

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

CRIMINAL APPLICATION NO.1084 OF 2017

Liyaqat Ali Irshadali Khan .. Applicant
vs
State of Maharashtra Respondent

with INTERVENTION APPLICATION NO.572 of 2017

Rajendra Himatlal Ghosaliya .. Intervener/Applicant

Mr.Mobin Solkar I/b Mr.Yusuf Mitha for Applicant.
Mr.S.R.Kantharia for Intervener

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CORAM : PRAKASH D. NAIK, J.
DATED : 01 July 2017.

P.C. :

1. This is an Application for anticipatory bail in connection with C.R.No.69 of 2017 registered with D.B.Marg Police Station for the offence punishable under sections 307, 326,504,506 (2) and 507 of the Indian penal code.

2. The Prosecution case is that on 3.5.2017 when the Complainant was in his shop, he received a telephone call on his land line from the Applicant. The Applicant demanded certain

goods from him. The Complainant knows the Accused since five to six years on account of business relationship. There were some disputes in respect to the payments which was subsequently paid after a period of about eight months. The Complainant informed the Applicant that in case if the goods were given to him the payment should be paid immediately. The Applicant/Accused abused and threatened him of dire consequences. The Complainant went to the shop of the Applicant and questioned him about the abuses and threatening. At that time, the Applicant removed a cutter which was lying in his shop and assaulted the Complainant. Hence, First Information Report was lodged on 3.5.2017.

3. The Applicant preferred an Application for anticipatory bail before the Sessions Court which was rejected. Learned Advocate for the Applicant submitted that the CCTV cameras were installed in the adjacent shops where the alleged incident had occurred. He relied upon photographs which shows

the installation of CCTV cameras. It was submitted that in the event of occurrence of such an incident, the same could have been captured on CCTV cameras and the police ought to have collected the footages. He submitted that in the Application for anticipatory bail preferred before the Sessions Court, he had made a prayer for production of CCTV footages by the Investigating Officer. He further submitted that even an Application was made to the police on 19.6.2017 for obtaining the CCTV footages from the cameras referred to herein above. The Complainant had visited the shop of the Applicant and all of a sudden the alleged incident had occurred. The offence under section 307 of the Indian Penal Code is not made. He submitted that the police have deliberately not collected the CCTV footages and had given a vague explanation for not collecting the same. He pointed out the observations made in the order of the Sessions Court wherein it is observed that the CCTV cameras had not covered the incident of assault. He submitted that the investigating machinery is taking a contradictory stand in relation to the CCTV footages. He further

submitted that the Complainant had refused to get admitted in J.J. private hospital and thereafter got admitted in private hospital which refers to the injuries sustained by him. He submitted that on account of rivalry, he has been implicated in the crime and the Complainant intends to finish the Applicant's business. He therefore, submitted that the Application may be allowed.

4. Considering the submissions with regard to CCTV footages, interim protection was granted to the Applicant vide order dated 23.6.2017. It is submitted by the Advocate for the Applicant that the Applicant had attended the Police Station and his statement has been recorded.

5. The learned APP and the learned Advocate for the Intervenor vehemently opposed the Application for anticipatory bail. The learned APP pointed out the investigation papers. It is submitted that the injured had sustained serious injuries and the

nature of injuries were apparent from the photographs which were collected by the investigating machinery. He further submitted that the CCTV footages installed by the police in the nearby vicinity does not cover the place of the incident. However, as far as the CCTV cameras installed near the shop of the Applicant are concerned, the Investigating Officer has recorded the statement of the shopkeepers who have stated that the cameras are defective. He further pointed out to the statement of the eye-witnesses who are Shopkeepers of the vicinity where the incident had occurred and they have referred to the incident of assault and the overt act has been attributed to the Applicant. He also pointed out the medical documents of J.J.Hospital which shows the injuries sustained by the Complainant. It is further submitted that the injured had sustained serious injuries and therefore, no relief may be granted to the Applicant. He also pointed out that proceedings under section 107 of the Criminal Procedure Code 1973 were initiated against the Applicant at earlier point of time.

6. The said submissions were countered by the learned Advocate for the Applicant stating that in the past the said proceedings initiated were on account of N.C.Complaints lodged by the father of the Applicant. The learned APP however submitted that there were various complaints against the Applicant/Accused.

7. Perused the First Information Report and other documents annexed to the Application and the investigation papers produced by the learned APP. It is crystal clear that there are eye-witnesses to the incident who had categorically attributed the overt acts to the Applicant. The injured had sustained serious injuries which are apparent from the photographs and the medical case papers. The statement of the shopkeepers about CCTV footages installed have been recorded who have stated that the cameras are defective. Although it was submitted by the Advocate for Applicant that there was deliberate inaction on the part of Investigating Officer in collecting CCTV footages and that

they have given vague explanation, it is apparent that the police have recorded the statements of said shopkeepers regarding CCTV footages and also recorded the statements of the eye-witnesses which involves the Applicant and attributes the overt act to him.

8. Taking into consideration the aforesaid aspects, the application deserves to be rejected. Custodial interrogation of applicant is necessary in this case.

9. At this stage, learned Advocate for the Applicant on instructions submits that the Applicant would surrender to the authorities within a period of one week. However, he submits that he may be protected for a period of one week.

10. The prayer was opposed by the learned APP and the learned Advocate for the Intervener. Statement made by the learned Advocate for the Applicant that the Applicant would

surrender to police within one week is accepted as an Undertaking to this Court. Interim protection granted by this Court is extended for a period of one week. The Applicant is directed to surrender to the authorities on **8.7.2017**.

O R D E R

- (i) Application is rejected.
- (ii) The statement made by the Applicant through his Advocate that the Applicant would surrender to police within one week is accepted as an undertaking to this Court. The Applicant to surrender to police on 8.7.2017. The interim protection granted earlier by this Court to continue for one week from today.
- (iii) It is made clear that the observations made in this order are only for considering the present Application for anticipatory bail and the trial Court or any other Court should not be influenced by the same.
- (iv) Criminal Application No.572 of 2017 stands disposed off.

(PRAKASH D. NAIK, J.)

