

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 850 OF 2015

Milind Dattu Bagul

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. M. S. Mohite i/b Abhijit Y. Patil for Applicant

Ms. S. S. Kaushik APP for the State.

Mr. L. D. Jadhav P.S.I. Kharghar Police Station

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 23rd JUNE 2015

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 150 of 2015 registered at Kharghar Police Station for offence punishable under sections 376, 506 of Indian Penal Code.

2) It is the case of prosecution that on 07/05/2015, prosecutrix lodged a report at the police station alleging therein that she works as Office Assistant at Flying Bird Motion Pictures. That one Mr. More had given her cellphone no. of present applicant on 18/03/2015 and informed her that in case she has any difficulties with her property, she should contact present applicant. She

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had some difficulties with the plot owned by her grandfather at Ulhasnagar and therefore, she contacted present applicant. It is alleged that present applicant had called her to his office on 04/05/2015 along with papers. On the very same day, he had gone to the said plot and seen the said plot. He had informed her that he would be able to help her. On 05/05/2015, applicant is alleged to have called her and asked her to visit her along with papers. On 06/05/2015, according to her, he had made several phone calls to the complainant and called her at Kharghar. On 06/05/2015 at about 3.00 p.m., she had been to Kharghar Police Station, where applicant is alleged to have been waiting in his Scorpio Car. Thereafter, it is alleged that she was taken by the applicant to Vastu Vihar flat no. K H - 02 building no. 1. There she was threatened by the applicant and thereafter, he had ravished her against her wish. She has also alleged that she had tried to resist the act of applicant, but to no avail. She was therefore constrained to lodge a report against the applicant and hence, applicant is being prosecuted for offence punishable under section 376 of Indian Penal Code.

3) Learned counsel for the applicant vehemently submitted that applicant was president of Republican Party of India, Ulhasnagar. That one Bhagwan

Bhalerao was aspiring for the said post and hence, applicant was being coerced to vacate the said post. Learned counsel for the applicant has drawn the attention of this Court to several complaints lodged by him to the Commissioner of Police, Thane as well as NC reports lodged by him at Hill Line Police Station, N.R.I. Sagari Police Station, Central Police Station on various occasions. He had informed the police that he is receiving several threat calls from cellphone no. +66617842287. The call appears to be an oversee call. It is pertinent to note that police of the said police stations had only lodged NC reports on the basis of his complaint and had not verified the genuineness of the complaint. Learned Prosecutor is not able to show that said police stations have enquired into complaints lodged by the applicant, nor there is enquiry to trace the said cellphone no.

4) Negligence on the part of police is *writ large* on the face of record. Learned counsel for the applicant submits that serious allegations have been levelled against him only in order to coerce him to vacate the said post. Learned counsel for the applicant has specifically stated on oath and has submitted that complainant had visited the office of applicant from time to time to help her out. Applicant had taken her to local Corporator namely Jaya

Sadhawani. That Jaya is Corporator of the Municipal ward, where the disputed property of the complainant was situated. It was revealed that disputed property was sold out by original owner in the year 1986 itself and that purchaser was to be in possession. In view of this, learned counsel for the applicant submits that there was no reason for the complainant to visit the office of applicant and request him to look into the disputed property as there was no dispute over any property. According to learned counsel for the applicant, complainant was foisted to lodged complaint against him with an ulterior motive.

5) Perused the papers of investigation, particularly medical report which clearly shows that complainant had not sustained any visible injuries nor prima facie there is anything to indicate that complainant had sexual intercourse before she was examined. The opinion is reserved. Medical report shows that she was examined after about 15 days of the alleged incident. Prima facie, medical report does not support the allegations levelled by the complainant. C. A. report is also received. There is nothing to indicate that she had suffered any injury or had undergone sexual intercourse. Learned counsel for the applicant has further placed on record the call details which is

admitted by learned APP. The C.D.R. would show that on 03/05/2015, complainant had called applicant on two occasions. On 04/05/2015 also she had called by him. On 05/05/2015, she had given three missed calls to the applicant and therefore, he had called upon her at 01.00 p.m. and 5.46 p.m. On 06/05/2015, applicant had made three calls to the complainant which were dropped. On 06/05/2015 complainant had called upon the applicant at 2.18 p.m. and 2.42 p.m. as well as 3.00 p.m. In view of this, it appears that complainant was voluntarily in touch with applicant for the reasons best known to her, although it was clear that said disputed property was sold in the year 1986 itself.

6) Upon considering the recitals of F.I.R., papers of investigation and the submissions advanced across the bar, it prima facie appears that applicant has made out case for grant of pre-arrest bail.

7) Commissioner of Police, Thane shall personally enquire into the NC reports lodged by the applicant at various police stations. This Court requests Police Commissioner, Thane to take NC complaints filed by the applicant to its logical end.

8) It is made clear that observations made herein above are prima facie in

nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount.
- (iii) Applicant shall report to Kharghar Police Station on 01/07/2015 to 03/07/2015 between 10.00 a.m., to 01.00 p.m. and co-operate with the investigating agency to the best of his capacity.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)