

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (BAIL) NO.206 OF 2019

Imran Qazi

.... Applicant

V/s

State through the Public Prosecutor & Anr. Respondents

Shri Arun Bras De Sa, Advocate for the Applicant.

Shri S.R. Rivankar, Public Prosecutor for Respondent No.1.

Shri A.D. Bhobe, Advocate for Respondent No.2.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 28th August, 2019

ORDER :

By this application under Section 438 of the Code of Criminal Procedure, the petitioner who is a businessman seeks protection from his arrest in Crime No.111/2019 registered with Ponda Police Station for the offences under Sections 354, 354(D), 504, 506(ii), 509, 498A read with 34 IPC.

2. The learned Additional Sessions Judge had rejected similar prayer of the applicant by her order dated 31/07/2019 mainly on the ground that the investigation was then in progress.

3. Interestingly, complainant is the wife of the applicant

whose relations have been strained since last more than one and half years on various counts. It is alleged that on 06/01/2018, the complainant was abused and threatened as well assaulted by the applicant at her matrimonial house for which a Crime No.6/2018 under Sections 504, 313, 506 of IPC was registered against him. The trial is pending in the Court of JMFC, Ponda.

4. The complainant has, inter alia, filed proceedings under the Domestic Violation Act, which are also pending before the same Court.

5. The incident in question alleged to have occurred on 02/05/2019 at about 13.00 hrs. when the complainant was returning to her residential house along with her brother in a four wheeler. It is alleged that when they reached at a distance of about 200 metres before Imtiyaaz Complex, Panditwada, Ponda, the applicant and his friend Yasin Shaikh, who were riding a motor bike abused the complainant in filthy language. The applicant abused the complainant by saying “Bastard Banchood Rhandi” and also threatened her with dire consequences for filing criminal case against him. It is alleged

that the applicant had threatened her brother for giving evidence against him in a trial. It is alleged by the complainant that the accused no.2 Yasin Shaikh, who was a pillion rider made a vulgar gesture by putting his two fingers near his mouth with his tongue protruding between the two fingers in up and down manner. Such act, according to the complainant, was vulgar, embarrassing and humiliating. The complainant had videographed the said action on her cellphone. The compact disk is also tendered on record depicting the same.

6. It is alleged that the applicant and his friend Yasin were stalking the complainant from 21.00 hours on 01/05/2019 near Amal Medical Stores and continued following the complainant till 13.00 hours of 02/05/2019.

7. On approaching the concerned police station and narrating the facts, a non cognizable case no.358/2019 under Sections 352, 504 of IPC was registered against the applicant and his friend. Pursuant to filing of this written complaint, crime as above came to be registered as against the applicant and, therefore, he approached this Court seeking relief of Anticipatory Bail.

8. I have heard Shri De Sa, the learned Counsel for the applicant, Shri A.D. Bhobe, the learned Counsel for the complainant - wife and Shri Rivankar, the learned Public Prosecutor for respondent no.1.

9. At the outset, it is contended by Shri De Sa that this is a case wherein the applicant was being stalked by the complainant and in fact he is the victim. It is contended that the so called CD does not reflect any of the vulgar signs alleged to have been made by the applicant's friend. It is submitted that the learned Additional Sessions Judge committed an error in law while refusing the protection on the ground that the investigation is still in progress. It is submitted that the Investigating Agency can straight away file a charge sheet and there is absolutely no requirement of custodial interrogation of the applicant looking to the nature of the matrimonial disputes between the husband and wife.

10. It is vehemently argued by Shri De Sa that merely because the friend of the applicant or the applicant had raised his two fingers as a victory sign would not in itself demonstrate any vulgarity as the

sections applied by the Investigating Officer do not contemplate any such act falling within the purview of any of the sections. It is submitted that the applicant is a law abiding citizen, who will abide by any terms and conditions that would be imposed by this Court while granting his prayer.

