

ANTICIPATORY BAIL APPLICATION NO.1055 OF 2015

Nadeemuddin Aliuddin ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. N.R. Bubna, for the Applicant.
Mr. Arfan Sait, APP for Respondent – State.
IO. Mr. S.P. Gaikwad (PSI), Pawar-wadi police station, Malegaon
present.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: JULY 27, 2015

PC.:

. The application is moved for pre arrest bail as the applicant/accused is facing charges for the offences punishable under Sections 384, 386 and 341 read with 34 of the Indian Penal Code in C.R. No. 62 of 2015 registered with Pawar Wadi police station, Tal. Malegaon, Dist. Nashik.

2. One Shirish More has given the first information report on 22nd June, 2015 that on 16th June, 2015 when his truck was going with

some goods from Manmad, the applicant/accused along with co-accused intercepted the said truck with their XUV car without having any number plate. The applicant/accused and other three persons told the driver of the truck to give money as '*gutkha*' was transporting in the said truck. The driver therefore called the complainant who was the owner of the truck. The complainant went on the spot and noticed that the applicant/accused and other three persons who are the residents of Malegaon were present there. He knew them by name. At that time, the applicant/accused demanded cash of Rs. 40 lacs from the complainant or otherwise he would take the said truck to the police station as the complainant was transporting *gutkha*. The complainant agreed to the said demand as he was under fear to go to the police station and he called his one friend named Abdul Aziz with money. Abdul Aziz came on the spot and then went to his house along with one of the co-accused and handed over the amount of Rs. 15 lacs to one Arif who is one of the co-accused and he then informed the applicant/accused that he had received money and therefore they all went away. The first information report was given by the complainant after six days of the incident and then the offence was registered.

3. The learned counsel for the applicant/accused has submitted that it is a false case against the applicant/accused. He is a Corporater in Malegaon. The applicant/accused is falsely implicated due to political rivalry. One Sunil Gaikwad, a brother in law of the complainant was contesting the election for Dy. Mayor of Malegaon Corporation and in that election he lost by one vote because of the absence of applicant/accused. He further submitted that if at all there was no *gutkha* in the truck, there was no reason for the complainant to succumb the demand of Rs. 40 lacs and pay Rs. 15 lacs to the applicant/accused and his associates.

4. He further submitted that it can not be a case under Sections 384 or 386 of the Indian Penal Code. He submitted that Section 383 of the Indian Penal Code defines 'extortion' as "whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion". He submitted that, if at all there is injury caused to the complainant and there is no any threat or apprehension or fear

to body of the complainant, then under such circumstances, the offence under sections either 384 and 386 is not committed by the applicant/accused. He further submitted that no custodial interrogation is required as the offence is not taken place at all. No money has transferred in the case. He further submitted that the allegations made are manipulated as first information report is given after six days of the incident. He further submitted that the complainant is a influential person and there was no reason for him to get scared of the applicant/accused of going to police station and he is in the transportation business. He further submitted that if at all there would have been *gutkha* in the truck, he was only a transporter and there was no reason for him to be scared of police.

5. The learned prosecutor has submitted that specific allegations are made against the applicant/accused. He submitted that the offence has taken place. The police have arrested five accused persons. He submitted that the driver of the truck is also made an accused as the conspiracy was hatched jointly between the driver of the truck and the applicant/accused. They have jointly committed this offence. He further relied on the recovery

panchanamas at the instance of the five co-accused. He submitted that till today Rs. 1,87,500/- were recovered at the instance of five accused.

6. Perused the first information report, the documents produced by the police and the order passed on 15th July, 2015 by the Additional Sessions Judge, Malegaon rejecting the first pre arrest bail application. The contents of the first information report discloses the offence committed under Section 384 of the Indian Penal Code. The section 383 of the Indian Penal Code which a defining clause of '*extortion*' states about the '*injury*' and not of '*hurt*'. As per section 44 of the Indian Penal Code, the '*injury*' is defined as any harm illegally caused to any person, body, mind, reputation or property. Thus if at all the person is put to fear, that he would be taken to the police station or harm to his reputation or property, then it amounts to *extortion* and such offences covered under Section 384 of the Indian Penal Code. The section 386 of the Indian Penal Code pertains to *hurt* and therefore if at all there is no fear of causing bodily injury, it can not be covered under section 386 of the Indian Penal Code.

7. In view of this, as the applicant/accused as per allegations has put the complainant in fear that along with truck he would be taken to police station, then there was a fear of causing harm to his either reputation or his property i.e. goods in the truck. It is true that the submission of learned counsel for the applicant/accused are true to the extent that if at all there would not be any objectionable goods i.e. *gutkha* then the complainant had no reason to be afraid of going to the police station. Possibly that the complainant may be carrying objectionable goods and therefore he was scared. Assuming though the complainant might have committed some offence, yet the rigor of the offence committed by the applicant/accused can not be reduced.

8. Thus, as per the allegations made, there is a demand of Rs. 40 lacs. It shows that the applicant/accused was trying to blackmail the complainant. If the complainant was at fault, and the applicant would have taken that truck to police station, then he really rendered the service to the society. However, *prima facie* he tried to exploit the complainant because he has committed some wrong. There is recovery at the instance of the co-accused who were arrested in this offence. The amount of Rs. 1,87,500/- is recovered from them.

The statement of Abdul Aziz discloses that he went and brought cash of Rs. 15 lacs and handed over to one of the co-accused. The learned counsel for the applicant/accused has submitted that there was a political rivalry and as the applicant/accused did not vote to one Sunil Gaikwad who was the brother in law of the complainant, it can not give weightage at this stage. The learned prosecutor pointed out that election has taken place six months prior of lodging the complaint. There is a delay of six days in lodging the complaint. However, it appears that the complainant was in double mind to give first information report or not which caused six days delay. It may be because of the circumstances as mentioned above. Thus custodial interrogation of the applicant/accused is necessary.

9. In view of the above, I am not inclined to grant pre arrest bail to the applicant/accused. Hence, the application is rejected.

(MRS.MRIDULA BHATKAR, J.)