

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 358 OF 2016

Dinesh R. Rambhia & Anr.	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. M.S. Mohite h/f. Mr. V.V. Purwant, Advocate for the applicant.

Mrs. P.P. Shinde, APP for the State.

Mr. P.G. Sardar, Advocate for respondent no. 2.

Ms. Vaishali Sarwade, P.S.I., Dadar Police Station present.

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

DATE: **29th April, 2016.**

P.C.:

This Application is moved for pre-arrest bail, as the applicants/accused are prosecuted for the offences punishable under sections 454, 380 r/w. 34 of the Indian Penal Code. The offence is registered at C.R. No. 60 of 2016 at the instance of Ashfaq M. Khan on 2nd February, 2016 registered with Dadar Police Station.

2. It is the case of the complainant that the applicant no. 1 is a landlord and he has given the premises on leave and licence to the complainant from 2007. The complainant was running a shop. He was paying the licence fee regularly. However, there was a dispute between them in 2012 as the applicant no. 1 demanded increased fees. The complainant started paying Rs.30,000/- p.m. He paid all the amounts by cheque till 14th June, 2014 and thereafter he was asked to pay the amount by cash. In

December, 2015, applicant no. 1 made further demand of more licence fees but as it was not agreeable to the complainant, the applicant told the complainant to vacate the premises otherwise he would get the possession of the premises vacated on or before 30th December, 2015. On 30th December, 2015, the complainant found that the premises was locked. The wedding of sister of the complainant was fixed on 1st January, 2016 and he was busy in the marriage, however, on 9th January, 2016, the complainant lodged NC against the applicants/accused. On 23rd January, 2016, the complainant was informed by his friend that applicant no. 1 and his friend, i.e., applicant no. 2 have taken away the articles from his shop and have taken forcible possession of the premises, therefore he gave the complaint against the applicants/accused.

3. The learned counsel for the applicants/accused submitted that applicants/accused are innocent. Applicant no. 1 is the landlord of the premises and there was mezzanine floor. One key of the mezzanine floor was with the complainant and other key was with applicant no. 1. The learned counsel submitted that on 29th December, 2015 the applicant/accused no. 1 informed the Senior Police Inspector, Dadar police station that he would be taking the possession of his premises, as the complainant is using the said premises without paying any rent or fees unauthorizedly. He further submitted that by intimation to the police, the

applicant no. 1 entered the premises and took possession of the premises, so that cannot be said as a trespasser. Moreover, he submitted that the allegations made by the complainant that his machines, articles and cash of Rs. 5 lakhs were taken away by the applicants is false. The complainant did not lodge any complaint immediately except NC was lodged by him on 9th January, 2016. He waited for a long time and gave FIR on 2nd February, 2016, as it is after thought. Nothing is stolen from the premises. The police have carried spot panchnama and his articles were found alongwith the machines in the premises. The learned counsel submitted that there are no criminal antecedents in the credit of the applicants/accused. The applicants/accused have not committed any offence. He submitted that applicant no. 2 is falsely implicated in this case.

4. Learned APP and learned counsel for the complainant both opposed this Application for anticipatory bail. Learned APP produced the panchnama which shows that machines and articles were there in the said premises. The learned counsel for the complainant submitted that the complainant is a poor person. The machines, materials and cash amounts are stolen by the applicants/accused.

5. Perused the FIR. If the applicants/accused would have been prosecuted only for the offence of trespass under section 454, the custodial

interrogation of the applicants/accused would not have required. However, the charges are made of theft under section 380 of the Indian Penal code. A letter written by the applicant no.1 to Sr. PI. of Dadar Police Station on 29th December, 2015 shows that applicant no. 1 has taken the possession of the premises forcibly, when it is a case of the complainant that he was staying in the premises on leave and licence since 2007. The civil remedy was open for the applicant no. 1. However, there are allegations of theft of the machines, materials and cash. At this stage, the denial of this allegation is only a word against word. Once there is prima facie case that he has forcibly taken possession of the premises, then on the point of theft, I am of the view that protection under section 438 of Cr. P.C. cannot be granted to applicant no. 1-Dinesh R. Rambhia. Hence, Application for anticipatory bail of applicant no. 1 is rejected.

6. However, applicant no. 2-Karan Dharamraj Saroj is a friend of applicant no. 1, who, as per the case of the complainant, has threatened him and he has accompanied applicant no. 1 when forcible possession of the premises was taken. It appears from the record that applicant no. 2 did not have reason to have animus against the complainant. Hence, interim pre-arrest bail granted earlier to the applicant no. 2 is hereby confirmed. Applicant no. 2 shall attend the concerned police station as and when called by the Investigating officer.

7. The learned counsel for applicants submitted that applicant no. 1- Dinesh R. Rambhia wants to challenge this order before the Hon'ble Supreme Court and hence seeks that the interim pre-arrest bail which was granted earlier to applicant no. 1 be continued for two weeks. In view of this, interim pre-arrest bail granted earlier to applicant no. 1 is continued till 14th May, 2016.

9. The Application for anticipatory bail stands disposed of on above terms.

(MRIDULA BHATKAR, J.)