

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 704 OF 2015

Mrs. Beena Rajeshsingh Thakur. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Ghanshyam Upadhyay i/b. Law Juris, advocate for Applicant.

Ms. R.M. Gadhvi, APP for State.

Mr. Aidale, API, Malvani Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JUNE 29, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal
Procedure, 1973. The applicant herein is apprehending her arrest in
Crime No. 644 of 2014 registered at Malwani Police Station on
11/12/2014 for offence punishable under Section 364A, 384, 323,
504, 506 read with Section 34 of the Indian Penal Code.

3 In the present case, at the time of argument at the very threshold, the learned Counsel for the applicant has asked for the police report submitted to the Court in order to know the grounds of opposing her application for grant of pre-arrest bail, submitted by the learned APP. However, since the investigation is in progress, the accused would not be entitled to know the nature of evidence collected against her. Hence, the said submissions is overruled.

4 Coming to the facts of the case, it appears from the record that on 11/12/2014 one Rajesh Sukhdev Dangi lodged a report at the police station that he is residing in a particular area and is engaged in making imitation jewellery. That since 1 ½ year he had brought his two relative children aged about 16 years and 17 years to take care of them from his native place. It is alleged that one Sameer Hussain Khan had given his premises on rent to the complainant. The complainant had paid deposit of Rs. 5 Lakhs to the owner and was also paying Rs. 50/- towards rent. That the owner of the said

premises demanded that the premises be returned to him and had also returned Rs. 5 Lakhs deposit to the complainant on 4/12/2014. He had however, requested Padamsingh Thakur to allow him to stay in the vacant place in his bungalow till he makes an arrangement for alternative accommodation. He was staying in the said outhouse of Padamsingh Thakur for the time being. He is engaging in the business of making imitation jewellery for 9 years.

5 It is also alleged that there was some dispute between Sameer Khan and the complainant over some agreement and Sameer Khan had refused to abide by his words. Thereafter, the complainant contacted the present applicant who claims to be a social worker. She had assured him to help him out and settle the dispute. She had also informed him that she is well connected in the police station and she would definitely help him in this work and for the said purpose she had informed him that he would have to spend about Rs. 1 Lakh or Rs. 1.50 Lakhs. The complainant had agreed to the same. It is alleged that the applicant used to accompany him to the police

station. He had parted with Rs. 1 lakh as an advance and Rs. 50,000/- were to be paid subsequently. That she used to keep him out of the police station and then used to talk with some of the acquainted police officer. She had also informed him from time to time that she has to meet the higher officers and had taken Rs. 25,000/- from him.

6 On 17/11/2014 Sameer Khan had taken away belongings of the complainant. In the presence of the present applicant, the complainant had been to the police station. Thereafter, there was a compromise between Sameer Khan and the complainant as Sameer Khan had paid Rs. 8 Lakhs. It is specifically alleged in the first information report that the present applicant was aware of the compromise between the complainant and Sameer Khan. She had demanded Rs. 1 Lakh from the complainant. During the period 4/12/2014 to 8/12/2014 he was forced to withdraw about Rs. 90,000/- from his ATM card and has paid the same to the present applicant. She was still demanding Rs. 1,50,000/-.

7 On 9/12/2014 when the complainant was out of home, it is alleged that the present applicant had been to the house of the complainant alongwith the co-accused Amina Shaikh and had abducted two minor children who were brought by the complainant to stay with him. It is alleged that the complainant was threatened of dire consequences and danger to the life of the abducted children in the eventuality he fails to pay her Rs. 1,20,000/-. On 9/12/2014 he had been to the Malvani Police Station. That the applicant had learnt about the steps taken by the complainant and therefore, she had released the abducted children and they had returned to his house. On the basis of this report, Crime No. 644 of 2014 is registered.

8 Perused the papers of investigation, more particularly the remand yadi of Amina Shaikh i.e. co-accused in the present case. While in the custody Amina Shaikh has admitted that she has received Rs. 35,000/- from the present applicant. However, she had refused to give details. She has been enlarged on bail.

