IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 981 OF 2020

Ali Yakub Khan ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 420 OF 2020

Mohammed Danish Mohammed Shahid Ansari ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Karim Khan, Advocate for the Applicant in ABA No. 981 of 2020.
Mr. Maten A. R. Shaikh, Advocate for the Applicant in ABA No. 420 of 2020.
Mrs. Anamika Malhotra, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 17th FEBRUARY, 2021.

PC :

1. The Applicants in both these applications are apprehending arrest in CR No.442 of 2019 registered with Oshiwara Police Station for offence punishable under Sections 384, 386, 389, 363, 364-A r/w 34 of IPC. The FIR was lodged on 07/11/2019.

2. The case of the complainant is that in June 2018, he had visited Trest Club at Lower Parel for a party in pub along with his friends. Table was booked for the party. They ordered champagne.

The complainant and his friends were preparing for champagne popping. The persons sitting the next table told them that champagne should not fall on them. The friend of the complainant opened the champagne bottle in excitement and the champagne was spilled over the persons sitting on the next table. One of them came to the table of the complainant and questioned them as to why the champagne was spilled over them. The complainant and his friends apologized and continued with the party. After 2 days, person named Iqbal called the complainant on his cellphone and asked him why champagne was thrown on the person of his elder brother Ibrahim at Trest Club Pub, Lower Parel. He threatened him that he would barge into his house and assault him. The complainant apologized. The caller told him that the complainant should settle the matter with Rs.1 Lakh. The complainant told him that he do not have such amount. The accused then told him that he would not accept anything less than Rs.80,000/-.The complainant requested him for 5 days. He borrowed money from his friend and told accused that he would pay amount of Rs.80,000/-. The complainant was called at a specified spot. Thereafter, Iqbal called the complainant and told him that he has sent one person to meet him. Thereafter one person came and told the complainant that he has been sent by Iqbal to collect money. The complainant parted amount of Rs.80,0000/-. The complainant was told that he should not repeat such act again. Thereafter in August 2018, Iqbal again called him and told him that you have received good amount and that you have spent money with your friends. He was threatened to pay more. The complainant again agreed to pay him Rs.80,000/-. He collected amount of Rs.80,000/- from his friends. Iqbal again sent a person to collect the money. On the next day, person named Abdul Rehman came to collect money. The complainant apologized to Ibrahim on phone. In September 2018, Abdul Rehman again demanded a gift from the complainant which was given by him. On 21/07/2019, the complainant had again visited the said place for celebrating party and ordered champagne. He was preparing for popping of champagne. The staff objected for the same. The person sitting on the next table opened the bottle of champagne. However the customer sitting in the pub thought that the complainant was responsible for throwing champagne. Thereafter, Abdul Rehman again called complainant and told meet him. He came with his friend and questioned him as to why he has spilled champagne again. Friends of Abdul Rehman joined him. The complainant somehow relieved himself and left the place. Abdul Rehman again called him and demanded Rs.5 Lakhs and threatened him. The complainant agreed to pay him Rs.1,50,000/- and by making arrangement, parted the said amount. On 06/11/2019, the complainant went to Desi Restaurant at Veera Desai Road. Abdul Rehman came there with his friend. The complainant was asked to join them. They told the complainant to call his friend Nadim at Andheri. The complainant refused to do so. The complainant was taken to a secluded place. Abdul Rehman, Danish, Papa, Ali left the place. The complainant and Nadim were assaulted by hockey stick. They demanded more money. Thus, it was alleged that the complainant has parted an amount of Rs.3,10,000/-, an I-Phone valued @ Rs.90,000/- to the accused.

