

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2552 OF 2018

Ramesh Gabaji Nale	]	... Applicant
Versus		
The State of Maharashtra	]	... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.2546 OF 2018

Kedari Raju Tryambak	]	... Applicant
Versus		
The State of Maharashtra	]	... Respondent

Mr. Sanjeev Kadam i/b Mr. Nitin Patil, Advocate for the Applicant in ABA No.2552/2018.

Mr. Uday Warunjikar, Advocate for the Applicant in ABA No.2546/2018

Ms. S.S. Kaushik, APP for the State/Respondent.

Mr. Ganesh Bhujbal, Advocate for the Intervener.

Sr. PI Kalyan Pawar attached to Pimpri Police Station present.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 17th JULY, 2019.

P. C. :-

1. Both these applications are decided by his common order because they arise out of the same offence registered as C.R. No.1112/2018 registered at Pimpri Police Station u/sec. 384, 385, 341, 323 r/w 34 of I.P.C.

2. The FIR is lodged by one Ishtiyah @ Mustak Malhu Khan on 30/11/2018. He has stated in his FIR, that, on 20/11/2018, he was working in his shop. He was a dealer in scrap material. At around 10.30 p.m., on that day, five people came to his shop. At that time, the first informant was accompanied by Sumit Yadav, Abdul Rashid etc. The persons who entered, searched his shop. It is alleged in the FIR that, the first informant and his brother Wasim were hand cuffed. They were beaten by plastic and iron pipes from the shop. Thereafter, the first informant and all the workers were taken to crime branch. One Abdul Rashid Khan was given electric shocks. These persons claimed themselves to be police officers and they were making inquiries about some theft. It is mentioned in the FIR that, on 21/11/2018 again they were interrogated from 9.00 a.m. The first informant has specifically named both the applicants. According to him, these applicants took the informant and his younger brother Wasim in a vehicle. When they were travelling towards his shop, they demanded Rs.10 Lakhs as extortion money for not lodging any case against him. The informant told them that he had Rs.5,50,000/- in his shop which was given to the applicant Nale. Even thereafter they kept on asking remaining amount out of Rs.10 Lakhs. The first

informant thereafter took these applicants to his friend Dhanraj's shop at Bharati Vidyapeeth. Dhanraj's son Mukesh was in the shop. He was taken in custody by the applicants. The first informant told Dhanraj that the police were demanding Rs.4,50,000/-. Dhanraj showed willingness to pay Rs.3 Lakhs and he paid the applicant Nale Rs.3 Lakhs outside Unit No.1. Thereafter, the workers of the first informant were allowed to go but the informant and three others were given in custody of Rajgad Police Station. On 22/11/2018 the officer of Rajgad Police Station proceeded against the informant and others u/sec. 109 of Cr. P.C. and produced them before a Special Magistrate.

3. The first informant took medical treatment at Sassoon Hospital on 23/11/2018 and others also were treated in that hospital. Based on these allegations the FIR is lodged.

4. The applicant Ramesh Gabaji Nale in ABA No.2552/2018 is ASI and the applicant Kedari Raju Tryambak in ABA No.2546/2018 is a Constable. At present both of them are suspended.

5. Heard Mr. Sanjeev Kadam, Ld. Counsel for the Applicant Ramesh Nale, Mr. Uday Warunjikar, Ld. Counsel for the Applicant

Kedari Raju Tryambak, Ms. S.S. Kaushik, Ld. APP for the State/ Respondent and Mr. Ganesh Bhujbal, Ld. Counsel for the Intervener.

6. Both the Ld. Counsel for the applicants submitted that, the first informant himself was a criminal who was a suspect in a theft case. According to Shri.Warunjikar, the FIR indicates that it is lodged after taking legal assistance. The FIR is based on false allegations. They submitted that both the applicants were well within their rights to investigate in the offence as it was part of their duty. The first informant and others were apprehended from outside Chinchwad Railway Station which was within the jurisdiction of both the applicants. Both the Ld. Counsel for the applicants submitted that though the incident had occurred on 21/11/2018, the FIR was lodged only on 30/11/2018. This delay shows that, there was deliberation and after-thought on the part of the informant and others. The first informant had addressed a complaint dated 27/11/2018 to the Police Commissioner, Pimpri, Pune, it was tendered on 28/11/2018. The said complaint is annexed to the applications. Even there, according to Ld. Counsel for the applicants, was a delay of about 7 days from the date of incident.

7. Mr. Warunjikar in addition to these submissions pointed out that, the complaint made to the Police Commissioner on 27/11/2018 does not make any reference to the name of the applicant Kedari Raju Tryambak. Both the Ld. Counsel therefore submitted that, the applicants are falsely implicated by the first informant to save his own skin.

8. Ld. APP opposed these applications and produced the investigation papers in respect of the investigation carried out so far. The investigation papers included medical certificates of the first informant and others. The medical certificates shows that the first informant had taken treatment at Sassoon Hospital. He had suffered three injures. The first injury was contusion on right lower leg and the dimensions were 7.5 x 3 cm. There was one injury in the nature of abrasions on right side. These injuries did not appear to be self inflicted injuries. The injury certificate in respect of other injured are also included in the investigation papers. Apart from this, there are important statements of the witness Dhanraj and his son Mukesh who have corroborated the story of the informant. This Dhanraj has paid Rs.3 Lakhs to the applicant for release of his son Mukesh. The

statement of Mukesh also corroborates this fact. Mukesh's statement was recorded on 11/12/2018 and Dhanraj's statement was recorded on 02/12/2018. Both these statements have mentioned the demand made by the applicants and the payments made to them.

9. The investigation papers also contain statement of one Police Constable Sachin Ahivale. He was working with Crime Branch, Unit 1 where the present applicants were also doing their duty. He has stated that, on 28/11/2018, they were on patrolling duty. At about 8.30 p.m., he received a phone call from the applicant Kedari and he was called near Wakad Bridge. Thereafter, he was called to Katraj Chowk. Thereafter, when he met the applicant Kedari, they along with the applicant ASI Nale sat in a Tavera vehicle and went to the shop of a scrap dealer. Both the applicants thereafter conducted search of the shop and took two persons in their custody. This statement is contrary to the report made by the applicant Nale to the PI Rajgad Police Station. In that report dated 21/11/2018, the applicant Nale had informed Rajgad Police Station that the present first informant and three others were taken in custody outside Chinchwad Railway Station. Thus, a false story apparently is

concocted by the applicant Nale himself when he made a report to Rajgad Police Station. His report is in contradiction to the story narrated by Police Constable Santosh Ahivale who was working with the same branch. PC Ahivale thereafter had narrated how these persons were detained in the police station. On their interrogation police did not find their connection with the alleged theft. The superior officers had directed to release them. However, that was not done and the applicants had thereafter obtained money from him. Thus, the investigation carried out so far supports the case of the first informant and therefore, the custodial interrogation of the applicants in this case is necessary to unearth their involvement in the offence. Therefore, no case for anticipatory bail is made out. Hence, the following order.

ORDER

Application is rejected and stands disposed of accordingly.

(SARANG V. KOTWAL, J.)