IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 267 OF 2015

Mr Ravindra Sadanand Phatak ..Applicant.
Vs
The State of Maharashtra ..Respondent.

ALONG WITH
ANTICIPATORY BAIL APPLICATION NO. 977 OF 2015

Mr Ninad Shailesh Sawant & 2 Ors ..Applicants.
Vs
The State of Maharashtra & Anr ..Respondents.

Mr Shirish Gupte, Senior advocate i/by K.S.Patil for the applicant in ABA No. 267/2015.
Mr Prakash Naik i/by Sandip L. Babar for the applicants in ABA No. 977/2015.
Ms S.S.Kaushik, APP for the Respondent-State.
Mr Mahesh Jethmalani, Senior Advocate a/with Gunjan Mangala & Parvez Menon i/by MZM Legal for the original complainant.

CORAM: A.S.GADKARI, J
DATED : 8th FEBRUARY, 2016.

P.C. :

1) The aforesaid two applications, filed under section 438 of

the Code of Criminal Procedure are being decided by this common order as the applicants herein are accused persons in the same crime.

2) The applicants are apprehending arrest in CR No. 54/2015 dated 20.2.2015 registered with M.R.A. Marg Police Station, Mumbai dated 20.2.2015 for the offence punishable under sections 406, 420, 506 (II), 409, 120-B of the IPC.

3) Heard Shri Shirish Gupte, the learned Senior Counsel for the applicant in ABA No. 267/2015, Shri Prakash Naik, learned counsel for the applicants in ABA No. 977/2015, Shri Mahesh Jethmalani, Senior Advocate for the original complainant, Shri Premprakash G. Saraogi and Ms S.S. Kaushik, the learned APP for the State, at length and also perused the record produced before me.

4) The first informant, namely Shri Premprakash G. Saraogi has lodged the Report (FIR) stating that, the complainant is the Director of (i) Blue Star Infra Housing Limited (ii) M/s Goldstar Metal Solutions and Vidarbha Mining Pvt Ltd (for short 'V.M.P.L'.) having its office at Chakala, Andheri, Mumbai.

5) That, Goldstar Metal Solutions had entered into an agreement with Deccan Group of Companies for processing minerals excavated at their site at village Sateli, Taluka Sawantwadi, District Sindhudurg. The said excavated mineral material was being sold through the Deccan Group of Companies. The said site for excavation was taken by the said Company on lease and the excavation activities were being conducted by M/s Vidarbha Mining Pvt. Ltd. That, while conducting the mineral excavation business, the complainant and his Companies were facing various problems with respect to labour, transporters and other related problems at local level. The applicant Ravindra Phathak therefore approached to the complainant's Company and represented that he was having good relations and/or influence in the local area and, he would see to it that the complainant's Company will be benefited by him. He, thereafter, established relations with the complainant and gained his confidence. The applicant, Ravindra Phatak, thereafter, started promoting himself as the well wisher of the local people in the said village. He also threatened to the

complainant that, without the co-operation of the said applicant if the Company continues with its work, the Company would suffer losses.

6) That on 26.12.2008 the Company entered into an agreement with the applicant Ravindra Phatak and he was appointed as a professional consultant for the labour and other related aspects required for the said Company. On 9.9.2012 the applicant Ravindra Phatak contacted the complainant and told the complainant to appoint his associate Shri Tusharkumar Panchal on the Board of Directors of the said Company. The applicant represented to the complainant that if the said Tusharkumar Panchal is appointed as the Director of the said Company, the said Shri Panchal will be helpful in finding out more mines and the Company will be benefited by huge profits. The applicant also extended threat that if the same is not done, the complainant's Company will have to suffer losses which may run into Crores of rupees. It is the case of the complainant that the Board of Directors of his Company thereafter passed a resolution dated 28.9.2012 and appointed the applicant and his

associate namely Shri Tusharkumar Panchal as the Director of the said Company. The applicant and his associate were not given any independent rights. However, the Company had decided to share 25% of the actual profit with them. The applicant, thereafter, approached the complainant in November, 2012 and demanded 50% profit from the complainant and threatened that if the complainant's company fails to give 50% profit, the applicant will close down the excavation work of the site at village Sateli and will cause tremendous losses to the Company. That taking undue advantage of the post of Director in the complainant's Company, the applicant on 29.10.2012 entered into a consent terms with the local supplier, namely Dattaram Kanwatkar and accepted his claim which was not in existence. That on 4.1.2013 the Board of Directors of the complainant Company passed a resolution and removed the applicant Ravindra Phatak and the said Tusharkumar Panchal from their Board of Directors with immediate effect. The complainant, thereafter, lodged a complaint with Wanrai Police Station on 31.1.2013 bearing CR No. 33/2013 under sections

384, 385, 409, 420, 465, 467, 468, 471 read with section 34 of the IPC against the applicant and Dattaram Kawtankar.

