

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2010 OF 2017

GIRISH BALKRUSHNA NAIR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Yashpal Thakur a/w. Mr.Munaf Virjee i/b. ABH Law LLP,
Advocate for the Applicant.

Mr.Avinash Kamkhedkar, APP for the Respondent – State.

Mr.D.K.Shaikh, Police Sub-Inspector, Virar Police Station, present
in the court.

CORAM : A. M. BADAR, J.

DATE : 17th NOVEMBER 2017

P.C. :

1 The applicant/accused in Crime No.0589 of 2017
registered with Virar Police Station for offences punishable under
Sections 188 read with 348 of the Indian Penal Code (IPC), under
Rules 5 and 6 of Noise Pollution (Regulation and Control) Rules,

2000, Section 15 of the Environment Protection Act, 1986, and under Sections 33, 38, 131, 136 of the Maharashtra Police Act, by this application, is seeking pre-arrest bail.

2 Heard finally, by consent of both parties.

3 Perusal of the First Information Report (FIR) lodged by Police Constable Kalpesh Keni of Virar Police Station shows that after taking entry in the Station Diary, he along with his police party left the police station to check sound level of music speakers during immersion ceremony of Ganesh Festival. This happened on 26th August 2017. As per version of the First Informant, procession of immersion of Lord Ganesh of Sameer Jatkara was proceeding and in that procession, DJ Sound System was played with loud music after the permitted hours. The sound level of that DJ Sound system was measured and found to be 109.6 decibel, which was more than permitted level. Accordingly, panchnama was prepared.

4 The FIR itself shows that spot inquiry revealed that the sound system is owned by one Girish Nair i.e. the present applicant/accused. This recital in the FIR itself shows that First Informant was not present on the scene of occurrence at the time of the incident in question.

5 The learned advocate appearing for the applicant/accused argued that the applicant/accused is the owner of a firm named Alara Music System which deals in business of renting out DJ Dolby musical system. The learned advocate further argued that on the relevant date, the music system was given on hire and the present applicant/accused was in no way concerned with playing loud music.

6 The learned APP opposed the application by contending that the FIR itself shows contravention of provisions of law by playing loud music by using the music system owned by the present applicant/accused.

7 I have carefully considered the rival submissions and also perused the material placed on record. Section 15 of the Environment Protection Act, 1986, prescribes for penalty for contravention of provisions of said Act which amounts to imprisonment for 5 years and fine, which may extend to Rs.1 lakh. Provisions of Rule 5 of the Noise Pollution (Regulation and Control) Rules appears to have been invoked by the prosecution. The said Rule deals with restriction of use of loud speakers. The person desirous of using the loud speaker or sound producing instrument is required to obtain written permission from the authority. The said Rule regulates use of sound producing instrument, and consequences in breach thereof, is provided in Rule 6.

8 The prosecution case reflects that the applicant/accused is the owner of the music system which was let out on hire to the end user i.e. the co-accused Sameer Jatkara. In this view of the matter, considering the nature of allegations

against the present applicant/accused, his custodial interrogation is not warranted, and hence, the order :

ORDER

- i) The application is allowed.
- ii) In the event of arrest in Crime No.0589 of 2017 registered with Virar Police Station for offences punishable under Sections 188 read with 348 of the Indian Penal Code, under Rules 5 and 6 of Noise Pollution (Regulation and Control) Rules, 2000, Section 15 of the Environment Protection Act, 1986, and under Sections 33, 38, 131, 136 of the Maharashtra Police Act, the applicant / accused shall be released on bail on his executing P.R.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount.
- iii) The applicant / accused shall not tamper with the prosecution evidence.
- iv) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.

- v) The applicant / accused shall attend the concerned Police Station on 24th November 2017 and 28th November 2017 between 11.00 a.m. and 1.00 p.m. till filing of the charge-sheet, and shall co-operate the Investigator in the investigation of the crime.
- vi) The application is disposed of.

(A. M. BADAR, J.)