

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO. 295 OF 2017

JAIRAM RADHYOMAL NIHLANI., ... Applicant

Versus

STATE OF GOA, AT THE INSTANCE OF
ANJUNA POLICE STATION, ANJUNA AND
ANR., ... Respondents

Shri S. S. Kantak, Senior Advocate with Shri M. S. Joshi and
Shri K. Simoes, Advocates for the applicant.

Shri S. R. Rivankar, Public Prosecutor for the respondents.

Shri S. G. Dessai, Senior Advocate with Shri G. Teles, Advocate
for the intervenor.

Coram:- C. V. BHADANG, J.

Date:- 27th February 2018

P.C.

This is an application for pre-arrest bail.

2. The applicant is apprehending arrest in connection with investigation of Crime No.79/2016, registered with Police Station, Anjuna, under Sections 384, 388, 420, 467, 468, 471, 474, 109, 114, 115, 182, 193, 195, 199, 200, 205, 201, 120-B read with Section 34 of Indian Penal Code (IPC). The applicant happens to be the accused no.8 in the said crime.

3. The gravamen of the allegations are that there is a property

dispute between the complainant Kishor Keswani and the accused no.1 Anil Jaisinghani in respect of certain properties situated at Ulhasnagar. It was alleged in the complaint that in order to pressurise and dispossess the complainant Kishor Keswani, a false case of rape was got registered against the complainant Kishor Keswani at Police Station, Anjuna. Apart from the girl, who was allegedly involved in the conspiracy along with Anil Jaisinghani, there are 11 other accused in the crime. Indisputably, a chargesheet has been filed in the case, reserving a liberty to file an additional chargesheet. One of the main accused i.e. Tulika Katare has since been released on regular bail by this Court.

4. The impugned order does not show that the learned Additional Sessions Judge had come to the conclusion that custodial interrogation of the applicant is necessary. The learned Sessions Judge, after noticing the criminal antecedents of the accused Anil Jaisinghani, who is said to be a history sheeter and after noticing various cases registered against him in para 13 of the impugned order, has found that this is not a fit case to grant pre-arrest bail, looking to the nature of the offences committed. This is how, the applicant has approached this Court under Section 438 of Cr.P.C.

5. I have heard Shri Kantak, the learned Senior Counsel for

the applicant, Shri Rivankar, the learned Public Prosecutor for the respondents and Shri Dessai, the learned Senior Counsel for the complainant/ intervenor. Perused record.

6. It is submitted by Shri Kantak, the learned Senior Counsel for the applicant that there is no prima facie case made out against the applicant to show the complicity of the applicant in the alleged crime. It is submitted that mere fact that there is a propriety dispute between the complainant and Mr. Anil Jaisinghani, would not be sufficient to prima facie come to the conclusion that the applicant was a party to the conspiracy to falsely implicate the complainant in a rape case. It is submitted that the girl, in her statement under Section 164 of Cr.P.C., has not named the present applicant as being party to the said criminal conspiracy. In so far as non-co-operation of the applicant with the Investigating Agency is concerned, it is submitted that notice under Section 41 of Cr.P.C. was never served on the applicant. It is further pointed out that the applicant had attended before the Magistrate and had even furnished bail bonds as a condition for cancellation of a non-bailable warrant. It is submitted that the custody of the applicant is not required, once the investigation is complete and the chargesheet is filed and as such, the applicant is entitled to pre-arrest bail.

7. Shri Rivankar, the learned Public Prosecutor submits that

the investigation although is complete and chargesheet is filed, liberty is reserved to conduct further investigation and to file an additional chargesheet, if necessary. It is, however, not disputed that Tulika Katare has not named the applicant as one of the persons, who is a party to the criminal conspiracy.