9 The learned Counsel for the applicant submits that according to the applicant, on 8/12/2014 the applicant herein being a social worker had learnt that two minor boys are engaged by the complainant in the business of making imitation jewellery and therefore, the applicant alongwith Amina Shaikh had raided the premises of the present complainant and had also threatened him in the eventuality, he continues to engage the minors in the said business, she would be constrained to lodge a report. It is pertinent to note that since 8/12/2014 or even thereafter, till today no report is lodged by the present applicant against the complainant.

10 The learned Counsel for the applicant vehemently submits that the defence of the accused needs to be considered in such a case at the time of grant of pre-arrest bail since the benefit should go to the accused. At the threshold the applicant has demonstrated that there is interpolation in the pro-forma of the first information report under section 154 of the Code of Criminal Procedure, 1973. The column

3(a) would show that the incident had occurred on 9/12/2014. It is writ large that initially 9 was written as Marathi as it is shown 09 whereas 12 and 14 had been written in English and therefore, in all probabilities, Marathi 9 was corrected to English 9. The learned Counsel submits that in column 3(b) against the words “information received at police station” is shown as 10/12/14 and in fact, it is an interpolation. Upon perusal it appears that the same mistake is corrected in column No. 3(b). However, all these matters need not be considered at the time of deciding an application under Section 438 of the Code of Criminal Procedure, 1973.

11 The learned Counsel submits that all these facts are necessary only to show that there is delay in lodging the FIR and the same has been concocted at the behest of the some interested persons. This Court cannot be oblivious of the fact that the applicant happens to be well-connected, as is seen from about atleast 40 photographs placed on record by the applicant to show that she has participated in the functions alongwith Ex-Chief Minister of State of Maharashtra,

political leaders, police officers and High Officials. The principal allegation in this case against the applicant is that she had made an impression that she is well-connected with the police personnels and therefore, would be able to help to the complainant. In view of this, it can be said that since she is really well-connected, Column No. 3(b) has been changed.

12 The learned Counsel for the applicant submits that no case of extortion has been made out. It is also submitted that the allegations under Section 364A are not well-founded since the minors were released immediately. In the above background, the recitals of the FIR also needs to be considered where the complainant has specifically stated that upon learning from reliable sources that he is in the process of lodging the complaint, she has released the minors from the house. The learned Counsel for the applicant upon instructions has also denied that any amount has been paid to the co-accused. It is only stated that the co-accused happens to help the applicant in her social work.

13 Upon perusing the papers of investigation and hearing the learned Counsel for the applicant, this Court was not inclined to grant pre-arrest bail and therefore, had disclosed that the Court is not inclined to grant pre-arrest bail, looking at the very facts of the case. Upon this, the demeanour and conduct of the learned Counsel was such which is not worth mentioning in detail. He has not maintained the decorum of the Court. Suffice it to say that the learned Counsel had conducted himself in a contemptuous manner. This Court has, as usual, maintained the balance and has refrained itself from issuing a Contempt Notice. It is for the **Bar Council of Maharashtra and Goa** to take cognizance of the same.

14 Learned Counsel for the applicant has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Joginder Kumar State of U.P. and ors. reported in II (1994) CCR 401(SC)**, wherein the Hon'ble Apex Court had observed that it is necessary to look into the person's complicity and even so as to the need to effect arrest.

The Hon'ble Apex Court has reminded all the courts in the country of the valuable right to liberty of the individual and therefore have observed that denying a person of his liberty is a serious matter. The learned Counsel submits that it is in these circumstance, the applicant has a right of pre-arrest bail.

15 The Counsel has also placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Siddharam Mhetre v/s. State of Maharashtra & ors. reported in (2011) 1 SCC page 694**, more particularly paragraph-112 sub-clause (x), wherein the Hon'ble Apex Court has observed as follows :

“Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of their being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

In the present case upon perusal of the papers of investigation, it is more than clear that there is no frivolity in the prosecution case. The

very fact that the applicant has specifically raised the ground that she is not just a common or ground level social worker, but she is well connected, her photographs with the then Chief Minister of Maharashtra as well as high placed officials in the police department and otherwise would also indicate that there is every likelihood of tampering of evidence. The photographs placed on record by the present applicant would make it clear that the possibility of the police machinery in not investigating the case properly also cannot be ruled out.

