

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

CRIMINAL APPLICATION (ABA) NO.806 OF 2019

(Rakesh s/o Wasudeorao Dekate Vs. State of Maharashtra, thr. PSO, PS Rana Pratap
Nagar, Nagpur)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri P.R. Puri, Advocate for Applicant.
Shri N.R. Patil, Addl. P.P. for Non-Applicant/State.
Shri Anil Mardikar, Senior Counsel assisted by Shri Sumit Joshi, Advocate
for the Intervenor/Complainant.

CORAM: ROHIT B. DEO, J.

DATE: 19th DECEMBER, 2019.

The applicant is apprehending arrest in Crime 428/2019 registered with the Rana Pratap Nagar, Police Station, Nagpur for offence punishable under Sections 386, 387, 323, 504, 452, 364-A of the Indian Penal Code read with Sections 3 and 25 of the Arms Act. The application preferred by the applicant under Section 438 of the Criminal Procedure Code, 1973 (Code) seeking bail in the event of arrest came to be rejected by the Additional Sessions Judge, Nagpur by order dated 19.11.2019.

2] I heard the learned counsel for the applicant Shri Pratik Puri, the learned Additional Public Prosecutor Shri N.R. Patil and Shri Anil Mardikar, the learned Senior Counsel assisting the learned Additional Public Prosecutor extensively on 18.12.2019 and passed the following order:

*I have heard Shri P.R. Puri, learned
Counsel for the applicant, Shri N.R. Patil,
learned Additional Public Prosecutor for the*

non-applicant and Shri Anil Mardikar, learned Senior Counsel who assisted the learned Additional Public Prosecutor on behalf of the complainant.

2. For reasons, which I do not find necessary to spell out elaborately in this order, I am not inclined to exercise discretion in favour of the applicant.

3. Shri P.R. Puri, learned Counsel states that he would seek instructions from his client whether this application can be withdrawn.

4. Stand over to 19-12-2019 at 10-30 a.m.

3] The learned counsel Shri Pratik Puri states that his client is not inclined to withdraw the application.

4] The complainant Shri Sachin Jainendrakumar Badjate is the Proprietor of Sachin Medical Stores. The gist of the oral report lodged by the complainant is that he borrowed some amount from the accused in the year 2014 to cater to the business expansion need. The complainant later on learnt that the accused is a hardened criminal. The complainant states that during the course of three years of availing the loan, the accused threatened the complainant and his elder brother Shri Shreyans Jainendrakumar Badjate and recovered three times the amount of the loan. The complainant then alleges that during the preceding two years the accused used to visit the business establishment and the residence of the complainant and his elder brother and used to demand amount. Reluctance of the complainant to fall in line used to invariably result in issuance of threats of bodily harm. The complainant alleges that the accused

extorted various amounts on multiple occasions by issuing threats of causing bodily harm.

The oral report further recites that on 30.06.2009 the accused forced his elder brother to accompany him in white safari vehicle bearing registration MH-31 EK-9921 and after stopping the vehicle on the Wardha road whipped out a revolver and threatened Shri Shreyans Badjate that if the accused is not paid Rs.1,00,000/- per month as “protection money” serious consequences would ensue. Fearing for life, neither the complainant nor his elder brother reported the incident to the police. It is further stated in the oral report that by issuing threats the accused extorted various amounts between 06.09.2019 and 13.10.2019 from the complainant and his elder brother Shri Shreyans Badjate.

5] The complainant then states that on 30.10.2019 the accused called the complainant from cell phone 9370192134 and demanded Rs.3 crores. The complainant was taken aback and disconnected the call. After sometime the accused came to the medical shop of the complainant in his car and gave a call to the complainant to come out of the shop. A frightened complainant stayed put in the shop. The accused left the spot after 30 minutes or thereabout and then again called on the cell phone of the complainant and threatened that should Rs.3 crores not be paid the complainant will be killed. The accused also called on the cell phone of the elder brother of the complainant several

times, which calls were not received by Shri Shreyans Badjate.

