IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2200 OF 2016

Mr. Tanaji Balasaheb Gambhire … Applicant/
(Ori. Accused No.1)

Versus

State of Maharashtra ...Respondent

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Mr.A.P.Mundargi, Senior Advocate i/b. Mr.Prashant Darandale for the Applicant.
Mr.S.S.Pednekar, APP for the State/Respondent.
Mr.R.B.Paranjpe for the Original Complaint.
Mr.Tushar Pachpute, PSI, Bundgarden Police Station, Pune (present)

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**CORAM : MRS.MRIDULA BHATKAR, J.**
**DATE : 19th January 2017**

P.C.:

1. This application is moved for pre-arrest bail by the applicant-accused under section 438 of Cr.P.C. The complainant Atul Jaiprakash Goyal, who is a builder and the director of Goel Ganga Developers (I) Pvt. Ltd., Pune has given a complaint against the applicant-accused on 14th November 2016. The applicant-accused has booked a flat in the construction of the complainant company by registered agreement of sale deed dated 5th August 2010 for total consideration of Rs. 38,56,375/-. Thereafter, the applicant-accused from

time to time paid an amount of Rs. 32,35,208/- towards the consideration, and at the time of registration of the offence an amount of Rs. 6,21,167/- was balance from the applicant –accused.

2. It is the case of the complainant that the applicant-accused did not pay the said amount, but he wanted the flat for lesser price i.e. the amount which he had paid. He started harassment of the complainant in various ways. The applicant-accused did not want to pay the balance amount, and therefore he started threatening the complainant by implicating falsely in various cases. The applicant-accused has filed a complaint against the complainant before the Consumer Forum on 22nd February 2012. The Consumer Forum has rejected the prayer of the applicant-accused seeking permission to waive the balance amount of Rs. 6,21,167/- by order dated 20th November 2014. It is the case of the complainant that thereafter the applicant-accused lodged a false case against him under MOFA before the Court of J.M.F.C, Pune at case no. 1359 of 2012. Thereafter, the applicant-accused approached the National Green Tribunal, Pune by making false allegations that the complainant has violated the rules and regulations of the Environment Protection Act, 1986 while constructing the buildings, and thereafter the complainant has received a notice on 25th June 2015 from National Green Tribunal, Pune. Apart from these cases,

the applicant-accused alongwith his wife started defaming the complainant by approaching one Marathi channel and gave false information, and also made incorrect statement on the channel. Thus, the reputation of the complainant was spoiled and his image in the society was lowered down. Thereafter, the applicant-accused through a reporter, namely, Datta Kanvate and Tushar Paygude and Amit Thakkar demanded ransom of Rs. 10 lacs initially in December 2015 in Pune club which the complainant paid to the middleman Tushar Paygude and thereafter again through one Amit Thakkar, the applicant-accused demanded Rs. 5 crores from the complainant. Thus, it is the case of the complainant that the applicant-accused by putting him to the threat of injury to his reputation and compelled him to part with Rs. 10 lacs. It is the case of the complainant that thereafter, on 22$^{nd}$ May 2016, in the afternoon the applicant-accused alongwith his friends met the complainant in one hotel West-In Mumbai and pressurized him to settle the matter. On 20$^{th}$ June 2016, the complainant has paid Rs. 10 lacs to one person for the applicant-accused, and therefore he lodged a complaint against the applicant-accused and his wife, which is registered on 14$^{th}$ November 2016 at C.R.No. 305/2016 with Bundgarden Police Station. Hence, this Anticipatory Bail Application.

3. The learned counsel for the applicant-accused has submitted that

the applicant-accused has not committed any offence of extortion. He further submitted that the applicant-accused booked a flat in one Amrut Ganga Housing Society, a project of the complainant and also paid an amount of Rs. 32,35,208/-He admits that cash of Rs. 6,21,167/- is still due. He submits that amount was not paid because the flat which was offered to the applicant-accused was not given as per the specifications given in the agreement of sale, and therefore the applicant-accused has lodged a complaint before the Consumer Forum, and also under MOFA before the learned Magistrate. These two cases are pending. The complainant has violated a number of rules and regulations under the Environment Protection Act, 1986 and therefore the applicant-accused has collected the information and gave it to media. The learned counsel further submitted that the applicant-accused has not committed any offence, and he has never asked for any ransom of Rs. 20 lacs from the complainant.

