

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 739 OF 2020

Shafiq Khan s/o Mehtab Khan Pathan,
Age : 56 years, Occu. Business,
R/o Kazi Mohalla, Bhokardan,
Tq. Bhokardan, District Jalna

APPLICANT

VERSUS

1. The State of Maharashtra,
through the Police Inspector,
Police Station, Bhokardan,
District Jalna
2. The Superintendent of Police,
Jalna, District Jalna

RESPONDENTS

Mr. Atul M. Karad, Advocate for the applicant
Mr. D.R. Kale, Public Prosecutor for the respondents/State
Mr. Swapnil Joshi, Advocate to assist the Public Prosecutor

CORAM : MANGESH S. PATIL, J.

ORDER RESERVED ON : 08.04.2021
ORDER PRONOUNCED ON : 09.04.2021

ORDER :

This is a successive application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Crime No. 293 of 2020, registered with Bhokardan Police Station, District Jalna for the offences punishable under Sections 364, 328, 327, 342, 506, 120-B, 406, 420 read with Section 34 of the Indian Penal Code.

2. Briefly stated, the allegations in the FIR lodged on 15.05.2020 are to the effect that there were financial dealings between the informant and the applicant. The applicant made him to borrow money from a Cooperative Bank by way of loan in his (informant's) name to the tune of Rs.90,00,000. When the bank insisted for repayment of loan, the applicant kept promising to pay him the money. It is then alleged that on 03.03.2020 at about 7.30 a.m., three unknown persons, under the pretext of purchasing pipes from his shop, approached him. They then made him to sit in their car by offering tea. Some spray was splashed on his face and he was abducted, simultaneously beating him. The assailants were all the while saying that he was harassing the applicant and threatened him of dire consequences if he continued to so harass the applicant. He became unconscious and could gain consciousness on 08.03.2020 when some shepherds found him abandoned in a forest. He was taken to Government Hospital at Daulatabad wherefrom the Medical Officer informed the police and he was taken to the Government Hospital, Aurangabad, where he was treated till 10.03.2020. In the meanwhile, his mother lodged a missing report on 04.03.2020. He made a phone-call to his family members, who arrived there and he was discharged on 10.03.2020. He lodged a complaint with the Superintendent of Police, Jalna on 17.03.2020.

3. It is then alleged that with a view to settle the dispute amicably, he again approached the applicant and demanded money to payoff the bank,

but to no avail and he realized that it was the applicant who had stage-managed his abduction. Accordingly, the FIR was lodged on 15.05.2020 and the offence was registered.

4. Mr. A.M. Karad, learned Advocate for the applicant would submit that though the earlier application for anticipatory bail was withdrawn after this Court had expressed its disinclination to grant anticipatory bail on merits, there is a material change in circumstance. After that application was withdrawn, the investigation has been completed and even chargesheet has been filed. It is after filing of the chargesheet that several material circumstances have surfaced to draw an inference and corroborate the applicant's version that he is being falsely implicated.

5. Though the informant states that he was abducted on 03.03.2020, in his statement under Section 164 of the Code of Criminal Procedure, he has stated the date as 04.03.2020. Besides, there is statement of witness with whom the informant has indulged in telephonic conversation even on 04.03.2020, which would indicate that he was in a state of establishing this communication after he was kidnapped. The learned Advocate would further point out that in a reply to the query put up by the Investigating Officer, the concerned Medical Officer of the Government Hospital at Daulatabad has specifically informed that no person by the name of the informant was ever brought to his hospital on 08.03.2020. The learned Advocate would further point out that there is statement of a

witness, on the date on which, according to the informant, he was abducted i.e. 03.03.2020, just before he was allegedly abducted, he had met this witness and had even disclosed his intention to go underground whereupon the witness had tried to persuade him by saying that being a businessman it would adversely affect his reputation in the market if he went underground. It is thereafter that the informant has stated to have been abducted. The learned Advocate would lastly point out that it is only after filing of the chargesheet that it is revealed that the informant had addressed a letter to the Superintendent of Police on 17.04.2020, making other allegations but without there being any whisper about the incident of abduction. If really he was putting up all the grievances before the Superintendent of Police on 17.04.2020, in the normal course, there would have been also a reference to the incident of abduction, since he was putting up the grievance regarding the selfsame dispute and the threats given to him by the applicant and his brother.

6. The learned Advocate, therefore, submits that there are strong and material circumstances which have surfaced during the course of investigation and became known to the applicant pursuant to the filing of the chargesheet. All these material circumstances, according to the learned Advocate, make the applicant entitled to press this successive application for anticipatory bail.

