

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 224 OF 2016

Nilesh Sunder Shetty. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. S.V. Marwadi, advocate for Applicant.

Mr. S.S. Pednekar, APP for State.

Mr. Bhosale, PSI, MHB Colony Police Station, Borivali, Mumbai.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : MAY 3, 2016

P.C.:

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

2 On 18/4/2016, this Court had directed the Assistant Sessions Judge Shri S.M. Belkar (C.R. No. 3) that appropriate orders be passed in the week commencing from 18th April, 2016 as it had been pointed

to this Court that the Court has heard the discharge application and the matter was fixed for orders on 16th April, 2016.

3 Learned Counsel for the applicant submits that till today, no orders are passed in the discharge application. The learned Sessions Judge has orally informed that he is due for transfer. In this circumstances, it was incumbent upon the learned Sessions Judge to pass appropriate orders and not to adjourn the matter *sine die*.

4 The present application is an application under Section 439 of the Code of Criminal Procedure, 1973 and it is submitted across the bar that the applicant has been in jail for more than one year approximately 15 months. The applicant is an accused in Sessions Case No. 100 of 2015 and the allegation against the present applicant is that he had threatened the witnesses in Sessions Case No. 9 of 2013. The applicant is not an accused in Sessions Case No. 9 of 2013. On the earlier occasion, the application seeking enlargement on bail was withdrawn and at that juncture, this Court had requested learned Sessions Judge to expedite the recording of evidence as far as

possible in Sessions Case No. 100 of 2015. The learned Counsel for the applicant submits that the applicant had cooperated. However, till 5th March, 2016, charge was not framed and therefore, on 5th March, 2016, the applicant herein had filed an application seeking discharge.

5 Perused the first information report. In the present case, the applicant is being prosecuted for the offence punishable under Section 195A and 506B read with Section 34 of the Indian Penal Code. The complainant had produced cell phone on which the alleged threat was given by the present applicant. From the said conversation, it appears that the applicant had called upon the complainant. The cell phone was seized at the time of arrest panchanama i.e. on 5/2/2015. The panchanama was recorded on the same day. The panchas and the police officers had heard the conversation. The transcript of the conversation prima facie does not indicate that any threat was extended to the complainant by threatening him of dire consequences or any intimidation. In the first information report, the complainant has stated that the applicant had threatened him by saying that he

shall not depose against the principal accused in Sessions Case No. 9 of 2013.

6 Section 506 II is a non-cognisable and bailable offence, whereas Section 195A of the Indian Penal Code reads as follows :

[195A. [Threatening any person to give false evidence].—
Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;

and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.]

7 Punishment contemplated for offence punishable under Section 195-A is imprisonment which may extend to 7 years or with fine or with both. Section 195A is a clause which contemplates penalty.

Section 506 of the Indian Penal Code is a non-cognisable and bailable offence.

8 Taking into consideration the intention of legislature in drafting Section 41(a)(b)(i)(ii) of the Code of Criminal Procedure, 1973, the Hon'ble Apex Court in the case of **Arnesh Kumar v/s. State of Bihar (2014) 8 SCC 273** has observed thus :

“Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest.”

It is further observed that :

“We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”

9 In the present case the principal allegation against the applicant is that he had threatened the complainant to give a

favourable deposition in Sessions Case No. 9 of 2013, where the complainant was a witness.

10 Section 195A of the Code of Criminal Procedure, 1973 reads as under :

“195A. Procedure for witnesses in case of threatening, etc. A witness or any other person may file a complaint in relation to an offence under Section 195A of the Indian Penal Code(45 of 1860).”

“Complaint” means a written report to the Court. In the present case, admittedly the statement of the first informant is recorded under Section 154 of the Code of Criminal Procedure, 1973. It is true that Section 195 of the Code of Criminal Procedure, 1973 denotes the word “may”. But Section 195 (a)(b)(i) of the Code of Criminal Procedure, 1973 specifically 'bars' taking cognizance of an offence punishable under Section 193 to 196 of the Indian Penal Code except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf or of some other Court to which that Court is subordinate.

11 In view of the above observations and taking into consideration the fact that the punishment contemplated is upto 7 years or with fine or with both, this Court is inclined to enlarge the applicant on bail.

12 The observations made hereinabove are prima facie in nature and are restricted to the consideration of application for bail under Section 439 of the Code of Criminal Procedure, 1973. The learned Sessions Court shall not be influenced by the observations made hereinabove either for quashing of the FIR or deciding application for discharge or at the trial of the present case.

13 Hence the following order :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- and one or two sureties in the like amount.

(iii) The applicant shall not enter into Mumbai and New Mumbai till the conclusion of recording of evidence in Sessions Case No. 9 of 2013.

(iv) The applicant shall furnish his residential address and contact numbers such as cell phone numbers, landline numbers etc. to the Sessions Court, Mumbai.

14 The Application is disposed of on the above terms.

(SMT. SADHANA S. JADHAV,J)