

Anand

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

BAIL APPLICATION NO.1876 OF 2016

1. Pramod Bapu Keluskar .Applicants
2. Avinash Dattatray Khedkar

Vs.

The State of Maharashtra .Respondent

Mr. A. P. Mundargi, Senior Counsel i/b. Mr. V. Hiremath, for the Applicants

Mr. S. S. Pednekar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 28.09.2017

P.C.

. Heard learned senior counsel for the Applicants and the learned APP for the Respondent – State.

2. By this Application, the Applicants seek their enlargement on bail in connection with C.R.No.477 of 2015 registered with the Dadar Police Station, Mumbai, for the alleged offences punishable under Sections 364A, 384, 387, 120B r/w 34 of the Indian Penal Code; under Sections 3 & 25 of the Arms Act; and under Sections 3(1)(II), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOCA').

3. Learned senior counsel for the Applicants submits that the Applicants have been falsely implicated in the said case. He submitted that in fact, the Complainant and the Applicant No.1 - Pramod Keluskar were close friends and that the Complainant and the Applicant No.1 - Pramod Keluskar were even involved in a DRI case (red sanders case) in 2014. He submitted that the Complainant had borrowed a huge amount from the Applicant No.1 - Pramod Keluskar and as the Applicant No.1 - Pramod Keluskar was asking the Complainant to return the said amount, he was falsely implicated in the said case. He submitted that the CDR records would also show that the Complainant was in touch with the Applicant No.1 - Pramod Keluskar much prior to the alleged incident. He submitted that the Applicant No.1 - Pramod Keluskar was also in touch with the Complainant's wife and that they alongwith their families would travel abroad for holidays. He submitted that infact, even the trap panchas in the said case, are also Complainant's close friends which will show the falsity of the case. He further relied on the CDRs and photos of the Applicant No.1 and his family taken with the Complainant's family. He submitted that the said material would show, that the Applicant No.1 - Pramod Keluskar was a close associate of the Complainant and not of accused No.1 – Ashwin Naik. He further submitted that the Applicant No.1 - Pramod Keluskar

happened to be present at the spot when the trap was laid, pursuant to which he was arrested. He further submitted that infact, the Applicant No.1 - Pramod Keluskar was in Gujarat during the period 10.12.2015 to 19.12.2015 and had come to Mumbai on the very day of the alleged trap i. e. on 20.12.2015. He further submitted that mere presence of the Applicant No.1 - Pramod Keluskar at the spot with co-accused – Ashwin Naik would not necessarily show that Applicant No.1 - Pramod Keluskar is an accomplice nor will it show that the Applicant No.1 - Pramod Keluskar was a member of the Organised Crime Syndicate and that he was involved in the continuing illegal activities of the said syndicate. Learned senior counsel further submitted that as far as the Applicant No.2 is also concerned, he too has been falsely implicated in the said case.

4. Learned APP opposes the Application. Learned APP has filed an Affidavit of Sandeep Vasant Bhagdikar, P. I. attached to the Dadar Police Station, Mumbai to oppose the Application. He submitted that the Applicant No.1 has four antecedents and the Applicant No.2 has one antecedent.

5. Perused the papers. The Complainant – Santosh Patil

alongwith two others i. e. Harish and Ramji are the partners / developers of Om Group Builders and Developers. According to the Complainant, about six months prior to the incident, their group had undertaken to re-develop Gomes Wadi at Dadar (W) and accordingly, various proposals were submitted to the Mumbai Municipal Corporation. He has stated that about four months prior to the incident, both his partners i. e. Harish and Ramji had received calls from Ashwin Naik (Original Accused No.1) on their mobiles. He has stated that Ashwin Naik had disclosed to them, that if they wanted to start re-development of Gomes Wadi at Dadar (W), they would have to pay extortion money, before the work commenced. He has stated that Ashwin Naik had disclosed to his partners, that if the said extortion money was not paid, both of them would be shot. He has stated that since Ashwin Naik was a known Gunda, neither him nor his partners lodged a police complaint as against him.

6. According to the Complainant, in November, 2015, he had been to Dubai for work and returned back to Mumbai on 07.12.2015. He has stated that on his return, he was informed by his partners that pursuant to the threats given by Ashwin Naik, they had paid a sum of Rs.10,00,000/- to Ashwin Naik.