16 The papers of investigation would show that at the behest of the applicant 4 non-cognisable cases were registered against Sameer Khan by showing that the complainant has lodged the same only in order to pressurise Sameer Khan to compromise with the complainant. And the complainant succeeded.

17 The learned Counsel for the applicant has also placed reliance upon the judgment of this Court in the case of **Jagannath v/s. State**

of Maharashtra decided on 6/6/1981 wherein this Court (Coram : Padhye, J) had held that anticipatory bail should not be refused merely because prosecution claim that they want the accused in custody for the purpose of investigation. The genuineness of the alleged need for police custody has to be examined and it must be balanced against the duty of Courts to uphold the dignity of every man and to vigilantly guard his right to liberty without jeopardizing the State objective of maintenance of law and order.

18 In the present case, the prosecution or the investigating officer who is present in the court is not insisting upon the custodial interrogation just for the sake of arguing. But it is seen that when co-accused was taken into custody, she has specifically narrated that she has received Rs. 35,000/- from the present applicant, but has not cooperated with the investigation any further. It prima facie appears that under the garb of being well-connected, the present applicant had extorted huge amount from the complainant. It is in the catena of decisions that the Hon'ble Apex Court has observed that grant of

anticipatory bail or regular bail depends not only on the facts of each case, but it is discretion of the court. It is expected that the court would exercise judicial discretion being conscious of the state of affairs of nature of allegations, gravity of the offence and also possibility of tampering of evidence.

19 Reliance can be placed on the Judgment of the Apex Court in the case of **Sanjay Chandra v/s. CBI decided on 23rd November, 2011.** The Hon'ble Apex Court has observed thus :

“The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.”

The Hon'ble Apex Court further observed thus :

“the legal principle and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise **polluting the process of justice.**”

(emphasis supplied)

The Hon'ble Apex Court further observed that :

“The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case.”

In view of all these factors, after considering the judgment relied upon by the learned Counsel for the applicant, the Court was not inclined to give pre-arrest bail.

20 It is noticed that the learned Counsel for the applicant is intimidating the court and was brow-beating only on the ground that he has not been given proper audience. An attempt is being made to see that the court should recuse from hearing the learned Counsel

with an ulterior motive to benefit from such order. However, this court would not get intimidated and pass an order of “not before me”.

21 The learned Counsel for the applicant has also insisted upon this Court to record that when the learned Counsel wanted to point out certain portion from the FIR, this Court was of the opinion that the Court has gone through the FIR and it is not necessary to reiterate the same. The Court was only trying to stop repetition of arguments as this Court had perused the report and the records. The learned Counsel has also made an attempt to intimidate the Court by telling this Court that he wants to place the affidavit on record stating therein that the Court had refused to read the FIR running into four pages alongwith the Counsel although the submissions were heard as patiently as possible for almost 30 minutes. The conduct and demeanor of the learned Counsel for the applicant in the course of hearing of this application is not worth mentioning, suffice it to say that it is contemptuous.

22 It would not be fair to part with the order without referring to the observation of the Hon'ble Apex Court in the case of **Subrata Roy Sahara v/s. Union of India & ors. reported in (2014) 8 SCC 420.**

The Hon'ble Apex Court has held thus :

“Judge not to recuse himself from the matter unless he/she should not be hearing it for reasons of direct or indirect involvement--, benchmark that justice must not only be done but should also appear to be done, has to be preserved at all costs--, even in the face of calculated psychological offensives and mind games as adopted by counsel in the present case, oath of office of Judge, to decide every case without fear or favour, ----Fearlessness and resoluteness with equanimity has to be maintained. Bench-hunting or bench-hopping or bench-avoiding should strongly repulsed.”

It is observed that -

“It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer,

to permit himself the liberty of scandalising a Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the due course of administration of justice.”

The Hon'ble Apex Court further observed that -

“We therefore also commend to all Courts, to similarly repulse all baseless and unfounded insinuations, unless of course, they should not be hearing a particular matter, for reasons of their direct or indirect involvement. The benchmark, that justice must not only be done but should also appear to be done, has to be preserved at all costs.”

23 Be that as it may, after going through the facts of the case and submissions advanced across the bar, the application being sans merit stands rejected. The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)