

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.753 OF 2015

Mukesh Kanti Patel

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.A.H.H. Ponda i/b G. Dubash i/b Durgesh Jaiswal for the Applicant

Mr.D.P. Adsule, APP, for Respondent – State

Mr.D.A. Nalawade, for Resp. No.2

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JUNE 9, 2015**

P.C.:

1. This application is moved by the applicant/accused as he is apprehending arrest in C.R. No.81 of 2015 registered at Nani Daman police station for the offences punishable under sections 323, 504, 506, 393, 186 r/w 34 of the Indian Penal Code. The offence is registered at the instance of one Gajendra Dhaniram Kanojiya, head constable of the said police station. On the night intervening 10.5.2015 to 11.5.2015, the complainant and his colleague were patrolling in Dilip Nagar and Narayan Park areas, when they arrived at a hotel Sai Regency, they found that though it was 2.15 am, the hotel was open and the customers were coming and going out. They suspected illegal activities and, therefore, went inside and asked the hotelier to stop serving drinks and food to the

customers and close the bar. Then, they came out and thereafter one person came out who confronted them, abused the police and that person called one Guddu from the hotel. Guddu assaulted Gajendra with kicks and blows and pushed him to a dark place out of the hotel where he fell down. Guddu then tried to take away his revolver. At the time, the applicant/accused Mukesh Patel, who was inside the hotel having his dinner, came out alongwith the Manager Mr.Rathore and told Guddu in Gujarati that he has done a good job teaching a lesson to the police. Rathore also repeated the same thing. It is the case of the prosecution that after these compliments from the applicant/accused and Rathore, Guddu again went towards the police to assault them. However, the police ran away from the spot to save their lives; went to the police station and after consulting their officers, registered offence against Guddu and the applicant/accused and Rathore and other persons.

2. Mr.Ponda, the learned Counsel for the applicant/accused, submitted that the applicant/accused is innocent. It is a false case lodged against the applicant/accused who is politically active. He submitted that prosecution is out of political rivalry. The other group has implicated him. There is a delay of 14 hours between the incident in lodging of the FIR. The learned Counsel tried to construct the entire incident time-wise by giving the time sequence. He submitted that Guddu came out, he assaulted the policemen and went away. Three minutes thereafter, the

applicant/accused came out of the hotel and arrived at the spot. He talked with the police, patted on the back of the police and he did not abuse the police and did not use any such words as alleged addressing Guddu. He submitted that fortunately, the incident has taken place outside the hotel where the CCTV cameras are fixed. He produced the recorded footage which was on his cellphone. He submitted that in this footage, the CCTV camera would have definitely captured Guddu and the applicant/accused in one frame. However, Guddu is not seen subsequently. There is no return of Guddu after hearing the certificate given by the applicant/accused. Guddu is not seen thereafter for the second time in the frame. This falsifies the case of the prosecution. He further submitted that Guddu's attempt to snatch revolver from one of the police officers is a concocted story. Assuming the words were uttered, he argued, this would not constitute any offence either under sections 323, 393, 353 or section 181 of the Indian Penal Code. He further submitted that no custodial interrogation is required in such matter and, therefore, the applicant/accused be given protection under section 438 of the Criminal Procedure Code.

3. The learned Prosecutor has opposed the application. He submitted that the applicant/accused is a political leader and the President of Daman Municipal Council and he himself is a politically influential person. He argued that not only the complainant but the other police officer i.e.,

Malayadi Rajkonda Narsya, the other constable who was with him also corroborated the utterance by the applicant/accused and after hearing those words, Guddu again became aggressive and ran towards them. The learned Prosecutor submitted that the applicant/accused has committed an offence under section 353, which led to deterring the public servants from discharging of their duties.

4. Perused the FIR and the other statements of both the police personnel; viewed the recorded portion of the CCTV camera footage shown by the learned Counsel for the applicant/accused. Undoubtedly, the offence of assault and threat have taken place. The police personnel, who were patrolling on that night had rightly taken action against the hotelier, who was running the bar at night which was not permitted. The assault by Guddu on the police constables is clearly seen in the video film and also it is specifically mentioned by both the witnesses in their statements. The points to be considered are whether there is any possibility of the applicant/accused uttering such words and if those words are uttered, whether it amounts to offence under section 353 and whether anticipatory bail is to be granted in view of the nature of the offence.

5. At this stage, from the statements of the police personnel, I do not find any ground to disbelieve that there might not be any such utterances. While deciding the Anticipatory Bail Application, it is necessary to see

whether the person is falsely implicated or not especially when the accused is active in the political field. In the present case, the applicant/accused is a President of Daman Municipal Council. He was present in the hotel at the relevant time. His presence immediately after the assault is also *prima facie* seen. The submissions of the learned Counsel that return of Guddu and second attack by Guddu on the police personnel is not seen in the CCTV camera and, therefore, it has not taken place, cannot be accepted at this stage because whatever comes within the range is captured in the CCTV. As per the case of the prosecution, it appears that Guddu after assault pushed away the complainant in a dark place of the hotel and the said spot is beyond the range of CCTV. The applicant/accused and the other police personnel were seen going towards that direction and therefore it cannot be said that whatever is not captured in the camera did not occur. I do not find any reason to disbelieve the statements of the police who have stated that such sentences were uttered by the applicant/accused.

6. The effect of the statement is also stated by the police officers that Guddu again mustered courage; was emboldened and ran after them to assault them. At that time, both the police officers ran away from the spot to save themselves. Thus, definitely the compliments given by the accused have caused deterrence in the discharge of their official duty. Thus, the role of the applicant/accused, who complimented them, *prima*

facie, appears to be in the nature of abetment. It appears that because of the compliments given by the applicant/accused who was such a politically influential person and also holding important post in the Daman Municipal Council, Guddu was encouraged to assault the police again. It is to be noted that the act of utterance may appear trivial. However, these words were uttered to compliment the person who has assaulted a public servant in discharging his duty. Secondly, they were uttered by a person who was an elected representative who ought to have shown complete respect towards law and order. It is an offence under section 353 of the Indian Penal Code. It is true that the everybody is equal before law. However, higher the position or more the power, greater the responsibility to respect the law and order. If a person in power violates law, then the degree of damage done to the system and the rule of law is always higher than the breach by a common man. The statements of the police personnel prima facie create an impression that the incident must have happened and the applicant is not falsely implicated. The maximum punishment under section 353 extends only to 2 years. However, it was earlier bailable section, but the legislature in its wisdom, has made it non-bailable and non-compoundable w.e.f. 23.6.2006, which is necessary to be taken into account. Hence, the application is rejected.

7. The learned Counsel for the applicant/accused seeks stay of this order for three weeks to approach the hon'ble Supreme Court. This

request is opposed by the learned Prosecutor. In the circumstances of the case, interim protection granted earlier to continue for three weeks i.e., upto 30.6.2015.

(MRS.MRIDULA BHATKAR, J.)