4. Both the learned counsel for the complainant and the learned prosecutor have opposed the application. The learned prosecutor has submitted that the applicant-accused has been committing offence continuously against the complainant. He has demanded Rs. 10 lacs through one Tushar Paygude and Datta Kanvate and the said amount was accepted in December 2015, and thereafter the complainant was compelled to part with money of Rs. 10 lacs in May

2016, as the applicant-accused has been repeatedly trying to fill the information to media and a particular Marathi channel. The learned prosecutor further relied on the statements of the complainant and also the witnesses. The learned prosecutor also relied on confession of Datta Kanvate. He submitted that Tushar Paygude and Datta Kanvate are accused in C.R. No. 17 of 2016 with Bundgarden Police Station for the offence of extortion. In the said case, Datta Kanvate has stated that the applicant-accused is continuously contacting the said channel and gave information against the complainant activities and making charges that the complainant has been violating the rules under the DC Rules, and his constructions are illegal. In his confession, he further submitted that he became suspicious about the bonafide intentions of the applicant-accused, as he was continuously giving information against the complainant. The learned prosecutor further submitted that the police are investigating the matter, and some time is to be given to the Investigating Officer to collect more information against the applicant-accused. The learned prosecutor relied on Call Detail Records (CDR) of the cell numbers of the applicant-accused, Datta Kanvate and Tushar Paygude, as they are continuously in touch with each other.

5. Perused the F.I.R. and the confession of Datta Kanvate. The offences, for which the applicant-accused is prosecuted, except the offences of cheating and extortion, are bailable. The applicant-accused

has booked a flat with the complainant and has paid Rs. 32,35,208/- out of Rs. 38,56,375/-. The complaint itself shows that the applicant-accused is litigating the matter before various fora, as the flat is not as per the specifications given in the agreement of sale. It appears that the applicant-accused is sufferers and has not left any method to get his dues from the complainant. He has contacted media and through media he has tried to expose the complainant. If at all the offence of defamation is constituted, then it is bailable. So far as, extortion and cheating are concerned, as per the case of the complainant, prima facie, there are two incidents of payment of ransom amount of Rs. 10 lacs each in December 2015 and in May 2016.

6. It appears from the records and documents produced herein that the complainant has filed a separate complaint of extortion against Tushar Paygude and Datta Kanvate, which is registered at C.R. No. 17/2016 with Bundgarden Police station. As per the case of the complainant, the money was given to Tushar Paygude as per the demand made by the applicant –accused. However, the name of the applicant-accused was not mentioned in the said F.I.R.. Moreover, prima facie there is no evidence to show except the bare words of the complainant that he paid Rs. 10 lacs on 20th June 2016 to an agent of the applicant-accused.

7. Thus, it appears that from this submission of the learned counsel for the complainant and the learned prosecutor that the applicant-accused is approaching out of vengeance. However, there is no sufficient evidence to accept that the applicant-accused has blackmailed the complainant. In this matter, the complainant has received money near to 80% to 85% of the amount of the consideration of flat from the applicant-accused and therefore the applicant-accused has suffered financially when the flat is not given to him. Moreover, on query, I am informed by the learned prosecutor, on instructions, that there are no complaints against this applicant-accused of blackmailing or extortion of any other person. I am of the view, that considering the documents and other evidence placed before the Court, custodial interrogation of the applicant-accused is not required.

8. Hence, Anticipatory Bail is granted to the applicant-accused on the following terms and conditions:

ORDER

(i) In the event of arrest, the applicant-accused be released on bail on furnishing P.R. Bond in a sum of Rs. 20,000/- (Rupees Twenty Thousand only) with one or two solvent sureties in the like amount.

(ii) The applicant- accused shall co-operate with the Investigating Officer and attend the concerned police station on every Monday from 10.00 a.m. to 11.00 a.m., till the filling of the charge-sheet.

(iii) The applicant-accused shall not tamper with the evidence or pressurize the complainant.

(iv) The applicant -accused shall not indulge into any criminal activity.

(v) The applicant –accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.

9. Anticipatory Bail Application is disposed of accordingly.

**(MRIDULA BHATKAR, J.)**