8. Shri Dessai, the learned Senior Counsel for the intervenor submitted that once the application under Section 438 of Cr.P.C. is rejected by the learned Sessions Judge, it would not be open to this Court to entertain a similar application again in as much as the jurisdiction under Section 438 of Cr.P.C., is concurrent jurisdiction. In so far as the merits are concerned, it is submitted that one of the offences under Section 467 of IPC is punishable with imprisonment for life and other offences are punishable with imprisonment up to seven years. It is submitted that the offences are serious and the antecedents of the applicant and his conduct of non-co-operation with the Investigating Agency, disentitles him from getting pre-arrest bail. The learned Senior Counsel has pointed out two messages, purportedly from the Government of Maharashtra, acknowledging receipt of a complaint dated 19/12/2017, filed by the intervenor/ complainant about the alleged threat held out by Anil Jaisinghani and others to the complainant. The said messages are dated 06/01/2018 and 08/01/2018. He, therefore, submits that this is not a fit case for grant of pre-arrest bail.

9. I have carefully considered the rival circumstances and the submissions made.

10. At the outset, the submission that on rejection of the application under Section 438 of Cr.P.C. by the learned Sessions Judge, it would not be open to this Court to entertain a similar application, cannot be accepted and has to be rejected. The jurisdiction under Section 438 similar to Section 439 of Cr.P.C., is concurrent. Merely because the jurisdiction exercised by the learned Sessions Judge and by this Court under Section 438 of Cr.P.C. is concurrent jurisdiction, would not preclude this Court from entertaining the application in the wake of rejection of an application by the learned Sessions Judge.

11. Coming to the merits of the matter, the gravamen of the allegations are that the accused no.1 Anil Jaisinghani alongwith the accused no.2 Tulika Katare, had hatched a conspiracy to falsely implicate the complainant in an offence of rape in respect of which, FIR No.17/2016 was lodged by Tulika Katare with Police Station, Anjuna. The offences as registered against the applicant reveal that except an offence under Section 467 of IPC, all other offences are punishable upto seven years of imprisonment. Section 467 of IPC pertains to forgery of valuable security, will or an authority to make or transfer any

valuable security or to receive any money, etc. It also includes an offence where the valuable security is a Promissory Note of the Central Government. A specific query was made to the learned Public Prosecutor as to how prima facie this offence can be said to be made out in the context of the allegations in the complaint and what is the valuable security, which is forged. At this stage, there is no explanation forthcoming as to which is the valuable security allegedly forged by the applicant as a part of conspiracy, so as to attract an offence under Section 467 of IPC. On the contrary, it is submitted by the learned Public Prosecutor, on instructions from the Investigating Officer, that an offence under Section 388 of IPC was added, which has subsequently been removed.

12. In so far as the reliance placed on two messages dated 06/01/2018 and 08/01/2018 are concerned, it is not known what is the outcome of any investigation in the complaint referred to in the said messages. Even from the messages as produced on record, it does not appear that the applicant has been named as one of the conspirators or a person, who has held out the alleged threat of killing.

13. Be that as it may, the fact remains that the material offences are punishable with imprisonment not in excess of seven years. Prima facie, at this stage, in her statement under

Section 164 of Cr.P.C., Tulika Katare has not named the applicant as one of the conspirators. Considering the fact that one of the main accused i.e. accused no.2 has been released on regular bail and further having regard to the fact that the investigation is complete at this stage and chargesheet is filed and looking to the fact that the material offences are not punishable with imprisonment in excess of seven years, I find that the custodial interrogation of the applicant would not be necessary and the applicant can be released on pre-arrest bail. The apprehension expressed on behalf of the complainant can be taken care of by imposing appropriate conditions.

14. In the result, the following order is passed :

- (i) In the event of arrest in connection with investigation of Crime No.79/2016 of Police Station, Anjuna, the applicant shall be released on bail on executing a P. R. Bond in the sum of Rs.50,000/-, with one or two solvent sureties in the like amount.
- (ii) The applicant shall co-operate with the Investigating Agency as and when required and shall not directly or indirectly influence or tamper with the prosecution evidence or the witnesses.
- (iii) The applicant shall furnish his permanent address along with proof before the Investigating Officer as also the

learned Magistrate.

(iv) The applicant shall not leave the country without prior permission of the learned Magistrate.

(v) In the event of breach of any of the conditions, the bail is liable to be cancelled.

(vi) The application is disposed of in the aforesaid terms.

C. V. BHADANG, J.

SMA