3. Learned Advocate for the Applicant in ABA No.981/2020 preferred by Ali Yakub Khan submitted that allegations of abduction and extortion are not made against the applicant. The complainant had not met the applicant nor he received any money. The extorted amount and I-Phone was received by another accused. The police filed charge-sheet against arrested accused. The main accused Papa @ Athar was granted bail by the Sessions Court. There are no specific allegations against the Applicant. It is difficult to accept the story made out by the complainant. The applicant need not be subjected to custodial interrogation. Learned Advocate for the Applicant in ABA No.420/2020 preferred by Mohammed Danish Mohammed Shahid Ansari submitted that the complaint is false. The

allegations are concocted. The Applicant has been falsely implicated. The main accused has been arrested. It is not alleged that the Applicant has received any money. There has been delay in lodging FIR. After the alleged first incident, the complainant had opportunity to lodge complaint to the police. However, he kept silent which speaks volumes of doubt about his version. The applicant is willing to cooperate with the investigation.

4. Learned APP submitted that the offence is of serious nature. The victim is a young boy who was threatened, abused, assaulted and the amount as well as cellphone was extorted from him. He was repeatedly intimidated by the accused. The applicants are involved in the crime. Statements of the witnesses recorded during the investigation show the complicity of the applicants in crime. Supplementary statement of the complainant was recorded on 19/02/2020. He has given further details about the alleged act committed by the accused and as to how and where he parted the amount. The applicants are not entitled for anticipatory bail. Learned APP also pointed out that several cases were registered against accused Atahar Ajmal Khan @ Papa. It is also submitted that against the applicant Danish Mohammed Saeed Ansari, 2 other cases were registered vide CR No.294/2011 and CR No.290/2013. There is

voluminous evidence against the applicants.

5. The accused Atahar Ajmal Khan @ Papa was arrested on 08/11/2019. The prosecution has opposed the application for bail preferred by him on the ground that one I-Phone 10 has been seized and that he is a habitual offender since several offences are registered against him. Investigation is in progress and other accused are yet to be arrested. The learned Addl. Sessions Judge, however, observed that investigation is completed and the charge-sheet is filed. The other accused are to be arrested is no ground for refusing bail. No purpose will be served by keeping him in custody. While granting interim protection to Mohammed Danish Mohammed Shahid Ansari, this Court, by order dated 18/02/2020, had observed that learned APP, on instructions, has submitted that the complainant was not referred to medical examination although he was assaulted by hockey sticks. Though offence was registered on 07/11/2019, prosecution has not placed on record any convincing material to connect the said applicant to the offence alleged statement of complainant. Hence, interim protection was granted to him. As per FIR, the incident of quarrel had occurred in June 2018. The complainant allegedly received call after 2 days and the amount was demanded by a person named Iqbal. According to him, he parted

amount of Rs.80,000/-. According to him, he has collected amount from his friend. No complaint was lodged with the police. Thereafter, in August 2018, Iqbal again called and threatened the complainant and at that time also, the complainant has borrowed money from his friend and gave it to the accused. In September 2018, cellphone was given under the threat to accused Abdul Rehman. No complaint was lodged with the police. In July 2019, the complainant again went to the same place where the previous incident had occurred and he was blamed for popping champagne although it was popped by the person sitting on the other table. It is alleged that again the complainant was threatened, taken to a secluded place and assaulted on 06/11/2019. Thereafter the FIR was lodged. The amount was not parted to the applicants. I-Phone was not given to the applicants. The I-Phone has been recovered during the course of investigation. The complainant is a student and it is not clear as to how he collected the huge amounts and parted to the accused. The supplementary statement was recorded belatedly on 19/02/2020 in which the complainant has given explanation as to from whom the amount was borrowed. In view of the above, the applicants may not be subjected to custodial interrogation.

6. Hence, I pass the following order.

ORDER

(i) Anticipatory Bail Applications are allowed;

(ii) In the event of arrest of applicants in CR No.442 of 2019 registered with Oshiwara Police Station, the applicants be released on bail on furnishing P. R. Bond in the sum of Rs.25000/-(Rupees Twenty Five Thousand Only), each with one or more sureties in the like amount;

(iii) The applicants shall not tamper with evidence and shall not approach the complainant;

(iv) This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)