

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

24 ANTICIPATORY BAIL APPLICATION NO.76 OF 2022
WITH
CRIMINAL APPLICATION NO.477 OF 2022

RISSHI RAJESH KAPOOR
VERSUS
THE STATE OF MAHARASHTRA

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Mr. A.S. Kulkarni and Mr. J.N. Singh, Advocates for the applicant

Mrs. V.N. Patil-Jadhav, APP for the respondent

Mr. A.A. Yadkikar, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08th FEBRUARY, 2022

ORDER :

1 Criminal Application No.477 of 2022 moved for assist to PP stands allowed and disposed of.

2 Applicant is apprehending his arrest in connection with Crime No.30/2020 dated 13.01.2020 registered with M.I.D.C. Police Station, Jalgaon, for the offence punishable under Section 354, 452 read with Section 34 of the Indian Penal Code, 1860.

3 Heard learned Advocate Mr. A.S. Kulkarni for the applicant and

learned APP Mrs. V.N. Patil-Jadhav, well assisted by learned Advocate Mr. A.A. Yadkikar, for the respondent/State.

4 It has been vehemently submitted on behalf of the applicant that the applicant is an auction purchaser. He has purchased an open plot with small house in public auction held by Bank of Maharashtra through Debts Recovery Tribunal, Aurangabad. The possession of the open space has been handed over to him in the year 2009 but the possession of the house was not handed over, as the possession was protected by this Court in a writ petition challenging the order of Debts Recovery Appellate Tribunal, Mumbai. The informant is the wife of the original borrower of the loan from Bank of Maharashtra. In fact, she along with other heirs as well as guarantors had challenged the auction sale. The appeal was dismissed by D.R.A.T., Mumbai and the auction in favour of the present applicant was confirmed by order dated 25.06.2014. The Writ Petition No.6521 of 2014 was dismissed finally by this Court on 31.10.2017, however, in between, that is, decision by D.R.A.T. Mumbai and this Court, the possession of those persons over the small house was protected. The interim stay was then vacated with the dismissal of the writ petition by this Court. After the dismissal of the writ petition, an application for recovery proceeding bearing R.P. No.75/2004 for possession of small house was initiated. Recovery Officer of D.R.T.,

Aurangabad had appointed Court Commissioner for handing over the possession by order dated 24.10.2019. The Court Commissioner along with the applicant had gone to Jalgaon on 13.01.2020 for taking possession of the house property. Due intimation thereof was given to the Police Station as well as Superintendent of Police, Jalgaon. The Court Commissioner, driver of the applicant and one Sanjay Zanwar, r/o Mhaswad visited the plot on 13.11.2020 at about 11.30 a.m. At that time, the informant was inside the house. When Court Commissioner disclosed the identity and the purpose for his arrival at the spot, she refused to hand over the possession, immediately, and requested the time. Therefore, the Court Commissioner came back and informed the said fact to the police. Later on, the applicant came to know that a false complaint has been lodged by the informant that he entered the house of the informant and outraged her modesty. It is filed against other persons also. The present applicant as well as Sanjay Zanwar have filed criminal writ petition for quashing of the First Information Report. The said First Information Report has been lodged with concocted story and with ulterior motive and, therefore, the applicant being a businessman deserves to be protected from such unscrupulous moves by the informant. He has adopted legal proceedings to get the possession of the property. Necessary documents have been attached and the interim protection granted by this Court deserves to be confirmed.

5 Per contra, the learned APP, well assisted by learned Advocate Mr. A.A. Yadkikar for the informant, strongly opposed the application and submitted that there are specific allegations against the present applicant. The affidavit filed by the informant is nothing but the replica of her First Information Report. However, it clearly states that how the offence was committed. The applicant might be having certain decisions in his favour, but that does not mean that he could forcibly enter the house of the informant and to take possession and misbehave with her, at that time. Taking into consideration the seriousness of the offence the applicant does not deserve any kind of sympathy.

6 At the outset, it is to be noted that the First Information Report lodged is totally silent on the proceedings before D.R.T., D.R.A.T. and this Court. Thus, there is total suppression on the part of the informant about the same. The informant says that when she was at home, suddenly the present applicant, to whom she was knowing, so also, Sanjay Zanwar, to whom she was knowing and two unknown persons entered the house and without any dialogues, it is stated that the present applicant had pulled her sari and Sanjay Zanwar had abused her. The unknown persons had also abused her. She states that the entire incident has been witnessed by one Vivek Kishor Chavan, whose reference was made by learned APP and submitted that he

has given supporting statement. At the outset, the contents of the First Information Report raises doubt, as to why the known persons would behave in such a way and that too without initiating any dialogues. How she was knowing these two persons is intentionally not disclosed and why the unknown persons would also behave with her in such a way ? On the contrary, the documents produced by the applicant show that the Court Commissioner appointed by D.R.T., Aurangabad had given intimation to the police that when he had been to the spot, the informant had refused to hand over the possession, though it was pointed out to her that it is under the orders of D.R.T., Aurangabad. Thus, it can be seen that there appears to be a substance in the submission on behalf of the applicant that the First Information Report has not been filed with bona fide intention. Taking into consideration the checkered history this might be one of the attempts to protract the matter in respect of handing over the possession of the small house. Therefore, interim protection granted earlier by this Court by order dated 18.01.2022 deserves to be confirmed. Accordingly, it is confirmed. Hence, following order.

ORDER

1 Application stands allowed.

2 The ad-interim protection, granted by this Court earlier to applicant vide order dated 18.01.2022, is hereby confirmed and made absolute. In other words, if the applicant is not formally arrested, in the event of arrest of the applicant viz. **Rissi Rajesh Kapoor**, in connection with Crime No.30/2020 dated 13.01.2020 registered with M.I.D.C. Police Station, Jalgaon, for the offence punishable under Section 354, 452 read with Section 34 of the Indian Penal Code, 1860, he be released on PR. of Rs.30,000/- (Rupees Thirty Thousand only) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

3 The applicant shall not indulge in any criminal activity nor he should tamper with the prosecution evidence, in any manner.

4 He should cooperate with the investigation and shall attend the concerned Police Station, on every Monday between 10.00 a.m. to 12.00 noon, till filing of charge sheet.

5 Criminal Application No.477 of 2022 stands disposed of.

(Smt. Vibha Kankanwadi, J.)