

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
**ANTICIPATORY BAIL APPLICATION NO. 1421 OF 2016**

|                          |     |            |
|--------------------------|-----|------------|
| Kiran Bajirao Kapse      | ... | Applicant  |
| Vs.                      |     |            |
| The State of Maharashtra | ... | Respondent |

WITH  
**CRIMINAL APPLICATION NO. 699 OF 2016**  
in  
ANTICIPATORY BAIL APPLICATION NO. 1421 OF 2016

|                            |    |            |
|----------------------------|----|------------|
| Shri Ramesh Narayan Kulthe | .. | Applicant  |
| In the matter between:     |    |            |
| Shri Kiran Bajirao Kapse   | .. | Applicants |
| vs.                        |    |            |
| The State of Maharashtra   | .. | Respondent |

Mr. Aniket Nikam i/b. Mr. Aashish I. Stapute, Advocate for the applicant.  
Mr. Sanjay P. Shinde, for the Intervener.  
Mr. Vinod Chate, APP, for the State.  
Mr. Dinkar Y. Borse, Police Naik, Niphad Police Station, Nashik.

**CORAM: SMT.SADHANA S.JADHAV,J.**  
**DATE : 26th September, 2016.**

**P.C.**

1. Heard. This is an application under Section 438 of the Cr.P.C.  
The applicant herein is apprehending his arrest in Crime No.91 of 2016 registered at Niphad Police Station, Pune, for the offences punishable under

Sections 384, 341, 143, 147, 148, 324, 504 and 506 of the Indian Penal Code.

2. It is the case of the prosecution that Ramesh Kulthe had filed a complaint on 28.5.2016 alleging therein that on 22.5.2016 when he was at his construction site, the applicant had approached him and threatened him to stop the construction or else pay him the protection money of Rs.10 lakhs. It is also alleged that the brother of the complainant was assaulted by the applicant and his associates. The applicant herein happens to be the Councillor from Niphad.

3. The learned counsel for the applicant submits that in fact, on 16.4.2016, the Chief Officer of the Niphad Nagarpanchayat had informed the complainant to stop his construction as he did not have all the necessary permission. Similarly, by a letter dated 22.2.2016, the Sub-Divisional officer had also requested the complainant to stop the construction. On 18.5.2016, the present applicant had also filed a complaint before the Chief Officer, bringing it to his notice that the construction is illegal. It is pertinent to note that on the same day i.e. 18.5.2016, the applicant had first approached the Chief Officer and informed him that when he had been to

the site and had requested the complainant to stop the construction, he was abused by the complainant and that the complainant had threatened him that he would not be perturbed by the number of applications made by the present applicant. It appears that on 19.5.2016, the applicant had approached the P.I. of Niphad Police Station and lodged a report in respect of the incident dated 18.5.2016, on the basis of which a non-cognizable case was registered against the complainant.\

4. The learned counsel for the applicant submits that the applicant was concerned only because he happens to be the elected representative of the people at Niphad and that he had noticed that illegal construction was going on.

5. The learned APP rightly submits that the applicant had no concern to visit the site and ask the complainant to stop the construction. It is also submitted that on the next day, the applicant had approached the P.I. of Police Station and lodged a report on the basis of which a non-cognizable case was registered. The learned APP submits that the applicant does not deserve the relief under Section 438 of Cr.P.C. in view of the fact that there are as many as six cognizable cases are registered against

the applicant. The learned APP submits that Crime No.318 of 2009 is registered against the applicant for the offences punishable under Sections 392, 324, 336, 504 and 506 of IPC. At this juncture, the learned counsel for the applicant submits that the said case was registered as Sessions Case No.8 of 2015. The learned counsel has placed on record the copy of the Judgment dated 26.3.2015 by which the applicant was acquitted. Upon perusal of the judgment, it is clear that the complainant in the said case had resiled from his earlier statement. He was declared hostile. The Investigating Officer who had recorded the said statement had also expired before commencement of the trial and hence the offence was proved. It cannot be said that the applicant was not guilty. The acquittal was not on merits.

6. At this juncture, the learned counsel for the intervener as well as the learned APP have submitted that the applicant herein is in the habit of terrorizing the people and threatening that he has obtained an acquittal on the ground that the complainant had turned hostile, would be a further indication that he would not only tamper with the evidence, but threaten the witnesses. The learned counsel for the intervener submits that the C.C.TV footage would clearly indicate that the present Applicant was

present at the site at the time of the incident and that the names of his associates is not yet disclosed.

7. The learned counsel for the applicant submits that he would co-operate with the investigating agency. The learned counsel further submits that even according to the complainant, the incident has taken place on 22.5.2016, whereas the first information report is lodged on 28.5.2016 and there is delay in lodging FIR.

8. The learned counsel for the intervener, at this stage, has drawn attention of this Court to the application dated 25.5.2016 filed before the police informing the police in respect of the the incident dated 22.5.2016. It is pertinent to note that no cognizable offence was registered against the applicant on the basis of the application dated 25.5.2016 and subsequently on 28.5.2016 the offence was registered. It appears that the police have also co-operated with the applicant in view of his status as a Councillor.

9. Initially, it was argued that the illegal construction was being carried out in the Municipal Ward which was represented by the applicant. Subsequently the learned counsel for the applicant has fairly submitted that it was in the adjoining Ward. Learned APP rightly submits that the applicant was not concerned with the Municipal Ward of the site of

transaction. It is neither the case of the applicant that he had informed the representative of the said Ward. In this circumstance, it is clear that the applicant had indulged into extortion. It is further clear that the applicant is taking advantage of his political clout and therefore the police had not co-operated with the complainant initially. Hence, the applicant who has no fear of law does not deserve the relief under Section 438 of Cr.P.C.

10. It is a matter of record that similar offences are registered against the applicant. The learned counsel for the intervener also submits that despite this, the police have not sent any proposal under the provisions of the Bombay Police Act to take action against the present applicant. That under the garb of being a Councillor, the applicant has added to the nuisance value of the society and has terrorized the people.

11. The papers of investigation clearly indicate that the applicant had taken law in his hands and hence he does not deserve the discretionary relief under Section 438 of Cr.P.C. Grant of anticipatory bail in favour of the applicant would simply add to his ego. That he can afford to take law in his hands, terrorize the people, extort them on superficial grounds and no authority, including the Court of law would take any action against him. It is in these circumstances that this Court is not inclined to grant pre-arrest

bail to the applicant.

12. The above observations are prima facie and restricted to an application under Section 438 of Cr.P.C. only.

13. The Bail Application stands rejected.

14. The Intervention Application is heard, allowed and disposed of.

**(SMT.SADHANA S.JADHAV, J.)**