

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1310 OF 2017

Manoj Durve	Applicant
versus	
State of Maharashtra	Respondent

Mr.Kapil Dave for Applicant.
Mr.V.V.Gangurde, APP, for State.
API Shilpa Duthade, Charkop Police Station, Zone-II, present.

CORAM : PRAKASH D. NAIK, JJ.

DATE : 26th July 2017

PC :

1. This is an application for anticipatory bail in connection with CR No.282 of 2016 registered with Charkop Police Station, Mumbai for offences punishable under Sections 354, 323, 506(2) and 504 of Indian Penal Code. The first information report was registered on 4th September 2016.

2. The applicant preferred an application for anticipatory bail before the Court of Sessions. The applicant was granted interim protection by Sessions Court vide order dated 17th December 2016. The application was rejected by Sessions Court by order dated 18th July 2017. The Sessions Court while rejecting the application for anticipatory bail has observed that ad-interim protection was granted to the applicant on 17th December 2016 and direction was given to the applicant that he shall not contact, meet or threaten the informant and the witnesses. The informant has filed non-cognizable

complaints on 30th December 2016, 21st March 2017, 10th April 2017, 13th April 2017, 4th May 2017 and 23rd May 2017 against the applicant.

3. The case of prosecution is that the complainant is an advocate by profession. She is residing at Flat No.102, Charkop Sargam Society, Plot no.4, Road No.RDP-2, Sector-1, Charkop, Kandivali (West), Mumbai since August-2013. The complainant is residing at the aforesaid premises along with her parents and two brothers. The younger brother of the complainant is also an advocate. It is alleged that the applicant is the Secretary of the society of said premises. He did not issue the transfer certificate and a false receipt was given to them. On 1st September 2016, the complainant and family members were in the house. As there was no water supply in the tap installed in her premises, mother of the complainant made inquiries in that regard. Father of the complainant proceeded to make inquiry with the watchman of the society. The complainant heard shouts of her parents and, therefore, went down in the compound of the society. She noticed that the secretary of the society (applicant) was assaulting father of the complainant. The complainant intervened. It is alleged that the applicant pulled her gown and also put his hand on her shoulder. The applicant then sat on the chest of the father of complainant and started assaulting him. The complainant then called her brother. The accused also caught hold the hand of the mother of complainant and pushed her down. The brother of the complainant was also assaulted. The applicant also threatened the parents of the complainant that they will be killed and also abused them. The residents of society then intervened. The FIR was lodged at the instance of complainant with Charkop Police Station.

4. Learned advocate for the applicant submits that false and frivolous complaint has been lodged by the complainant against the applicant. It is submitted that the applicant is engineer by profession and he is secretary of the society where applicant and complainant reside. The complainant is residing in same society in flat no.102. The complainant is not paying the maintenance as well as water charges of the society since 2013. The committee had issued notice to the complainant from time to time but she had refused to pay the society charges. Several times, warnings were issued by the committee of the society on issues like parking, wastage of water, maintenance etc. The complainant had a grudge against the applicant as he being secretary of the society. The complainant had filed non-cognizable complaints against the applicant and also threatened the applicant that he will be put behind the bars by filing cases against him. There was a water cut in the area on 1st February 2016. The applicant was talking to the watchman. It is submitted that the parents of the complainant started assaulting the applicant. Even the complainant started assaulting the applicant. Members of the society tried to intervene and tried to stop the fight. The brother of the complainant also started assaulting the applicant. It is submitted that entire incident is recorded in CCTV camera which was installed in the building premises. The FIR was lodged after three days of the incident. The applicant had also lodged non-cognizable complaint against the complainant. It is further submitted that police had recorded statements of members of society. It is submitted that CCTV footage gives clear picture and shows that entire complaint of the informant against the applicant is false. CCTV camera recorded that applicant was assaulted by the complainant and her parents.

5. The applicant had preferred an application for anticipatory bail before the Court of Sessions. The report was filed by police before the Sessions Court on 17th December 2016. In the said report, it was stated that on 1st September 2016, the complainant, her parents and brother had visited police station. They made a complaint against the applicant that they were abused and assaulted. Statement was recorded and non-cognizable complaint was recorded for offence under Sections 323, 506(2), 504 of IPC. It is further submitted that the complainant realized that on account of registration of non-cognizable complaint no action would be taken against the applicant. Therefore, she narrated the facts noted in the FIR. It was also mentioned that the inquiries were made with the persons residing in the society and it was revealed that family members of complainant and complainant, had assaulted the applicant and also abused him. The police verified the CCTV camera footage and it was found that the complainant and her family members were assaulting the applicant. It was also noted that FIR has been lodged by the complainant to cause harassment to the applicant. The Sessions Court, however, while rejecting the application for anticipatory bail, recorded that during pendency of the application and after grant of interim order, there were some non-cognizable complaints lodged by the complainant against the applicant. Learned counsel for applicant pointed out the non-cognizable complaints which are annexed to the application and the nature of allegations made in the said non-cognizable complaints.

6. Learned APP submitted that inquiries were made by police which is stated in the report dated 17th December 2016. I have

perused the documents with FIR annexed to the application. It appears that there is confrontation between the complainant and her family members with the applicant who is the secretary of the housing society. Police had made inquiries by visiting the spot and by recording statements of various persons in the housing society. They have also recovered the CCTV camera footage which gives contrary picture than narrated in the FIR in question. In the report filed before the Sessions Court, it was mentioned that the applicant was being assaulted by the complainant and her family members. Taking into consideration aforesaid circumstances, a case for grant of anticipatory bail is made out by applicant.

7. I, therefore, pass following order :

ORDER

- (i) Anticipatory Bail Application No.1310 of 2017 is allowed;
- (ii) In the event of arrest of Applicant in connection with CR No. 282 of 2016 registered with Charkop Police Station, Mumbai, the Applicant be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is directed to attend the investigating officer of Charkop Police Station, Mumbai as and when called for;
- (iv) The application is disposed of.

(PRAKASH D. NAIK, J.)