The complainant then alleges that at 10:50 p.m. he received a call from his nephew Shri Sambhav Shreyans Badjate that the accused had barged in the residential house of the family and was physically manhandling and abusing the father of the complainant Shri Jainendrakumar Badjate and the sister of the complainant Mrs. Bharati Rokde. Shri Sambhav Badjate also informed the complainant that the accused was threatening to kill the family members. The complainant rushed home and was physically assaulted and filthily abused by the accused. The accused further threatened to kill the complainant and his elder brother should the amount of Rs.3 crores not be paid immediately. The police was informed and the accused fled in his safari car. The accused however, again called the complainant on cell phone and threatened that since the police were informed, the complainant will not be spared and he will be killed.

6] The learned counsel Shri Pratik Puri appearing on behalf of the applicant Shri Rakesh Dekate submits that the applicant is a businessman and a peace loving citizen of repute. It is submitted that the complainant and his brother used to borrow money from the applicant since 2007-2008 and at a point in time the amount recoverable from the Badjate brother was Rs.3 crores. At this stage, the complainant executed an agreement dated 04.02.2019 to

sell machines and further executed a memorandum of understanding dated 04.02.2019 acknowledging the liability of Rs.3 crores. The complainant and his elder brother issued ten post dated cheques in favour of the applicant – accused for Rs.30,00,000/- each and promised to repay the loan of Rs.3 crores on or before 31.12.2019. Shri Pratik Puri, the learned counsel for the applicant would submit that a false report came to be lodged by the complainant since the applicant Shri Rakesh Dekate sought to exercise right to recover the amount covered by the cheques.

7] I have perused the case diary. The investigation is ongoing. However, the statements which are recorded during the course of the investigation and in particular the *panchnama* of the CCTV footage of the incident which allegedly occurred at the residence of the complainant would *prima facie* show that the oral report is not false as is suggested by the applicant Shri Rakesh Dekate. I do not consider it appropriate, to delve deep in the evidence collected till date, and indeed while deciding an application for pre-arrest bail the Court is not expected to make any decisive observation on the veracity or otherwise of the accusations in the oral report and the rebuttal thereof by the applicant – accused. However, since as indicated in the order dated 18.12.2019, I am not inclined to exercise discretion in favour of the applicant, I must briefly indicate the reasons, which have weighed with me while rejecting this application.

8] It is well settled that anticipatory bail is an extraordinary privilege and the discretion must be exercised judiciously and not as a matter of routine. Notably, the Hon'ble Apex Court has attached significant importance to the recommendation of the Indian Law Commission in the 41st report to introduce a provision for grant of anticipatory bail which recommendation came with the rider that the power to grant anticipatory bail should be exercised in very exceptional cases.

9] The nature and gravity of the accusations is serious. At this stage, it would be inappropriate to make any observation on the rival contentions qua the documents referred to by the applicant. The complainant alleges that he and his brother were forced to sign and affix thumb impression on certain blank papers and cheques. Be that as it may, even if it is assumed *arguendo*, that the applicant Shri Rakesh Dekate has a legitimate money claim, the attempt to threaten, intimidate and physically manhandle the complainant and his family members including the aged father and sister of the complainant coupled with the alleged use of revolver to issue threat of bodily harm, has the propensity to subvert the rule of law which is the very bedrock of civil society.

10] The investigation is ongoing and according to the learned Additional Public Prosecutor Shri N.R. Patil custodial interrogation is necessary to recover the firearm

and to unearth the various facets of the crime. Having perused the case diary, I am inclined to agree with the said submission.

11] The applicant Shri Rakesh Dekate has faced/is facing 27 prosecutions out of which six offences are of chain snatching, two offences are of extortion by putting the complainant in fear of death, four offences are of robbery, five offences are of threatening to cause death and two offences are of outraging the modesty of woman and criminal tress-pass. The applicant Shri Rakesh Dekate is convicted in one prosecution, and is acquitted in twenty two. Four prosecutions are pending and in one non-bailable warrant is issued presumably since the applicant Shri Rakesh Dekate failed to appear before the trial court. Considering the antecedents of the applicant, in the back-drop of the nature and gravity of accusations and the need to custodial interrogate the applicant Shri Rakesh Dekate, it would be impermissible to exercise discretion and grant pre-arrest bail.

12] The application deserves dismissal, and is accordingly dismissed.

JUDGE