IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.921 OF 2016
WITH
CRIMINAL APPLICATION NO.419 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO.921 OF 2016

Rajesh Nagesh Revankar ... Applicant
Versus
The State of Maharashtra & anr. … Respondents
And
Dipak Eknath Shinde … Intervener

Mr.G.K. Sovani for the Applicant
Mr.Deepak Thakre, APP, for Respondent – State
Mr.S.V. Kotwal i/b P.M. Patil for Intervener

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 1, 2017

P.C. :

1. This application is moved by the applicant/accused for pre-arrest bail as the applicant/accused apprehends arrest in C.R. No.99 of 2016 registered with Hatkanangale Police Station, District Kolhapur, for the offences punishable under sections 353, 384, 186, 506, 506 of the Indian Penal Code. The complaint was filed by one Dipak Eknath Shinde, who was working as a Tehsildar and Special Executive Magistrate at Hatkanangale when the incident took place. The complainant gave this information to the police on

30.3.2016. It is the case of the complainant that he issued notices in respect of some land scam on 23.2.2016 to one Girish Revankar i.e., the brother of the applicant/accused, the wife and relatives of the applicant/accused, for evasion of revenue. As the notices were issued by the complainant, the applicant/accused, who is a politically influential person, got enraged and he issued notice dated 26.2.2016 through his lawyer to the complainant wherein he has made all false allegations that two Air Conditioners were fixed by the applicant/accused in the rented premises of where the complainant is residing. It was also contended that the applicant/accused was made to pay Rs.25,000/- and Rs.30,000/- for the said Air Conditioners. However, the said amount was not paid by the complainant Tehsildar. In the said notice, it was further contended that the complainant wanted to purchase a flat in Pune and, therefore, he borrowed money time to time from the applicant/accused and the total amount lent by the applicant/accused was Rs.30 lakhs to Rs.35 lakhs. However, the said amount was paid by cash and, therefore, he made demand of the said amount from the complainant through that notice. It was also contended that the complainant has misused his position as Tehsildar and has not issued receipts of the said payment to the applicant/accused. The complainant gave reply on 9.3.2016 to the said notice and denied all allegations. The complainant also sent a notice dated 8.3.2016 to the applicant/accused to appear before him to give evidence in the enquiry pertaining to the land revenue matter. Accordingly, the applicant/accused appeared before him on 11.3.2016 and at that time, the applicant/accused shouted at the complainant that he unnecessarily sent him a notice and now the complainant will receive the notice sent by the applicant/accused and he should not take it personally, otherwise, he will face dire consequences. The complainant told him that if he did not want to proceed with the matter, then, he should bring an order from the Sub-Divisional Officer, Ichalkaranji till 21.3.2016. At that time, the applicant/accused threatened him that he would see that he would not remain in the job. Thereafter, it is the case of the complainant that the applicant/accused thereafter filed civil Suit for recovery of Rs.30 to Rs.35 lakhs on 15.3.2016 in the civil Court and it is the case of the complainant that this is how the applicant/accused is trying to extort money of Rs.30 lakhs to Rs.35 lakhs from the complainant. So also, the applicant/accused has filed a criminal complaint against the complainant for criminal breach of trust, cheating under sections 389, 406 and 420 of the

Indian Penal Code before the Court of the JMFC, Ichalkaranji. Thereafter, the complainant wrote a letter to the Collector on 29.3.2016 and reported about the incident and he approached the police and gave the present complaint.

2. The learned Counsel for the applicant/accused has submitted that there were many transactions prior to these incidents between the complainant and the applicant-accused. He submitted that the applicant/accused has paid him money in cash of Rs.30 lakhs to Rs.35 lakhs. The applicant/accused has not committed any offence of extortion or of giving any threats to the complainant at his workplace. He submitted that this is a false case filed by the complainant against the applicant-accused. The learned Counsel further relied on an affidavit filed by one Ramakant Ashok Jadhav, who has stated that in his presence and in presence of one Sanjay Chougule that cash of Rs.25 lakhs was given to the complainant.

