

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1960 OF 2016

Pappu Champarao Dokhare

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Ms. Mallika Ingale Advocate for Applicant.

Mr. Deepak Thakare APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 11th JANUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 05/02/2015 in crime no. 41 of 2015 registered at M.H.B. Colony Police Station for offence punishable under sections 195 (A), 506 (2), r/w 34 of the Indian Penal Code. Investigation is completed and charge-sheet is filed on 27/03/2015.

2) The present application is an application under Section 439 of the Code of Criminal Procedure, 1973 and it is submitted across the bar that the applicant has been in jail for more than one year approximately 15 months. The applicant is an accused in Sessions Case No. 100 of 2015 and the

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allegation against the present applicant is that he had threatened the witnesses in Sessions Case No. 9 of 2013. The applicant is not an accused in Sessions Case No. 9 of 2013. On the earlier occasion, the application seeking enlargement on bail was withdrawn and at that juncture, this Court had requested learned Sessions Judge to expedite the recording of evidence as far as possible in Sessions Case No. 100 of 2015. The learned Counsel for the applicant submits that the applicant had cooperated. However, till 5th March, 2016, charge was not framed and therefore, on 5th March, 2016, the applicant herein had filed an application seeking discharge.

3) Perused the first information report. In the present case, the applicant is being prosecuted for the offence punishable under Section 195A and 506B read with Section 34 of the Indian Penal Code. The complainant had produced cell phone on which the alleged threat was given by the present applicant. From the said conversation, it appears that the applicant had called upon the complainant. The cell phone was seized at the time of arrest panchanama i.e. on 5/2/2015. The panchanama was recorded on the same day. The panchas and the police officers had heard the conversation. The transcript of the conversation prima facie does not indicate that any threat was extended to the

complainant by threatening him of dire consequences or any intimidation. In the first information report, the complainant has stated that the applicant had threatened him by saying that he shall not depose against the principal accused in Sessions Case No. 9 of 2013.

4) Section 506 II is a noncognisable and bailable offence, whereas Section 195A of the Indian Penal Code reads as follows :

[195A. [Threatening any person to give false evidence].—

Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one

in whom that person is interested, with intent to cause that

person to give false evidence shall be punished with

imprisonment of either description for a term which may extend

to seven years, or with fine, or with both;

and if innocent person is convicted and sentenced in consequence of

such false evidence, with death or imprisonment for more than seven

years, the person who threatens shall be punished with the same

punishment and sentence in the same manner and to the same extent

such innocent person is punished and sentenced.]

5) Punishment contemplated for offence punishable under Section 195A is imprisonment which may extend to 7 years or with fine or with both. Section

195A is a clause which contemplates penalty. Section 506 of the Indian Penal Code is a noncognisable and bailable offence.

6) Taking into consideration the intention of legislature in drafting Section 41(a)(b)(i)(ii) of the Code of Criminal Procedure, 1973, the Hon'ble Apex Court in the case of **Arnesh Kumar v/s. State of Bihar** (2014) 8 SCC 273 has observed thus :

“Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest.”

It is further observed that :

“We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”

7) Clause 10 Section 195A of the Code of Criminal Procedure, 1973 reads as under :

“195A. Procedure for witnesses in case of threatening, etc. A witness or any other person may file a complaint in relation to an offence under Section 195A of the Indian Penal Code(45 of 1860).”

“Complaint” means a written report to the Court. In the present case, admittedly the statement of the first informant is recorded under Section 154 of the Code of Criminal Procedure, 1973. It is true that Section 195 of the Code of Criminal Procedure, 1973 denotes the word “may”. But Section 195 (a)(b)(i) of the Code of Criminal Procedure, 1973 specifically 'bars' taking cognizance of an offence punishable under Section 193 to 196 of the Indian Penal Code except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf or of some other Court to which that Court is subordinate.

8) Charge-sheet is filed against the applicant under section 195 (A) and 506 (2) of the Indian Penal Code. The co-accused has been enlarged on bail by this Court vide order dated 03/05/2016. Applicant would deserve bail on the ground of parity also as principal allegation is against the co-accused Nilesh Shetty. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal

Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
- (iii) Applicant shall not entered into Mumbai and Navi Mumbai till the conclusion of the recording of evidence in Sessions Case No. 9 of 2013. Applicant shall furnish his residential address to the Investigating Officer.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)