7) That, in the year 2011, the applicant Ravindra Phatak approached the complainant and advised him to invest in real estate business. That as per the suggestion the applicant was supposed to invest 50% of the requirement in the said business and the applicant again threatened the complainant to cause loss in the mining activities, in case the complainant refused to participate in the real estate business. In furtherance thereof, the complainant and the applicant Ravindra Phatak formed a Company by name M/s Blue Star Metal Solutions Pvt Ltd., for conducting the business in the field of real estate.

8) It is the further case of the complainant that the applicant Ravindra Phatak and his wife thereafter introduced him to the members of Punamiya family who were partners of M/s Kapurba & Co. That said Kapurba & Co. had a desire to sell their land, lying and situate at Panchphakhdi and Majiwade in the city of Thane. That the value of the said land was determined at Rs.20 Crores. The applicant Ravindra Phatak and

the partners of M/s Kapurba & Co., thereafter, showed the documents pertaining to the said property to the complainant and on believing in the applicant Ravindra Phatak, the complainant transferred an amount of Rs. 13 Crores from time to time in the account of the said Kapurba & Co. and its Partners. That there were certain encroachments on the suit property and for removal of the said encroachment the applicant Ravindra Phatak demanded an amount of Rupees Fifteen Crores from the complainant and threatened him that if the said amount is not paid and the encroachments are not removed, the entire earlier investment will go in waste. The applicant Ravindra Phatak, thereafter, showed the draft of power of attorney and sale deed to the complainant. In the said drafts, it was stated that the said lands are without any encumbrance. That on 19.1.2012 the applicant Ravindra Phatak called the complainant for executing the sale deed. However, the complainant could not attend the same. On 19.1.2012 the applicant Ravindra Phatak executed the sale deed and power of attorney by effecting his signatures on behalf of

M/s Blue Star Infra Housing Pvt Ltd. The complainant has categorically stated that the said sale deed and the power of attorney which were executed by the applicant Ravindra Phatak were not as per the drafts shown to the complainant. That the applicant Ravindra Phatak executed those documents without any authority under the law. The complainant thereafter learnt that the partners of M/s Kapurba & Co. executed the said power of attorney and sold the said land in favour of the applicant Ravindra Phatak and his wife despite the fact that the said partners were not having the ownership rights in their favour and accepted the aforesaid amount of Rs.13 Crores from the complainant.

9) It is the further case of the complainant that the applicant Ravindra Phatak thereafter pressurised the complainant through the then Minister for the Department of Heavy Industries to withdraw the crime lodged by the complainant with Wanrai Police Station. The complainant and the applicant Ravindra Phatak thereafter met the said Minister and due to his intervention the complainant withdrew his complaint lodged

with Wanrai Police station on 4.11.2013. At the time of negotiations before the concerned Minister the applicant and his associate Dattaram Kavthankar agreed to pay Rs.10 Crores towards damages caused in the mineral excavation business. Similarly, the applicant Ravindra Phatak also agreed to pay an amount of Rs.26 Crores towards losses suffered by the complainant in the project at Majiwade by the said Blue Star Infra Housing Company. The said damages were calculated at Rs.26 Crores. The applicant Ravindra Phatak, his wife and the partners of Kapurba & Company agreed to pay the said amount within a period of three months from 4.11.2013. The complainant has fairly admitted in his complaint that the applicant has returned an amount of Rs. 3,15,00,000/- and the same was deposited in the account of Vidarbha Mining Pvt Ltd. That the applicant Ravindra Phatak thereafter did not pay any amount to the complainant though agreed. The complainant has further stated that in April, 2014 the applicant Ravindra Phatak joined the political party namely Shivsena. When the complainant demanded the balance amount from the applicant