7. The Complainant has stated that on 09.12.2015, when he was proceeding on his motor cycle, he was intercepted by five unknown persons, who were travelling in a Scorpio jeep. He has stated that one of the said persons told him that they were associates of Ashwin Naik and that Ashwin Naik had ordered them to pick him up; that out of fear, he sat in the Scorpio jeep; that when he was taken in the said vehicle, the person (Sunny) i. e. Applicant No.2 sitting besides him, showed him a revolver and threatened him to keep quiet and that on being taken to the office of Ashwin Naik, Ashwin Naik demanded Rs.50,00,000/- and 6000 Sq. feet space in the proposed construction. According to the Complainant, he pleaded with Ashwin Naik and stated that initially, the demand was of Rs.25,00,000/- and that the demand has now increased, however, Ashwin Naik threatened him and stated that in addition to the demand of Rs.25,00,000/-, he would have to give Rs.50,00,000/- and 6000 Sq. feet space, failing which he and his two partners would be eliminated. According to the Complainant, just then, the Applicant No.1 – Pramod Keluskar, entered the office of Ashwin Naik. The Complainant has stated that the Applicant No.1 – Pramod Keluskar was known to him for the last three years; that the Applicant No.1 – Pramod Keluskar abused him and stated that Rs.50,00,000/- was not a huge amount for him (Complainant) and informed Ashwin Naik that he

(Complainant) had enough money. He has stated that Ashwin Naik fed his mobile number in his mobile and thereafter, he was allowed to leave. According to the Complainant, his partner informed him on 15.12.2015 that he had been to the office of Ashwin Naik on 14.12.2015 and had paid him Rs.15,00,000/-. The Complainant has stated that Ashwin Naik again contacted him on four occasions on his mobile and demanded Rs.50,00,000/-. He has stated that on 19.12.2015 at 2.15 p.m., he received a call from Ashwin Naik, who informed him that he was standing outside his office (Complainant's office), pursuant to which he came out and found Ashwin Naik sitting in an Innova car; that when he approached him, Ashwin Naik questioned him about Rs.50,00,000/-, pursuant to which, he (Complainant) assured to pay the said amount on the next date. The Complainant has alleged that Ashwin Naik told him that he would visit his office (Complainant's office) to collect the said amount on the next date. According to the Complainant, as the Complainant was not willing to pay extortion money of Rs.50,00,000/-, he approached the police and lodged a complaint. Pursuant thereto, the aforesaid FIR came to be lodged with the Dadar Police Station on 20.12.2015. A trap was laid and the Applicant No.1 - Pramod Keluskar, Ashwin Naik and others were apprehended red handed, on the spot. Out of the two Innova cars which were used i. e. in which the Applicant

No.1 and others came, one of them belonged to the Applicant No.1 - Pramod Keluskar and one to Ashwin Naik. As far as the Applicant No.1 - Pramod Keluskar is concerned, he was apprehended on the spot alongwith Ashwin Naik, accepting extortion money. The submissions advanced by the learned senior counsel for the Applicants, that the Applicant No.1 was known to the Complainant and that they were friends, that there are several calls exchanged between the Applicant No.1 and the Complainant and his wife, photographs etc., is the Applicant No.1's defence, which will be considered at the time of trial. Although, it is contended by the learned senior counsel for the Applicants that the Applicant No.1 was in Gujarat from 10.12.2015 to 19.12.2015 and had come only on 20.12.2015 in the morning, the fact remains, that the Applicant No.1 - Pramod Keluskar was present on both the aforesaid dates i. e. 09.12.2015 & 20.12.2015 alongwith Ashwin Naik, when extortion money was demanded and also when trap was laid. The CDR records also show that the Applicant No.1 - Pramod Keluskar was in touch with Ashwin Naik. As far as the Applicant No.2 – Avinash Khedkar is concerned, the material on record shows, that he had abducted the Complainant on 09.12.2015 and had threatened him by showing a revolver and had taken the Complainant to Ashwin Naik's office, where the Complainant was threatened and was demanded

extortion money. Applicant No.2's friend, has in his statement corroborated the incident of 09.12.2015, which clearly shows the Applicant No.2's complicity in the Complainant's abduction. The tower location of the Applicant No.2 - Avinash Khedkar shows his presence at the spot, where and when the incident of 09.12.2015 and 20.12.2015 took place. According to the prosecution, the Applicant No.2 - Avinash Khedkar was not apprehended at the spot, as he escaped from the spot, however, the CDR records show that Applicant No.2 - Avinash Khedkar's tower location at the spot.

8. Considering the prima facie material on record as against the Applicants, this is not a fit case to enlarge the Applicants on bail. Hence, the Application stands rejected.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)