IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.783 OF 2016
(Tushar Vishwanath Pathak and another vs. State of Maharashtra)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Shri P.V. Navlani, Advocate for applicants.
Shri N.H. Joshi, Additional Public Prosecutor for respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 23, 2017

Heard learned Counsel for both sides.

This is an application for anticipatory bail by applicant nos.1 and 2, who are son and mother respectively, in Crime No. 930/2016 registered under Sections 447, 379 and 506 read with Section 34 of Indian Penal Code and Section 3(1)(v) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

Shri Navlani, learned Counsel for applicants, has filed Bank statement of applicants, which is taken on record.

Shri Navlani, learned Counsel for applicants, has submitted that false complaint is lodged against applicants by complainant, who had initially some dispute with regards to shop purchased by him from applicants. However, as agreed between complainant and applicants, applicants had returned back amount of Rs.7 lakhs to complainant, which they had accepted for shop premises. In spite of that, false report is lodged by complainant alleging that amount of Rs.7 lakhs returned by applicants by cheque was not paid by the concerned Bank for want of necessary funds.

Shri Navlani, learned Counsel for applicants, to falsify the contents of report has relied upon Bank statement of applicants as well as say of prosecution filed before learned trial Court wherein it is specifically stated that prior to lodging of report, i.e. on 21/7/2016 applicants had already made payment of Rs.7 lakhs to complainant.

In the background of facts as aforesaid, it appears that complainant had lodged report with reference to shop No. G-1 which, according to stamp paper valuation, was purchased by him from applicants for Rs.7 lakhs on 10/12/2015. Thereafter complainant started his business of sale of shoes. However, on 15/7/2016, 16 cartons containing shoes, valuing Rs.2,50,000/- were missing and, therefore, complainant lodged report against applicants alleging that they had committed theft of his articles from the shop. It is alleged in the report that as complainant was not handing over possession of shop, he was threatened by applicants and, therefore, applicants committed theft.

From the contents of report, it is prima facie found that due to strained relations between applicants and complainant and admittedly since prior to lodging of report dated 8/11/2016, i.e. on 21/7/2016, according to say of prosecution, amount of Rs.7 lakhs appears to have been returned by applicants to complainant and as applicants are found not to have handed over premises to complainant, false report appears to have been filed against them. It is material to note that though according to report, it is stated that cheque of Rs.7 lakhs issued by applicants was not honoured by the Bank for want of funds, from the copy of Bank statement of applicants, it is found that on 30/7/2016, there were sufficient funds in the applicants' Account with The Amravati Merchants Cooperative Bank Ltd., VMV Branch, Amravati.

In that view of the matter, interim protection granted to applicants on 1/12/2016 stands confirmed on the same terms and conditions with further direction to applicants to attend Investigating Officer as and when called till filing of the charge-sheet. The criminal application is accordingly allowed.

JUDGE

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