

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 151 OF 2015

Divyesh Valjibhai Vaja ... Applicant
 vs.
 1. Union of India)
 2. Senior Inspector of Police,)
 Diu Police Station.)
 3. The State of Maharashtra).Respondents

Mr. S.R.Ganbavale, Advocate for the applicant
Mr. D.A.Nalawade for Union of India – Respondent No.1.
Mr. A.S.Shitole, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 11th February, 2015.

P.C.

Heard. This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No.21/2014 registered at Diu Police Station for the offences punishable under Sections 307 and 506(2) read with Section 34 of IPC.

2. It is the case of the prosecution that on 23.8.2014, the complainant Dhaval Upendrkumar lodged a report at the police station alleging therein that he is the Constituted Attorney of the owner of land bearing PTS No.126/1. He has

alleged that on 23.8.2014 when he was passing from the land bearing PTS No.126/1, certain locals including Divyesh Valji i.e. the present applicant were present at the said site. They had threatened him with dire consequences. They had demonstrated that they do not fear the police. That they had filed proceedings under Sec. 145 Cr.P.C. before the Sub-Divisional Magistrate and that they had obtained stay which was to remain in force till 26.8.2014. It is alleged that on earlier occasions also the present applicant had threatened the complainant. That there was dispute over the said land. It is alleged that on 23.8.2014, when he was going to police station, he had parked his car at the turning of Bhausarwada at around 5 p.m., the applicant and his associates had seen him in the car. They raised the speed and tried to dash his car. According to the complainant, the present applicant in fact wanted to dash the car on the driver's side as the complainant was in the driving seat. However, the complainant had taken his car reverse and, therefore, the applicant had dashed his car on the Bonnet of the car driven by the complainant.

3. The learned counsel for the applicant submits that in fact, the father of the present applicant was looking after the interest and property matters of one Smt. Shantaben. There was dispute over the land bearing PTS No.126/1 and 126/5. That one Kantaben was the widow of Keshavbhai. They had no child and

therefore they had executed a Will on 4.4.2002 and bequeathed his estate to Smt. Shantaben. The lands were under the cultivation of the ancestors of Shantaben. It prima facie appears that Shantaben had filed Regular Civil Suit no.43 of 2013 and Special Civil Suit NO.11/2014 before the Civil Court, S.D., Diu, which are pending.

4. The learned counsel for the respondents has produced the papers of investigation. According to him, Kiran Bhaliya who was working with Gurukripa Garage has disclosed to the police that on 23.8.2014, the present applicant had called upon him and informed that he had dashed his vehicle with Nagar Haveli owner namely Dhaval with his vehicle bearing vehicle No. GJ-6-AH-7929 at Bhausarwada. He had also informed that he had deliberately dashed his vehicle and had directed ghim to bring the vehicle to his garage and informed that if police persons need the dashed vehicle, then he may produce before the police and thereafter the applicant had kept the vehicle in his garage in an accidental condition and had left for Viraval. Soon thereafter, the police had come and searched the accidental vehicle and Kiran Bhaliya had produced the same before the police. The learned counsel for the respondents submits that this would be a extra judicial confession made before Kiran Bhaliya soon after the incident stating therein that he had deliberately dashed the vehicle.

5. The learned counsel for the respondents further submits that on 14.9.2014, the Investigating Officer had recorded the statement of one Arvindbhai Devabhai Vala , who had described the incident and had disclosed to the police that when he was in the car of the complainant, he saw one Qualis Car coming towards them from the opposite direction. He had not noticed the number of the said car. According to him, the driver of Qualis Car had taken the vehicle in reverse and then the driver of Qualis drove his Qualis car in the rash and negligent manner and attempted to dash his car. In the meanwhile, Dhaval had taken the car in the reverse. Therefore, Qualis Car was dashed from the front side of the driver seat and thereafter, one person came down and threatened to Dhavalbhai “that he was not to enter in the land opposite Krishnapark. He has also disclosed to the police that the said person had stated that since long years you are slipping and today I dashed your vehicle in driver side and I murdered. But you are safe.”

It is pertinent to note that the date of recording of the statement has been interpolated by applying whitener and it is made to appear that the statement was recorded on 14.9.2014. The same is the case with Kader Musa Mansuri. Upon perusal of the statement recorded by the investigating officer, there is

interpolation in dates of almost all the witnesses including Bhavesh Bhartbhai Seth. The scene of offence panchnama drawn on 24.8.2014 shows that the nil panchnama was drawn. The supplementary statement of the complainant was recorded on 13.9.2014. he has given the history of the civil dispute to the police. He has specifically stated that on 4.8.2014, the Diu Court had passed an order that the complainant was the owner of PTS Nos.126/1 and 125/5. That Shantaben Velji had appealed to the Sessions Court on 20.8.2014. The Sessions Court had passed an order that Shantaben is the owner of the said plot. The said order passed by the Sessions Court, Diu was under challenge before the High Court and the High Court had refused to grant stay. All this would lead to show that there was a civil dispute between the parties and therefore the complainant apprehended danger at the hands of the applicant. The applicants have made out a prima facie case for grant of pre-arrest bail.

3. However, the observations made hereinabove are restricted to consider the application under Section 438 of Cr.P.C. and shall not be considered for the purpose of quashing of FIR or discharge application or at the time of trial.

ORDER

(i) The application is allowed. In the event of his arrest, the applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs.15,000/- with one or

two sureties in the like amount.

(ii) The applicant shall report to the concerned police station as and when called.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)