

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2799 OF 2015**[Mohit s/o Dilip Changare Vs The State of Maharashtra & anr.]**

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or
directions and
Registrar's orders

Court's or Judge's orders

Shri V.D.Hon, Senior counsel i/b
Shri A.V.Hon, advocate for the applicant
Smt. S.G.Chincholkar A.P.P. for respondent/State

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CORAM : V.M.DESHPANDE, J.**DATED : 23rd June, 2015****PER COURT :-**

1] This is an application for grant of anticipatory bail, since the applicant is apprehending his arrest in connection with Crime No. 71 of 2015, registered with Ramanand Nagar police station, Jalgaon, for the offences punishable under Sections 143, 147, 452, 447, 385, 323, 500(2), 504, 506 of the Indian Penal Code.

2] I have heard Shri V.D.Hon, learned Senior counsel instructed by Shri A.V.Hon, learned counsel for the applicant, Smt. S.G.Chincholkar, learned Additional Public Prosecutor for the respondent/State and Shri M.R.Bhokarikar, learned counsel for the first informant.

3] The first information report is lodged by Sneha Joshi on 6.5.2015. Admittedly, the name of the present applicant is not mentioned in the first information report.

It is informed to the court that out of four persons named in the first information report, accused nos. 1, 2 and 4 are already arrested and they are in jail.

The first information report discloses that the first informant is having only one son named Soham. Prior to one month of lodging the first information report, the first informant received a call on her cell phone by accused no.4 Yogesh Choudhari. He disclosed his identity and informed the first informant that he has given Rs.30,000/- to Soham on interest and he demanded the said amount. The first information report states that informant stated to Yogesh that amount was not taken by first informant and whether her son Soham had taken the amount or not was not known to her. In spite of that, accused no.4 Yogesh Choudhari came to the office of the first informant and demanded the money.

It is further alleged in the first information report that Yogesh Choudhari extended threats to the first informant that if the amount along with the interest was not paid, she would be required to face dire consequences.

The first information report further states that on 12.4.2015 when the first informant and her son Soham were present in the house, that time accused nos. 1 to 5 came to her house. It is to be mentioned that in the first information report accused no.5 is described as under : -

“ 5) Hotel Palkhi, Akashwani Road,
Sindhi Colony, Jalgaon ”

The first information report does not disclose whether accused no.5 was servant in that hotel or was proprietor of the said hotel.

The first information report alleges that accused nos.1 to 5 entered into her house. That time accused no.1 Ganesh Jagtap asked the first informant that her son has taken Rs.80,000/- on interest from him and he demanded the said amount. That time accused no.2 Ganesh Dhamne also disclosed that Soham has taken Rs.65,000/- from him and also demanded the said amount. That time, according to the first information report, a person who was unknown to her,

said that he is the owner of hotel Palkhi and demanded the bill of the hotel. That time, accused nos. 3, 4 and 5 caught hold the shirt collar of Soham and tried to assault him by a wooden stick. That time, when first informant tried to intervene, accused nos. 1 and 2 shown the dagger and they threw away various articles of her house. That time, accused no.4 Yogesh took her pan card, aadhar card, ATM card, Gas card and cheque book of State Bank.

It is also alleged that accused no.4 then by giving threat to her that he will kill her son Soham, obtained her signature. Under the threat, the first informant has given her signature on the cheque. It is also stated that accused no.5 then extended threat that if amount of the bill of hotel is not paid till 18.4.2015, she will require to face dire consequences.

It is further alleged that on 22.4.2015, accused no.4 Yogesh gave a phone call and called the first informant and her son at Ganpati Nagar. There all the accused persons put them in a van and thereafter obtained the signature on a stamp paper and thereafter that was notarized.

4] Since the statement made in the first information report was disclosing commission of a cognizable offence, the investigating officer has registered the offence against accused nos. 1 to 4 and one unknown person for the offences punishable under Sections 143, 147, 452, 447, 385, 323, 504, 506 of the Indian Penal Code.

5] According to the investigating officer, during investigation statement of Soham is recorded. The investigating officer has also filed on record the bill of hotel Palkhi. According to the investigating officer and the learned counsel for the first informant, the present applicant is owner of hotel Palkhi; whereas the said fact is seriously disputed by the applicant by pointing out that he is not the owner,

however, he is the owner of one Shri Sai Agro Center. For that he invited my attention to license issued by Licensing Authority and Agricultural Development Officer, Zilla Parishad, Jalgaon, who has issued license to carry on the business of Dealers in Seed to M/s Shri Sai Aro Center and the name of present applicant is shown as Proprietor of the same. Further he invited my attention to the license issued by Food and Drugs Administration Department granting license under Food Safety and Standards Act, 2006. The validity of the same is from 23.11.2014 to 12.11.2019. The same pertains to Hotel Palkhi and it is issued in the name of Shri Suresh Jadhavani and not the present applicant. Thus, prima facie he is not shown owner of Hotel Palkhi.

