

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1321 OF 2014

Sudhakar Khade	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

WITH
CRIMINAL APPLICATION NO. 721 OF 2014
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1321 OF 2014

Mangal Kamlesh Babar	.. Intervener (Orig. Complainant)
In the matter of	
Sudhakar Dnyaneshwar Khade	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

Mr. Prakash Naik a/w Mr. U.R. Mankapure for the Applicant.
Mr. Rajesh More, A.P.P. for the State.
None for the Intervener.

CORAM :- SMT. SADHANA S. JADHAV, J.
DATED :- 2nd MARCH 2015.

P.C. :-

1) Heard respective parties. This is an application under Section 438 of Cr.P.C. The applicant herein is apprehending his arrest in Crime No.202 of 2014 registered at Vishrambag Police Station, for the offences punishable under sections 376(A) of the Indian Penal Code on the basis of the statement of the prosecutrix recorded by the Police Station on 01.10.2014.

2) It is the case of the prosecution that on 01.10.2014, the victim accompanied by Jaymala Shahajirao Kharade approached the Police Station and lodged report alleging therein that the victim happens to be working as domestic servant in the bungalow owned by Smt. Kharade. She was residing in the servants quarter in the said bungalow. That the applicant is the tenant in the said bungalow and he is residing there alongwith his family since four years prior to the incident. For four years the survivor was working as domestic servant for the applicant. According to her, the applicant belongs to Vanjari caste which is Nomadic Tribe. That the applicant had extended co-operation to her on many occasions. That six months prior to the report of the incident, on one day when the victim was mopping the floor in the house, the applicant is alleged to have abused her by referring to her caste. He had brandish the gun at her. He had informed her that he is an active member of Maharashtra Navnirman Sena and had ravished her against her wish. According to the victim, she had, therefore, changed her residence and was residing with her nephew. 15 days prior to reporting the incident, she had gone to clean the room, it was occupied by her in the said bungalow, at that time also the applicant is alleged to have ravished her against her wish. On 30th September 2014, Mrs. Jaymala Kharade had come from Mumbai to Sangli. She had called upon the victim. The victim refused to go to her. She informed her about the act of the applicant and, thereafter, she accompanied by Mrs. Jaymala Kharade to the Police Station to lodge report.

3) It is pertinent to note that the statement was recorded by female P.S.I. Mrs. S.G. Duthade. It bears a thumb mark which is not attested that of original victim. There is endorsement to the effect that Mrs. Jaymala Kharade had read over the said statement to the victim and had signed the F.I.R. There is nothing on record to remotely indicate that the thumb mark found on the original informer on the F.I.R. is that of victim. It prima facie appears that it is a statement of Mrs. Jaymala Shahajirao Kharade.

4) It is the matter of record that the applicant is residing with his family in the bungalow owned by Mrs. Kharade and her family. The bungalow therefore, initially given on leave and licence basis to the applicant. Subsequently, there was some agreements between the wife of the present applicant and the family of Mrs. Jaymala Kharade. The agreement was terminated. That a cheque of Rs.5,00,000/- was issued in favour of the wife of the applicant. The said cheque was dishonoured. On 11.04.2014 the applicant had issued a statutory notice under section 138 of Negotiable Instruments Act. The complaint was filed on 07.05.2014. Mrs. Jaymala Kharade and her family members had taken recourse to several antisocial acts to evict the applicant from the said premises. The wife of the applicant had, therefore, filed Civil Suit No.159 of 2014 against the family of Mrs. Jaymala Kharade. The exparte ad-interim injunction was granted on 24th April 2014. The notice of the same was issued on 25th April 2014. The interim relief was to remain in force on 3rd May 2014. On

19th August 2014, affidavit was filed in lieu of Examination-in-Chief. According to learned counsel for the applicant, the owner of the said premises had finally taken recourse to the victim to file a complaint against applicant under Section 376 of I.P.C.

5) Learned A.P.P. submits that the applicant does not deserve grant pre-arrest bail on two important grounds that applicant was prosecuted for a similar offence in Sessions case No.222 of 2007 and secondly that there is a bar under Section 18 of the act to grant pre-arrest bail in favour of the applicant.

6) As against this learned counsel for the applicant has drawn the attention of this Court to the observations made by the learned Sessions Judge while acquitting the applicant in Sessions Case No.222 of 2007 vide judgment and order dated 24th December 2010. It is matter of record that the applicant at that stage, prior to filing of the F.I.R. had filed an application before the Police Authorities that there is every likelihood that he would be implicated in a false case. Learned Sessions Judge had observed that the said F.I.R. was filed after a lapse of almost one year and that was too to avoid payment of loan. According to the learned Judge, on the basis of substantive evidence, the possibility that he would be falsely implicated could not be ruled out. The learned Sessions Judge had observed that the prosecution had failed to bring home the guilt of the accused and hence acquitted the applicant. Same are the facts in the present case. The person who was instrumental in initiating the present criminal

proceeding that is Mrs. Jaymala Kharade was liable to pay Rs.5,00,000/- to the wife of the applicant and Civil Suit was pending between the parties in respect of the same premises which also happens to be the scene of offence in the present case. That secondly, the bar under section 18 of the said Act cannot be made applicable in the present case in view of the fact that it prima facie does not appear that the complainant had filed the said F.I.R. A thumb mark is not attested either by the Police Officer who recorded the statement or by any other respective witness. In fact the complaint appears to be filed by Mrs. Jaymala Kharade. The allegations in respect of the atrocities on the basis of caste are omnibus in nature. There is a delay of more than 6 months in lodging the F.I.R. In view of the above circumstances, the applicant deserves the confirmation of the order granting interim relief in his favour vide order dated 13th October 2014. There is nothing on record that the applicant has not co-operated with the Investigating agency, in fact, the evidence is otherwise on record. The complainant had, during the pendency of the present application, filed an application stating therein that she was being threatened by the applicant. The enquiry in the said report revealed that the applicant was not in Sangli on the date of the incident.

7) Therefore, it prima facie appears that the applicant is being implicated in a serious case like the present one. It is made clear that the observations herein above are prima facie in nature and are restricted to the consideration of application under Section 438 of

Cr.P.C. and shall not be considered for the purpose of quashing of F.I.R. discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, applicants be enlarged on bail on furnishing P R. bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.
- (iii) None appears for the Intervener and hence Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)