7. The learned Advocate for the applicant would then, on merits,

submits that there were thick and fast economic relations between the applicant and his brother on one hand and the informant on the other. In fact, the brother of the applicant had enabled the informant to borrow huge loan from a bank by subjecting his immovable property to encumbrance in the form of mortgage to secure the repayment. The informant could not repay the loan and by resorting to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), the mortgaged property of his brother has suffered attachment. It is thereafter that the applicant's brother lodged a complaint against the informant for cheating and misappropriation and to give a counterblast to it, a false and concocted story is wreaked up to falsely implicate the applicant.

8. The learned Advocate would lastly submit that the applicant has been protected by way of Ad-interim relief by the order dated 12.11.2020. There are no allegations about he having committed breach of the terms and conditions. Considering all the above facts and circumstances, the ad-interim relief may be confirmed.

9. Mr. D.R. Kale, the learned Public Prosecutor, assisted by Mr. Swapnil Joshi, the learned Advocate for the original informant, strongly opposes the application. He submits that this being a successive application for anticipatory bail, shall not be entertained, when this Court has already refused to grant anticipatory bail on merits and the application was

withdrawn.

10. As far as merit is concerned, the learned Public Prosecutor would submit that the offence is serious, the informant was abducted, he was threatened of dire consequences. Huge money was lent by the informant to the applicant and in order to dupe him, an attempt was made to coerce him. Considering the nature of the allegations, custodial interrogation of the applicant is necessary and the application be rejected.

11. I have carefully gone through the papers. As far as the maintainability of such successive application for anticipatory bail is concerned, true it is that this Court has already dismissed the earlier application filed by the applicant by order dated 14.07.2020, but conspicuously, there was no occasion for the Court to record the reasons inasmuch as no sooner the Court had expressed its disinclination to grant any relief, the application was withdrawn. Therefore, one cannot gather and appreciate the reasons for which at earlier point of time, this Court had expressed its such disinclination.

12. Be that as it may, as is pointed out by the learned Advocate for the applicant, there are several circumstances which have now surfaced after filing of the chargesheet and the earlier application was filed and decided before filing of the chargesheet.

13. As is mentioned hereinabove and as can be seen from the papers,

the stand of the informant about having been abducted, as alleged, is riddled with several improbabilities and contradictions. Though he alleges about having been abducted on 03.03.2020, the statement of the witness Bantusing Barku Kakarwal would indicate that he was in touch with him on telephone even on 04.03.2020. If really he was abducted on 03.03.2020 and immediately after he had become unconscious, there was no reason and occasion how this witness could have spoken to him on telephone.

14. Again, though the informant was allegedly abducted on 03.03.2020 and was thereafter admitted in the hospital on 08.03.2020, no plausible explanation is coming forth as to why he could not file the FIR within a reasonable time thereafter and why he was required to wait for some opportune moment to file the FIR on 15.05.2020.

15. Further, the informant had addressed a letter to the Superintendent of Police on 17.04.2020, making all the grievances which he has made in the present FIR against the applicant sans any whisper regarding the incident of abduction. One cannot comprehend as to why he omitted to even refer to such incident of abduction. This is indeed a strong circumstance coupled with the above mentioned circumstances which creates a serious doubt about the story being sought to be built up by the informant regarding abduction.

16. One could also have some inkling if one refers to the statement

of one Nasib Khan Maqbal Khan, who has stated that he had met the applicant on 04.03.2020 and had tried to desist the informant from going underground. His version would firstly show that the informant was very well present and had accompanied this witness for a cup of tea and was not actually kidnapped on 03.03.2020. Secondly, it would also indicate what was passing in the mind of the informant. He had disclosed that he wanted to go underground and the witness had tried to persuade him desisting him from taking any such step.

17. Again, there is a statement of one Ishwar Manikrao Ingale, who is an independent witness. Though he could not state the exact date, he did see the informant accompanying this witness Nasib Khan Maqbal Khan, who happens to be a doctor and the two had gone to hotel Ambika and it is the informant who, using the mobile phone of Nasib Khan Maqbal Khan, invited this witness Ishwar Manikrao Ingale to come to the hotel for a cup of tea. Though he refused to go there, the fact clearly corroborates the version of witness Nasib Khan Maqbal Khan.

18. All these circumstances are indicative and create a serious doubt about the veracity of the allegations regarding the informant having been abducted at the instance of the applicant. Indeed, all such material is now available since the chargesheet has been filed post-rejection of the earlier application for anticipatory bail and indeed, is sufficient now to concede to the request of the applicant for anticipatory bail.

19. The application is allowed. The ad-interim relief granted to the applicant by the order dated 12.11.2020 stands confirmed with the same terms and conditions.

[MANGESH S. PATIL]
JUDGE

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