Ravindra Phatak, the applicant Ravindra Phatak threatened him with dire consequences and asked him to forget about the said amount paid by him. The said threat was extended in presence of the employee of the complainant Shri Pratik Saraf. Thereafter, the complainant enquired with the applicant Ravindra Phatak about the removal of encroachment on the property situated at Majiwade Thane. The applicant Ravindra Phatak told the complainant to pay an amount of Rs. 75,00,000/- to a firm namely M/s Om Shri Sai Constructions Co. (a partnership firm) of which the applicants in ABA No. 977/2015 are the partners. The complainant, thereafter, transferred an amount of Rs. 75,00,000/- by way of R.T.G.S. in the account of M/s Om Shri Sai Constructions Company. Subsequently, upon enquiry, it was revealed to the complainant that the applicant Ravindra Phatak himself is the main partner and Mr Deelip S. Bendugade, Ninad S. Sawant and Shri Kirtibhai G. Shah are the other partners of the said firm. The complainant has further stated that for removal of encroachment on the property situated at Majiwade, Thane, the applicant Ravindra Phatak directed the complainant to make the said payment to M/s Om Shri Sai Constructions Co.

10) The complainant has stated that the applicant and his wife were the Directors of the said four companies and the addresses of the said Companies were of the office of the applicant Ravindra Phatak himself. That, the applicant Ravindra Phatak concealed the said fact form the complainant and forced him to pay a sum of Rs. 3,20,00,000/- to the said companies. That the said amount was transferred by way of RTGS. The complainant has further stated that in the aforesaid manner the applicant Ravindra Phatak had induced the complainant to pay a total sum of Rs. 26,95,00,000/- without removing the encroachment on the property situated at Majiwade, Thane. That the applicant Ravindra Phatak used and utilized the said amount of Rs.26,95,00,000/- for his own benefit. That the applicant Ravindra Phatak gave threats to the complainant of dire consequences when the complainant demanded the said money back. In the premise the said FIR dated 20.2.2015 is lodged by the complainant.

11) The learned counsel for the applicant Ravindra Phatak submitted that the transactions involved in the present crime are purely of civil nature. He further submitted that the complainant was made aware about the encroachment which was in existence on the Majiwade property at the time of execution of the agreement itself. He further submitted that the amounts which the complainant claimed to have been paid to the companies wherein the applicant Ravindra Phatak is the Director, are paid as friendly loan and the M/s Vidarbha Mining Pvt Ltd. has, in fact, demanded the said amount from the respective companies by issuing notice. He further submitted that in the FIR, the complainant has admitted that the applicant has repaid an amount of Rs. 3.50 Crores. He, therefore, submitted that the complainant wants to convert the civil dispute by giving it the colour of criminality and has filed the FIR. He further submitted that the custodial interrogation of the applicant is not necessary as the present crime is pertaining to the documents which have been already either seized by the police or otherwise on record of the Government Authorities.

He, therefore, submitted that the applicant may be granted pre-arrest bail.

12) The learned counsel Shri Naik appearing for the applicants in ABA No. 977/2015 submitted that the said applicants are the Partners of Om Shri Sai Constructions. That at the instance of the applicant Ravindra Phatak the amount of Rs. 75,00,000/- was deposited in the account of that firm by the complainant. He further submitted that in pursuance of the receipt of the payment they have in fact carried out their part of obligation.

13) Shri Jethmalani, the learned Senior Counsel for the complainant submitted that this is a clear case of cheating and extortion at the behest of the applicant Ravindra Phatak. He submitted that the applicant Ravindra Phatak is habitual offender and 32 cases are pending against him. He also pointed out the various documents which are on record which show the complicity of the said applicant in the present crime.

14) The learned APP has filed a detailed affidavit of the Investigating Officer, Shri Prafulla S. Phadke dated 24.4.2015. It

is stated in the said affidavit that the applicant is also involved in six other criminal cases. I have also perused the entire record produced before me.

