

Rane

1/10 ABA-1512-2018 A/W.
ABA-1513-2018 (SR. 903)
22.12.2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1512 OF 2018

Menka Shivraj Rathod ...Applicant

V/s.

The State of MaharashtraRespondent

ALONGWITH

ANTICIPATORY BAIL APPLICATION NO. 1513 OF 2018

Shivraj R. RathodApplicant

V/s.

The State of MaharashtraRespondent

* * * * *

Shri. Aniket Nikam I/by. Mr. Aashish Satpute, Advocate for
the applicants.

Mr. H.J. Dedhia, APP for the respondent-State.

Coram : Sandeep K. Shinde, JJ.

Saturday, 22nd December, 2018.

P.C. :

1. These are two applications for pre-arrest bail in Crime No. 347 of 2018 dated 4th July, 2018 registered at Vijapur Naka Police Station, Solapur for the offences punishable under Sections 363, 364A, 324, 379, 143, 147, 148, 504 and 506 of the Indian Penal Code.

2. Vide order dated 30th July, 2018 ad-interim relief was granted to the applicants on certain terms and conditions. One of the terms was to report to the concerned Police Station on 2nd, 3rd and 4th August, 2018 and co-operate with the investigating agency.

3. Heard learned Counsel for the applicant and learned APP for the State.

4. On 19th December, 2018 these applications were heard. It was submitted on that day by the learned APP that in all, there are five accused in this C.R. out of which three are absconding. It was also submitted that the applicants

herein were not co-operating with the investigating agency. It was submitted that, they were not giving information or particulars of the absconding accused. It was submitted that the absconding accused are driver, brother of applicant no.1 (Menka), and third one is Assistant working with Menka Shivaji Rathod who is the Sitting Corporator of the Corporation. At the request of the learned Counsel for the applicant, the hearing was adjourned to 20th December, 2018. On that day, it was submitted by the learned Counsel for the applicants that the two accused surrendered to the police in evening on 19th October, 2018. The learned APP wanted to verify this fact and therefore the hearing was adjourned and kept today.

5. The applicant in Application No. 1512 of 2018 (Menka) is a Sitting Corporator . Her husband (applicant in Application No. 1513 of 2018) is a public servant. They are accused nos.1 and 2 in the subject crime.

. It is alleged that, on 4th July, 2018 at about 8.30 a.m. accused nos.2, 3 and 4 abducted the complainant from his house at the instance of accused nos.1 and 2 (applicants

herein) and was taken to the house of the applicants. He was severely beaten by wooden stumps for ransom of Rs.20,00,000/- allegedly spent by the applicants in the elections. It appears from the complaint that, the complainant had campaigned in the elections for the opposite party and resultantly the applicant lost the elections of the Market Committee. It is further alleged that, accused nos.2 , 3 and 4 caught hold of the complainant which facilitated Shivraj Rathod to beat the complainant with wooden stumps. It appears the complainant was let off after sometime.

6. The learned Counsel appearing for the applicants submits that, to the given set of facts, the penal provisions of Section 363 and Section 363-A, 364-A of the Indian Penal Code cannot be applied. He submits that the alleged incident had taken place at 8.30 a.m. whereas the proforma/FIR shows that the FIR was registered at 27.37 hrs. He has pointed out a discrepancy in the FIR as it indicates at 11.36 a.m., the information was received, whereas the FIR was registered at 23.37 hrs. It is

submitted that the complaint has been lodged out of political rivalry and the delay in the registration of the FIR would indicate the allegations in the complaint were manipulated within the passage of time i.e. between the alleged incident and time at which the FIR was registered. It is also submitted that the applicants were co-operating with the investigating agency and had attended the Police Station as directed by this Court. It was submitted that the complainant had received simple injuries and that the complainant is an habitual offender as could be seen from the observations made by the learned Additional Sessions Judge in his order which is page-26 of his application. It is lastly submitted that the Menka Shivraj Rathod is a Sitting Corporator and her husband is a Public Servant and as such they have firm roots in the Society and would always be available for investigation. It is submitted that the investigation is over and their custody would not further the case of the prosecution. It is further submitted that, the applicants may be granted anticipatory bail on such terms and conditions as this Court may deem fit and proper.

