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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1099 OF 2016
WITH
CRIMINAL APPLICATION NO.536 OF 2016

Prashant Bharat Kadam	..Applicant.
V/s.	
State of Maharashtra	..Respondent.
AND	
Amruta Nandkumar Kshirsagar	..Intervenor.

Mr.Jaydeep D. Mane for the applicant.

Mr.Y.M.Nakhwa, APP for respondent-State.

Mr.Priyal G.Sarda for the intervenor.

Mr.V.V.Jadehav, API, Kurduwadi-Solapur Road Police Station.

CORAM : A.M.BADAR, J.

DATED : 27TH JULY, 2016

P.C. :-

1. The applicant / accused in Crime No.155/2016 for the offences punishable under section 384 and 509 read with 34 of the Indian Penal Code registered with Kurudwadi Police Station, District Solapur by this application is praying for pre-arrest bail.

2. Heard the learned counsel appearing for the applicant / accused. By drawing my attention to the judgment dated 1st April, 2016 in Sessions Case No.198/2015, the learned counsel argued that the alleged victim of the crime has the audacity to create false evidence and to press it in service in order to secure conviction. The learned counsel further argued that exactly by adopting the same modus operandi, the applicant was prosecuted earlier and even his bail was cancelled. He was under-trial prisoner in both Session Cases and ultimately, he was set at liberty in consequences of his acquittal recorded by the learned Additional Sessions Judge, Solapur in those two Session cases. The learned counsel further argued that the present F.I.R. is in order to malign the image of the applicant for breaking his marriage arranged to be held in near future.

3. As against this, the learned APP argued that there are two eye witnesses and the Investigating Officer has seized the photographs as well as the chit. The learned APP further argued that subsequent to the registration of the crime in question, one more N.C. is lodged against the present applicant by the alleged victim of the crime.

4. I have also heard the learned counsel appearing for the intervenor / alleged victim of the crime in question. By pointing out the averment in the F.I.R., the learned counsel argued that the victim is in tremendous pressure and it is not possible for her to walk out of her house. The learned counsel further argued that for tracing out the original of the photographs, it is necessary to effect recovery of the articles such as cell-phone, laptop, etc.

5. I have given my anxious thoughts to the submissions so made and I have also perused the papers of investigation made available by the learned APP. The F.I.R. in question came to be lodged by the alleged victim of the crime on 11th May, 2016. In her report, the informant has referred to the earlier cases and the resultant acquittal. The informant further averred that after acquittal, Sachin Kadam - brother of the present applicant used to come in front of her house and used to address them that they should pay an amount of Rs.5 lakhs as his family has spent amount of Rs.2 to 2.5 lakhs in the litigation initiated at the instance of the informant. It is averred in the F.I.R. that said Sachin Kadam used to say that

they have nude photographs of the informant. The informant further averred that on 6th May, 2016 she had been to Mumbai and when she returned on 11th May, 2016, she came to know from her mother that her mother had found nude photographs and a chit in white envelope at 4.00 a.m. at the premises of Datta Temple. The informant apprehended that this was done for extorting money from her by the present applicant and her brother Sachin Kadam.

6. Perusal of the statement of mother of the informant goes to show that on 6th May, 2016 she was cleaning the premises of the Datta Temple at 4.00 a.m. and at that time inside the southern door of the temple, she found a white envelope containing four photographs and a chit demanding Rs.5 lakhs with message that judgments in Sessions case should not be carried in appeal.

7. Statement of father of the alleged victim shows that his wife had received a white envelope containing photographs and a chit. Statement of neighbourers named Mukund and Suhas shows that on 6th May, 2016 they had been to the house of the informant and then they came to know

about the incident.

8. During the course of investigation, the said chit and photographs came to be seized by the Investigating Officer. Sample handwriting of present applicant is also taken and seized. It is seen that spot was inspected and panchanama thereof is also drawn.