15) It is to be noted here that a bare perusal of the FIR lodged by the complainant Shri Premprakash Saraogi demonstrates that the applicant Ravindra Phatak in a systematic and well planned manner forced the complainant to adopt him as the Director of their Company. That under the threat of causing huge losses, the applicant Ravindra Phatak subsequently demanded substantive profit in the Company. That the applicant despite the knowledge that the Kapurba & Co. of which the members of Punamiya family were partners, though were not having clear title in their favour forced the complainant to pay the valuable consideration for the said property lying and situated at Majiwade, Thane. The applicant though without having any lawful authority to enter into an agreement for sale on behalf of the said Blue Star Infra Housing Pvt Ltd., represented himself as the authorized signatory of the said Company and entered into the agreement dated

27.10.2011 for the purchase of landed property lying and situate at village Pachpakhadi and Majiwade, District Thane for valuable consideration of Rs. 13 Crores. It is further to be noted here that the applicant has forced the complainant to pay an additional amount of Rs.13,95,00,000/-for removal of encroachment on the property lying at Majiwade, Thane and the said amount was directed to be paid to the Companies of which the applicant Ravindra Phatak himself was a Director. It is further to be noted that at the instance of the applicant the complainant paid an amount of Rs. 75,00,000/- to M/s Om Shri Sai Constructions of which the applicants in ABA No.977/2015 are partners. It is the specific allegation of the complainant that the applicant Ravindra Phatak himself is the main partner of the said partnership firm and was instrumental in forcing the complainant to pay the said amount of Rs.75,00,000/- to M/s Om Shri Sai Constructions. The FIR and the documents on record clearly show that the applicant Ravindra Phatak is the main perpetrator of the present crime. The applicant has threatened the complainant that if the complainant fails to make further payments, his earlier investment would go in losses. Though it is contended by the applicant Ravindra Phatak that the dispute between him and the complainant is purely of a civil nature, I do not agree with the said contention. I am of the considered opinion that the applicant Ravindra Phatak is instrumental in giving threats and extorting the amounts from the complaint by adopting the most sophisticated ways. The affidavit filed by the Investigating Officer discloses that there are six criminal cases at the discredit of the applicant Ravindra Phatak.

16) It appears from the record that the applicants in ABA No. 977/2015 have acted under the dictates of the applicant Ravindra Phatak in ABA No. 267/2015 and they did not have any individual say when the amount of Rs.75,00,000/-was deposited in the account of M/s Om Shri Sai Constructions.

17) In view of the above, I am of the view that considering his direct involvement in the present crime the applicant Ravindra Phatak in ABA No. 267/2015 does not deserve the protection of pre-arrest bail. However, the applicants in ABA No. 977/2015

can be protected by way of pre-arrest bail.

17) Hence, the following order :

ORDER

(i) Anticipatory Bail Application No. 267/2015 is rejected;

(ii) In the event of arrest of the the applicants in ABA No. 977/2015, namely (1) Ninad S. Sawant, (2) Kirtibhai G. Shah and (3) Dilip Bendugade shall be released on bail in CR No. 54/2015 registered with M.R.A.Marg Police Station, Mumbai on their furnishing a P.R. bond of Rs.1,00,000/- each with one or two separate solvent sureties in the like amount;

(iii) The applicants namely, (1) Ninad S. Sawant, (2) Kirtibhai G. Shah and (3) Dilip Bendugade shall attend the concerned Investigating Officer of the MRA Marg Police station Mumbai as and when called for between 11:00 a.m. to 2:00 p.m. for the purpose of investigation, till the filing of charge-sheet.

(iv) The applicants in ABA No. 977/2015 shall not tamper the evidence and/or influence the prosecution witnesses;

(v) ABA No. 977/2015 is allowed in the aforesaid terms.

(A.S. GADKARI,J)

At this stage, Shri Shirish Gupte, learned Senior Counsel appearing for the applicant in ABA no. 267/2015 submitted that the applicant is protected by way of interim relief since 24.2.2015 and the same may be continued for a further period of three weeks from today, with a view to enable his client to prefer an appeal before the Hon'ble Supreme Court. Mr Jethmalani, the learned Senior Counsel for the original complainant and the learned APP opposed the said prayer. However, after taking into consideration the fact that the applicant who is enjoying interim relief since 24.2.2015, the same can be continued for a further period of three weeks from today in the interest of justice. The interim relief granted by an order dated 24.2.2015 is hereby continued for a period of three weeks from today.

(A.S. GADKARI,J)