.C. In this regard, the notice under Section 149 is not placed on record. So also, the said fact will have no bearing at this juncture when the investigation is at a nascent stage.

9. Undoubtedly, another such matter was filed against the applicant and against which he is enlarged on pre-arrest bail by the Hon'ble High Court. The Ld. Advocate for applicant has vehemently

stated that, the observations of the Hon'ble Bombay High Court are very conclusive, wherein two factors with regard to the applicability of Section 438 and the factum of the allegations in the FIR being in the form of afterthought and concocted and motivated have been enunciated.

10. I have minutely perused the said order of the Hon'ble Bombay High Court and I do humbly submit that, although the informant there in and the informant in the present case were employed under the same trust, but the present informant was working with the trust hospital, while the informant in the said case was working under the trust run school. Moreover, I do further humbly submit that the statement of the informant and the reply filed by the prosecution categorically mentions for the fact that, the informant had communicated the relevant incident of August 2021 with Dongri Police Station and therefore, considering the fact that post such intimation it was incumbent upon the officer on duty to have considered the complaint. This Court had raised a specific query with the investigating officer present before this Court pertaining to whether the officer on duty at the relevant time of the incident of August 2021 was inquired with regard to such complaint of the informant, upon which the investigating officer states that, as the date is not mentioned or rather as the date is not to the knowledge of the informant such inquiry with the duty officer is not possible. Considering this submission and also the fact that the informant being a sweeper did such possible attempt available at her ends, but the same at that juncture was not looked into by the concerned duty officer and merely because that, the informant failed

to recollect the date, the occurrence of incident cannot be dismissed outright. And therefore, it is necessary that all such facts are required to be investigated and in this regard the physical presence of the applicant necessitates for custodial interrogation as it being more elicitation oriented.

11. Ld. Advocate for applicant has relied on 6 case laws, which ensue as under.

1. **Dr. M. G. Bhat Vs. State of Karnataka, 2022 LiveLaw (Kar) 506.**
2. **Dr. Monali W/o Makrand Kshirsagar and Ors., Vs. The State of Maharashtra and Anr., Criminal Application (APL) No. 477/2019, decided on 21.02.2020.**
3. **Hitesh Verma Vs. The State of Uttarakhand & Anr., Criminal Appeal No. 707/2020 (Arising out of SLP (Criminal) No. 3585/2020), decided on 05.11.2020.**
4. **Swaran Singh & Ors. Vs. State through Standing Counsel & Anr., decided on 18.08.2008.**
5. **Pradnya Pradeep Kenkare and Anr. Vs. The State of Maharashtra, Criminal Writ Petition No. 713/2005, decided on 05.05.2005.**
6. **Prathvi Raj Chauvan Vs. Union of India & Ors., Writ Petition (C) No. 1015/2018 with Writ Petition (C) No. 1016/2018, decided on 10.02.2020.**

12. Considering the conspectus of the aforesaid case laws it is humbly submitted and evident that, initial 3 case laws pertain to the quashing of FIR and therefore will have no relevance with regard to the present application at this juncture. Case law at serial No. 4 and 5 are prior to the Amendment Act of 2018. Considering the case of **Prathvi Raj Chauvan Vs. Union of India & Ors.**, it is evident that,



“21. It is important to reiterate and emphasize that unless provisions of the Act are enforced in their true letter and spirit, with utmost earnestness and dispatch, the dream and ideal of a casteless society will remain only a dream, a mirage. The marginalization of scheduled caste and scheduled tribe communities is an enduring exclusion and is based almost solely on caste identities. It is to address problems of a segmented society, that express provisions of the Constitution which give effect to the idea of fraternity, or *bandhutva* (बन्धुत्व) referred to in the Preamble, and statutes like the Act, have been framed. These underline the social – rather collective resolve – of ensuring that all humans are treated as humans, that their innate genius is allowed outlets through equal opportunities and each of them is fearless in the pursuit of her or his dreams. The question which each of us has to address, in everyday life, is can the prevailing situation of exclusion based on caste identity be allowed to persist in a democracy which is committed to equality and the rule of law? If so, till when? And, most importantly, what each one of us can do to foster this feeling of fraternity amongst all sections of the community without reducing the concept (of fraternity) to a ritualistic formality, a tacit acknowledgment, of the “otherness” of each one's identity.”

13. The aforesaid germane observations of Hon'ble Apex Court alongwith the SOR i.e. statement of objects and reason will have bearing at this juncture. Moreover, the basic ingredients with regard to the factum that, the informant belongs to the scheduled caste community and the alleged incident in presence of independent witness deserves consideration. So also, the school leaving certificate dated 13.09.1995 propel for the fact that, the informant belongs to Hindu Mahar Caste and the FIR states for the informant to be from

**A.B.A. 2843/2022.**

Scheduled Caste. Although the factum of tenure of service is disputed, still the complainant is aware that for such time as stated in the FIR she was employed under the trust and therefore, at this juncture, I hold that, the entire trail of events propel for such necessity of custodial interrogation and this is not a fit case for grant of pre-arrest bail and as the applicability of SC ST Amendment Act is made out upon the substratum of FIR an embargo laid under Sections 18(A)(2) of the SC ST Amendment Act 2018, shall operate. Undoubtedly, the FIR in prima-facie discloses for the offences to have been apparently committed under the sections *ibid*. And as the investigation is at nascent stage granting of such relief would naturally derail the momentum of investigation. Hence, in the backdrop of the aforesaid facts, I hold that, the application deserves no consideration. Hence, order infra :-

**ORDER**

Anticipatory Bail Application No. 2843/2022 stands rejected and disposed of accordingly.



**Date : 29.12.2022**

Dictated on : 29.12.2022  
Transcribed on: 29.12.2022  
HHJ signed on : 30.12.2022

**(DR. A. A. JOGLEKAR)**  
**Additional Sessions Judge**  
**City Civil & Sessions Court,**  
**Gr. Bombay (C.R.37)**  
**(Incharge Court of C.R.No. 60)**

**“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”**

<b>Upload Date</b>	<b>Upload Time</b>	<b>Name of Stenographer</b>
<b>30.12.2022</b>	<b>12.46 p.m.</b>	<b>Mahendrasing D. Patil (Stenographer Grade-I)</b>

<b>Name of the Judge (With Court Room No.)</b>	<b>HHJ DR. A. A. JOGLEKAR (Court Room No. 37)</b>
<b>Date of Pronouncement of JUDGMENT/ORDER</b>	<b>29.12.2022</b>
<b>JUDGMENT/ORDER signed by P.O. on</b>	<b>30.12.2022</b>
<b>JUDGMENT/ORDER uploaded on</b>	<b>30.12.2022</b>