7. On the other hand, the learned APP has brought to my notice, the statement of witnesses who had seen that on 4th July, 2018, the complainant was abducted on the motorcycle by two unknown persons. This witness is a neighbour of the complainant. Besides, there is a statement of the wife of the complainant reiterating the allegations of abduction. It may also be stated that, statement of one, Police Constable No. 581 was recorded on 5th July, 2018 which shows that the wife of the complainant with two other women, soon after the incident, went to ITI Police Chowky and reported the incident to the said Police Constable. Yet there is another statement of the Constable. Therefore in the Proforma FIR, time at which information was received i.e. 11.36 a.m. has been correctly recorded. It is stated that the information was received at 11.36 a.m..

8. The learned APP has also submitted the case diary for perusal. It shows that, on 4th July, 2018 wife of the complainant with two women had been to ITI Police Chowky and reported the incident to Police Constable No. 581. It further appears, the complainant was taken to the Hospital

and therefore though the information was received at 11.56 a.m. FIR was registered at 23.37 hours. Thus, I do not agree with the submission of the learned Counsel for the applicant that, there was a delay in registration of the FIR to facilitate the complainant to manipulate the allegations.

9. This Court, while granting interim order directed the applicants to attend the Police Station. It is submitted that the remaining three accused were the close associates/relatives of the applicants. Accused no.5 is the brother of Menka-the applicant herein. It is submitted that, the applicants did not co-operate with the Police as they avoided to give particulars/information of their whereabouts. In the remand report dated 4th August, 2018 it was submitted by the Investigating Officer that on the date of the incident i.e. 4th July, 2018 the applicants were in contact with accused nos.3, 4 and 5 on their respective cellphones. On this ground, the custody was sought at the remand stage. The submissions are based on the CDR reports. Thus, the CDR report indicates that before the actual incident of abducting the complainant, accused nos.1

and 2 were in contact with accused nos.3, 4 and 5. Be that as it may, a Scorpio Car which was allegedly used for abducting the complainant belongs to the applicant-Corporator.

9. Though the complainant had received simple injuries as could be seen from the Medical Certificate, the fact remains that, there is material on record to indicate that the complainant was abducted from his house and thereafter brought to the house of the applicants. As to whether the provisions of Section 364A has application to the facts of the case or not, cannot be decided at this stage. However, taking into consideration, the facts of the case and the material placed before me for perusal, in my view, the applicants do not deserve relief of anticipatory bail. It may also be stated that, both the applicants are Public Servants and though they may be available for investigation, the fact remains that, they did not co-operate with the investigating agency till 19th December, 2018. I say so, because on 19th December, 2018 when the matter was taken up for hearing, it was informed by the learned APP that three accused were

absconding and their whereabouts were not parted with by the applicants. The learned Counsel appearing for the applicants, thus sought time to verify this fact. When this Court was not inclined to grant relief on the ground that applicants were/are not co-operating with Police by not disclosing the whereabouts of absconding accused, who are their relatives/associates, immediately on the same day i.e. on 19th December, 2018 in the evening out of three, two accused surrendered. This clearly indicates the whereabouts of these two accused were well within the knowledge of the present applicants and therefore it is to be recorded and stated that the applicants did not co-operate with the police and thereby breached the terms and conditions on which they were granted ad-interim reliefs. That even otherwise, investigation may not proceed effectively, if the applicants are granted pre-arrest bail. They are influential persons in the locality. The accused no.5 is yet not available for interrogation. Thus, taking into consideration, the facts on record and the material placed on record for my perusal, I pass the following order :

Rane

10/10 ABA-1512-2018 A/W.
ABA-1513-2018 (SR. 903)
22.12.2018

ORDER

- (i) Both the Bail Applications are rejected accordingly.
- (ii) At this stage, the learned Counsel for the applicants prays that ad-interim protection granted to the applicants may kindly be extended. The prayer is rejected in view of the facts of the case stated hereinabove.

(SANDEEP K. SHINDE, J)