

CNR No.  
MHPU01-000012-2022

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Bail Appln. No.46/2022

**ORDER BELOW EXH.1**  
**(Decided on 12<sup>th</sup> day of January 2022)**

**Milind Ramakant Ekbote and ors** ... Applicants  
**Vs**  
**State of Maharashtra**  
**(PSO Khadak Police station )** ...Opponent

1- This is anticipatory bail application filed u/s 438 of Cr. P. C. for grant of protection from arrest to the applicants viz. viz. (1) Milind Ramakant Ekbote, (2) Nandkishor Ramakant Ekbote, (3) Deepak Babulal Nagpure and (4) Mohanrao Balachandra Shete for an offences under sections 295(A), 298, 505(2) r/w 34 of Indian Penal Code in C.R.No.466/2021 registered at Khadak Police Station, Pune.

2- Perused the application. Heard APP for the State and Advocate for applicants.

3- It is the case of prosecution that, the applicants are members of 'Samast Hindu Aaghadi'. One of the applicant asked for permission to celebrate 'Shiv Pratap Din'. Accordingly permission was given with certain conditions. On the day of incident i.e. on 13.12.2021 all the applicants gathered on venue. Other 500 to 550 people were also present. During the program applicants gave hate speech and uttered certain words which would cause disturbance of peace. The speeches were targeting to certain community creating haterate. On the basis of aforesaid allegations FIR bearing No. 466/2021 came to be registered at Khadak Police Station.

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4- It is argued on behalf of applicants that, they have not committed any offence as alleged. They are falsely implicated only due to political rivalries. The applicants were gathered to celebrate Historic day. It is further argued that, it is the history of this land that, it has been severally attacked by the foreign forces and they tried to vanish our culture as well as by demolished temples. The breviary of Chhatrapati Shivaji Maharaj is also known to everyone and applicants did no wrong in celebrating such auspicious day. Only because there are political rivalries, the applicants are being continuously attacked by one or other way. Filing of present complaint is also one of the way to attack their liberty. It is further argued that, applicants are having permanent residence. They are social workers. They have deep roots in the society. As such there are no likely chances that they will flee from the course of law. They are ready to co-operate investigation. They are also ready to abide conditions if any imposed by Court while granting bail. It is, therefore, prayed that, interim protection be granted.

5- Per contra, APP for the State submitted that, the act of applicants was likely to pose question of law and order. The hate speeches were against particular community. The FIR clearly shows acts done by every individual applicant. There is prima facie sufficient material against all applicants. The presence of applicant with police for custodial interrogation is necessary to unfurl prosecution case. The voice samples of the applicants are yet to be taken. As such their custody is necessary. The applicants

are habitual offenders. They are involved in similar activities since long. If they would be granted bail, fair investigation would not be completed. It is therefore, lastly prayed that, application be rejected.

6- Before touching other merits, it is necessary to emphasize on the point 'Right to arrest and need to arrest'. Needless to say, in certain cases, investigation machinery has right to arrest an individual subject to justifiable grounds. In heinous cases it is utmost necessary too. But that does not mean that every offence warrants arrest. This fact is also elaborately discussed by the Hon'ble Apex Court in **Arnesh Kumar V/s State of Bihar**. It was specifically held that, arrest should be an exception, in cases where the punishment is less than 7 years of imprisonment. Admittedly, in present matter all the sections are triable by Magistrate Court having maximum punishment upto 3 years only.

7- In the case at hand, while justifying custody of the accused, the Investigation Officer in his say mentioned only one reason and that is collection of voice sample of applicants. Needless to say, this cannot be only ground which would warrant custodial interrogation. On the contrary, specific directions to the applicants to that effect would definitely suffice the purpose. During compulsive presence of applicants before Investigation Officer, they should co-operate investigation and give their voice samples to Investigation Officer.

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8- Similarly, only because other offences are pending against applicants, cannot be the sole reason for outright rejection of bail. Every case is required to be evaluated on its own merits and mere previous pending cases cannot be a ground for rejection.

9- Moving further, though the informant in the present matter is a police officer who was allegedly present on the spot of incidence, he took almost 10 days to file FIR. The incident took place on 19.12.2021. However, the police officer lodged complaint on 28.12.2021 that too without single whisper regarding justification for lodging FIR after such a huge delay. This is sufficient enough to infer that, the delayed FIR came to be filed after thought only. It is also necessary to keep in mind that, though an attempt is made to convey that, serious question of law and order would have posed, there is no any mentioning of any such incident till filing of FIR against applicants.

10- Thus delay in filing FIR and only reason of collection of voice sample fall short to justify physical custody of applicants with police. In view of discussions in forgoing paras, it is desirable that, in present set of facts, liberty of applicants needs to be protected. Similarly, stringent conditions are also required to be imposed to secure presence of applicant before investigation machinery and rule out possibility of any further untowards incidents. Hence order.

### ORDER

- 1- Ad interim bail application (Exh. 1) is allowed.
- 2- In the event of arrest of the applicants viz. (1) Milind

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Ramakant Ekbote, (2) Nandkishor Ramakant Ekbote, (3) Deepak Babulal Nagpure and (4) Mohanrao Balachandra Shete in connection with C.R.No.466/2021 registered with Khadak Police Station, Pune under sections 295(A), 298, 505(2) r/w 34 of Indian Penal Code shall be released on executing P. R. bond of Rs.25,000/- each along with one or two sureties of the like amount on the following conditions.

- (a) The applicants shall not tamper with the prosecution evidence.
  - (b) They shall co-operate the Investigation agency, as and when required.
  - (c) They shall attend the police station every Sunday in between 11.00 a.m. to 2.00 p.m. or as and when called for interrogation till filing of charge-sheet or 60 days from date of order.
  - (d) They shall not commit any offence while on bail.
- 3- In the event of breach of any of the condition, the protection granted shall be vacated.
- 4- Inform P. S.O. Khadak Police Station, accordingly.

Pune  
Date :12.01.2022

(P.R.Ashturkar)  
Addl Sessions Judge  
& District Judge-20 Pune

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**CERTIFICATE**

I affirm that, the contents of the P. D. F. file order are same word to word as per original order.

Court Name : Shri.PR.Ashturkar,  
Addl Sessions Judge and  
District Judge-20, Pune  
Name of Steno : Smt.S.V.Hirve  
Date of order : 12.01.2022  
Order signed by P. O. on : 15.01.2022  
Date of PDF & Order uploaded on : 15.01.2022