11. Shri Rivankar, on the other hand, spoke in tune with Shri De Sa. However, he submits that since there are several proceedings between the husband and wife, the applicant can be enlarged on bail by putting stringent conditions. Shri Rivankar admits that filming or videographing anyone is a serious act. However, Investigating Officer will file a charge sheet within a month or two.

12. Shri Bhobe, while strongly objecting the arguments of the learned Counsel for the applicant and the Prosecutor, submits that the manner in which the applicant had demonstrated vulgarity is in itself sufficient to attract the ingredients of Section 354(D) of IPC.

13. It is pertinent to note that the complainant is the wife of the applicant. Admittedly, there are various proceedings and disputes

pending in different Courts against them. This is one more proceedings by the complainant against the applicant and his friend. Without going into the merits of the allegations levelled in the complaint, it cannot be said that this is an offshoot of the matrimonial discord/dispute *interse* between the applicant and his estranged wife. The question is whether the investigating agency needs custodial interrogation of the applicant? As already stated above, the learned Public Prosecutor is fair enough to concede that it being a dispute between a husband and wife, the applicant may be released in the event of his arrest by putting certain conditions. It is not the case of the prosecution that some recoveries are to be made or the applicant needs to be interrogated after taking him into police custody.

14. Shri De Sa has relied upon a judgment of the Hon'ble Supreme Court in case of ***Social Action Forum for Manav Adhikar & Anr. V/s. Union of India, Ministry of Law and Justice & Ors.***¹

Paras 33 and 42 of the judgment read as under:

“32. In ***D.K. Basu V/s. State of W.B.***², after referring to the authorities in ***Joginder Kumar V/s. State of U.P.***³, ***Nilabati Behera V/s. State of Orissa and***

1 (2018) 10 SCC 443

2 (1997) 1 SCC 416

3 (1994) 4 SCC 260

others⁴ and State of M.P. V/s. Shyamsunder Trivedi and others⁵, the Court laid down certain guidelines and we think it appropriate to reproduce the same:-

“(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of

4 (1993) 2 SCC 746

5 (1995) 4 SCC 262

detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

"42. In the aforesaid analysis, while declaring the directions pertaining to Family Welfare Committee and its constitution by the District Legal Services Authority and the power conferred on the Committee is impermissible. Therefore, we think it appropriate to direct that the investigating officers be careful and be guided by the principles stated in Joginder Kumar (supra), D.K. Basu (supra), Lalita Kumari (supra) and

Arnesh Kumar (supra). It will also be appropriate to direct the Director General of Police of each State to ensure that investigating officers who are in charge of investigation of cases of offences under Section 498-A IPC should be imparted rigorous training with regard to the principles stated by this Court relating to arrest.”

15. The Hon'ble Supreme Court in the said judgment reiterated the guidelines in case of ***D.K. Basu V/s. State of W.B.*** (supra), ***Joginder Kumar V/s. State of U.P.*** (supra), ***Nilabati Behera V/s. State of Orissa and others*** (supra) and ***State of M.P. V/s. Shyamsunder Trivedi and others*** (supra).

16. Those are certain guidelines to be ensured by the Investigating Officer while carrying out arrests and handling the interrogations of the arrestees.

17. In view of the observations made herein above, I do not see any reason to refuse the relief sought for by the applicant in the event of his arrest. Consequently, the following order is passed:

ORDER

(i) In the event of his arrest in Crime No.111/2019, the applicant shall be released on his furnishing a PR bond

in the sum of ₹20,000/- with one or two sureties in the like amount.

(ii) The applicant shall make himself available for interrogation by the Investigating Officer as and when required till the filing of charge sheet.

(iii) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any of the witnesses including the complainant.

(iv) The applicant shall not leave the jurisdiction of concerned Police Station without prior permission of this Court.

(v) The applicant shall deposit his passport, if any, with the Investigating Officer.

(vi) Needless to say, in case of breach of any of the aforesaid conditions, prosecution is at liberty to apply for the cancellation.

PRITHVIRAJ K. CHAVAN, J.

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