9. On the backdrop of these factual averments in the F.I.R. and the resultant investigation, let us have a brief review of the past history. It appears that on the basis of the report lodged by the alleged victim, after investigation charge-sheet for the offences punishable under section 376, 328 and 506 of the Indian Penal Code came to be filed against the present applicant and after committal of the case, the same came to be tried. This case resulted in acquittal on 1st April, 2016. Perusal of that judgment shows that the applicant was under-trial prisoner in that case. My attention is drawn to paragraphs 16 and 17 of the judgment. In support of the charges in that Sessions case, report of Sriram Laboratory was pressed in service. Averments were to the effect that because of rape committed by the present applicant, the informant became

pregnant and pregnancy tests was conducted at Sriram Laboratory. During trial of that Sessions Case, summons was issued but ultimately, it was found that no such Laboratory as Sriram Laboratory exists at Ahmednagar.

10. It is seen that during the pendency of the Sessions Case No.37/2015 another report came to be lodged against the applicant by the informant alleging offences under sections 195(A), 501, 507 and 354 (C) of the Indian penal Code. The relevant averments in this Sessions Case were to the effect that on 28th March, 2015 the informant had gone to Pune and her mother was alone at the house. On that day someone had thrown envelope into the house of the informant which was containing naked photographs of the informant with threatening that those will be uploaded on the Internet if she fails to withdraw the report lodged by her. This case also resulted in acquittal. The report of handwriting expert did not lead to any conclusion.

11. With this factual background, let us turn to the case in hand. The spot panchanama recorded by the Investigating Officer shows that Datta Temple is having two doors, one on

the eastern side and one on the southern side. The envelope was allegedly found inside the southern door of the Datta Temple. The mother of the informant has also stated that she found the envelope on the steps inside the southern door of Datta Temple. This temple is on the main road leading to Punjabi Talim. It needs to be pointed out here that the envelope was not found either inside the house of the informant at the door of the house of the informant. One fails to understand that if really there was an attempt to extort money from the informant or to defame her why culprits should keep the envelope at a public place such as Datta Temple.

12. The learned APP relied upon the report of the NC lodged on 20th July, 2015 by the informant against the present applicant. The printed proforma of the report shows that threat is extended by giving a chit. The learned APP is not in a position to produce the chit for perusal of the Court. As such no overbearing importance can be attached to the report of N.C. case.

13. Considering the entire factual background and the

history of relations between the parties reflecting registration of similar such offences in the past, I am of the considered view that custodial interrogation of the applicant is not at all warranted. Liberty of a citizen deserves paramount consideration. In the case in hand, the possibility of false implication cannot be ruled out in the wake of earlier attempts as well as strained relations between the parties. Sample handwriting of the present applicant is already seized by the Investigating Officer. Hence the order :-

- (i) The application is allowed;
- (ii) In the event of arrest of the applicant / accused in Crime No.155/2016 for the offences punishable under section 384 and 509 read with 34 of the Indian Penal Code registered with Kurudwadi Police Station, District Solapur he be released on bail on his executing P.R. bond in the sum of Rs.15,000/- with one or more surety in the like amount;
- (iii) As a condition of this order, the applicant / accused shall attend Kurudwadi Police Station, District Solapur on every second and fourth Saturday of every month between 11.00 a.m. to 1.00 p.m. till the filing of charge-sheet, if any, and shall co-operate with the Investigating

Officer;

- (iv) The applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him / her from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the evidence;
- (v) The applicant / accused shall co-operate in expeditious disposal of the trial, if any;
- (vi) The applicant / accused shall not commit an offence similar to the offence of which he is accused or suspected of commission;
- (vii) The application is disposed of accordingly.
- (viii) Needless to state that above observation are prima facie observation which will not have bearing on the case.
- (ix) In view of the disposal of the main application, criminal applications, if any, are also disposed of.

(A.M.BADAR, J.)