3. Learned Prosecutor and the learned Counsel for the complainant have relied on the complaint dated 30.3.2016, so also the previous notice dated 26.2.2016 issued by the accused and the reply dated 9.3.2016 given by the complainant refuting all the

allegations. The learned Counsel for the complainant and the learned Prosecutor have submitted that it is a serious offence committed against the public servant when he is performing his duty. The learned Counsel has submitted that the applicant/accused being a Tehsildar, was performing his quasi-judicial function of enquiry and evasion of revenue which is committed by the brother, wife and other relatives of the applicant/accused They relied on the statements of the witnesses i.e., a Bench Clerk, namely, one Ashish Shinde, a Talathi, namely, Dilip S. Patil, Sanjay Annappa Kamble, Basheer Naikwade, Shabbeer S. Mulani and Sanjay Chougule. Learned Prosecutor and the learned Counsel for the complainant submitted that the witness Sanjay Chougule had stated that on 11.3.2016, in Tehsil office, the applicant/accused was present and the applicant/accused made a grievance that the complainant Tehsildar has taken out all his old matters and he is after him and therefore, he would see him. There is also a statement of Ashish Shinde, bench clerk, that at the time of the proceedings, the applicant, who was present on 11.3.2016, shouted at the complainant and told him that he should also accept the notice and he would have to face dire consequences. The learned Prosecutor further pointed out that Sanjay Chougule, whose reference is made as a witness for payment of Rs.25 lakhs cash by the applicant/accused to the complainant, is falsified as Sanjay Chougule did not support such kind of transaction. It was further submitted that the police of Hatkanangale police station, did not investigate properly and, therefore, at the request of the complainant, the investigation was transferred to Local Crime Branch on 7.6.2016 and thereafter, these statements of the witnesses were recorded. The learned Counsel for the Complainant has submitted that the applicant/accused is a politically influential person and, therefore, the police of Hatkanangale police station did not record the statements in time. Further, he relied on the statement of one Totla, who has stated that he did not give any bungalow on lease to the complainant but he has given it on leave and licence basis for two years to the complainant and he has received rent of the same. The learned Prosecutor further submitted that a forged affidavit of Mr.Totla, the landlord, is filed by the applicant/accused before the Court of JMFC, Ichalkaranji.

4. Perused the FIR, all the statements of the witnesses relied upon by the prosecution and perused the notice and reply between the complainant and the accused. In the present case, the applicant/accused is facing charge u/s 353 of the Indian Penal Code, which is non-bailable, which is thus:

> 353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

5. Further, sections 350 and 351 define criminal force and assault as under:

> “350. Criminal force.—Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.
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> 351. Assault.—Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his

> gestures or preparation such a meaning as may make those gestures or preparations amount to an assault."

6. As per the case of the prosecution, if the words which were used by the applicant/accused are taken into account, *prima facie,* it may amount to criminal force and assault as there was a gesture that he shouted and he rushed aggressively towards the complainant. This may amount to gesture falling under the definition of 'assault'.

7. It is to be noted that if the incident is taken to be true as taken place on 11.3.2016, *prima facie*, there is a delay of nearly 18 days in giving complaint to the police and a further delay of nearly 17 days in reporting about the incident to higher authority i.e., the Collector. According to prosecution, in the notice dated 26.2.2016 given by the applicant/accused, he has made all baseless, false allegations that the complainant has abused his post and position which shows that the complainant was aware of these allegations and charges since 26.2.2016. Apart from other merits, the applicant/accused has filed civil suit for recovery of amount of Rs.30 lakhs to Rs.35 lakhs which is pending before the appropriate civil Court. At present, though extortion on the basis of statements

of witnesses is seen, at this stage, there is no incident of actual parting of money.

8. Under such circumstances, no custody of the applicant is required. The interim anticipatory bail granted on 30.5.2016 is confirmed. The applicant/accused shall attend the concerned police station, on every Monday between 10am to 11am and cooperate with the Investigating Officer, till 30th April, 2017 or till filing of chargesheet, whichever is earlier.

9. Anticipatory Bail Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)