6] In so far as the bill of hotel Palkhi International is concerned, which is available on record along with the reply filed by the investigating officer, it shows that two rooms were booked from 22.3.2015 to 27.3.2015. The rooms are G-1 and G-4. It is also stated in the said bill that a birth day party took place on 26.3.2015 of for about 100 persons wherein food and liquor was served at the rate of Rs.250/- per person.

Learned counsel for the applicant has pointed out that the date of birth of Soham is 26.3.1998, which fact is not denied by the prosecution or the learned counsel for the first informant.

Further, statement of Soham is recorded twice during the course of the investigation by the investigating officer. His first statement is recorded on 22.5.2015. Said statement specifically shows that he took various amounts by way of loan from accused no.1-Ganesh Jagtap, accused no.2-Ganesh Dhamne and accused no.4-Yogesh Choudhari. His statement specifically shows that on 22.3.2015 accused no.2-Ganesh Dhamne took a room at hotel Palkhi and

Soham was accompanying with him in the said hotel. His statement would show that Ganesh and he were enjoying the life there. His statement corroborates to the statement of allegations made by his mother in the first information report in respect of the incident dated 12.4.2015.

His second statement is recorded on 30.5.2015 i.e after about 8 days. In this particular statement, for the first time, he has stated in respect of the incident that took place in the hotel on 27.3.2015. Even narration of facts in the said statement would reveal that he has attributed specific role against accused nos. 1 to 4 and general statement is made against the applicant.

7] Even according to the prosecution, Soham was not available from 23.2.2015. According to the prosecution, from this day he was kidnapped. He returned, according to the prosecution case on 4.4.2015. Though, whereabouts of Soham were not available from 23.3.2015 to 4.4.2015, there is nothing available on record as to why the first informant did not file any complaint with the police station. Further, according to the first information report, at the time of first incident Soham was available in the house on 12.4.2015. In spite of that the atrocities, which the first informant has stated in the first information report, for the reasons best known to her, the first information report was not lodged at the very same day. Not only that, according to the first information report on 22.4.2015, the first informant and her son were secondly called by the accused persons and they got executed a particular document from them, in spite of that the first information report was not lodged. The first information report is firstly lodged on 6.5.2015. Even from the statement of Soham, though he was assaulted on 27.3.2015, if his statement is to be believed, there is no explanation available with the prosecution as to why the first

information report was not lodged by Soham against the present applicants. Thus, there is huge unexplained delay in the prosecution case.

Even from the first information report, all allegations specifically are made against accused nos. 1 to 4. Out of four, three are already arrested. This shows that presently custody of the present applicant is not essential.

8] To a very specific query made by this court to the learned Additional Public Prosecutor as to for what purpose the custody of the present applicant is required by the investigating officer, upon that the learned Additional Public Prosecutor has fairly stated that if the conditions are imposed upon the applicant to attend the police station, that will subserve the purpose and that will be enough for the investigating officer for conducting further investigation in so far as present applicant is concerned. That leads me to pass the following order.

ORDER

- (i) Application is allowed.
- (ii) In the event of his arrest, applicant-Mohit s/o Dilip Changare be released on anticipatory bail on he executing P.R. bond of Rs.25,000/-with two solvent sureties in the like amount, in connection with Crime No. 71 of 2015, registered with Ramanand Nagar police station, Jalgaon, for the offences punishable under Sections 143, 147, 452, 447, 385, 323, 500(2), 504, 506 of the Indian Penal Code.
- (iii) The applicant is directed to remain with the investigating officer from 25.6.2015 till 28.6.2015. He shall be with the investigating officer from 11.00 a.m. to 6.00 p.m.
- (iv) After 28th, the applicant shall attend the police station twice a week i.e. on every Wednesday and Friday in between 10.00 a.m. to 12.00 noon.

(v) The applicant shall not extend any sort of threats either to the first informant or Soham.

(vi) Any breach of condition will entail cancellation of anticipatory bail granted in favour of present applicant, if application is moved by the investigating officer.

(vii) With the above observations, application is disposed of.

(V.M.DESHPANDE, J.)

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