

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.871 OF 2021**

1) Mohd Khalid @ Guddu Mukhtar
Ahmed Shaikh
2) Iftekar Ahamed @ Bablu Mukhtar
Ahamed Shaikh Applicants
v/s.
The State of Maharashtra Respondent

Mr. Ashok P. Mundargi, Sr. Advocate a/w. Mr. Jayant Bardeskar
i/b. Mr. Hrishikesh Mundargi for the Applicants.
Ms. A.A. Takalkar, APP for the State.
Mr. Rajendra J. Rathod a/w. Mr. Ali Bubere and
Mr. Amir Kordia and Mr. Umar Dalvi for the complainant.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 27th APRIL, 2022.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the
aforesaid Applicants who are arrested in C.R.No.I-312/2020 registered
with Bhiwandi City Police Station for offences punishable under
sections 364A, 384, 385, 386, 387 r/w. 34 of the Indian Penal Code
and sections 3, 25 of the Indian Arms Act.

2. Heard Mr. Ashok Mundargi, learned senior counsel for the
Applicants, Mr. Rajendra Rathod, learned counsel for the complainant
and Ms. A.A. Takalkar, learned APP for the State. I have perused the

records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the First Information Report (FIR) lodged by Takweem @ Guttu Ajaz Khan. The complainant is engaged in construction business under the name Razi Constructions. In the year 2014, the complainant had undertaken redevelopment of Rangadi Building at Bhiwandi. At the relevant time, the Applicant No.1 was the Corporator of Bhiwandi Nizampura Municipal Corporation. He called the complainant to his office and instructed to give him 20% of the profit towards protection money to ensure that the construction was not obstructed. There was an altercation and scuffle between the complainant and the Applicant when he refused to pay the money.

4. In January, 2015, the Officers of the said Municipal Corporation came to the site and stopped the construction though he had requisite sanctions and approvals. The complainant learnt that the Applicant through one Javed Naeem Khan had lodged a complaint in respect of the said construction work. About 15 to 20 days thereafter, two persons by name Faiz Alam and Ghulam Mohammed Khan came to the construction site and told him that the Applicant would not stall the

construction in the event, if he settles the matter with him. The complainant refused to meet the Applicant. These two persons once again approached the complainant and told him that they could arrange a meeting with the Applicant. Accordingly, the complainant met the Applicant in Hotel Dariya Sagar. The complainant has alleged that the Applicant demanded Rs.4 lakhs per slab. The complainant was told that the money would reach the gangsters and in the event he fails to pay the amount, the construction would be embroiled in civil litigation and he would not be able to complete the construction. The complainant has alleged that he was scared as he had already entered into the agreements with the occupants of the building and had to complete the construction within time. He therefore agreed to pay to the Applicant No.1 Rs.4 lakhs per slab towards extortion money. The complainant paid to the Applicant No.1 the extortion amount of Rs.4,00,000/- per slab after which he could go ahead with the construction without any obstruction.

5. The Applicant used to organize Cricket Tournaments. In the year 2015, the Applicant compelled the complainant to pay Rs.1,75,000/- for the uniform and in the year 2016, he was made to purchase Hero Honda motor cycle worth Rs.60,000/- which was to be given as a prize

to the best player.

6. The complainant has alleged that he did not lodge a complaint against the Applicant No.1 because of his political position and association with gangsters. The complainant learnt that the Applicant No.1 used to extort money from the builders who started new construction at Bhiwandi. He used to file petitions before the High Court through his associates to stall such constructions.

7. In the year 2017, the Applicant No.2, who is the brother of the Applicant No.1 was released from jail. He came to the construction site to collect the extortion amount. When the complainant refused to pay the money, he showed his mobile having photograph of Munna Bhai Bajrangi who was stated to be a gangster. The Applicant No.2 told the complainant that he had to send the money to Munna Bhai Bajrangi and in case he failed to give the money, they would ensure that the building was demolished. The complainant under fear paid him Rs.1,50,000/-. When he was unable to pay him money in July, 2016, the Applicant No.2 threatened him and demanded Rs.4,00,000/- and on failure to give the money, they threatened to get the building demolished through the Corporation. The complainant has alleged that the Applicants used to constantly threaten him and extort money

in the name of the gangster – Munna Bajrangi.

8. In 2019, the Applicant was the candidate of MIM party for Assembly Election. The complainant has alleged that while he had gone to Bhiwandi, the Applicant No.2 compelled him to sit as a pillion rider on his motor cycle under the threat of causing his death and took him to the house of the Applicant No.1. The Applicant No.1 demanded extortion amount of Rs.50,00,000/- and when he expressed his inability to pay the said amount, the Applicant No.1 demanded Rs.5 lakhs for election expenses. The complainant informed the applicant no.1 that he was unable to pay Rs.5 lakhs at which time, Applicant No.1 threatened him and stated that he knows how to recover the money and that he would recover the same. He also threatened him to canvass for him, if he wanted to stay in Bhiwandi. The complainant agreed to canvass but after his release, he did not canvass for the Applicant No.1 and he left Bhiwandi as he was scared for his life.

9. In the year 2018, the complainant started construction of Mehboob Mandir. The Applicant No.1 once again demanded extortion amount, which was paid by the complainant. The complainant has stated that the Applicant No.1 also took forcible possession of two rooms in the said building. The complainant has given details of the

threats given by the Applicants and the money demanded and paid to them from time to time.

10. Mr. Ashok Mundargi, learned Senior counsel for the Applicants contends that the material on record does not prima facie prove the essential ingredients of section 364A of IPC. He submits that the FIR reveals that the Applicant No.1 had allegedly demanded ransom from the complainant. He submits that section 364A contemplates that the demand for ransom should be from “ any other person ” and not from the person kidnapped or abducted.

11. It may be mentioned that scope of section 364A by the Division Bench of this Court in *Philips Fadrick D' souza v/s. The State of Maharashtra and anr. in Criminal Appeal No.349 of 2005* ; wherein it has been held that the object of introducing Section 364A is to create an offence out of an aggravated form of kidnapping or abduction, where the purpose which underlie the unlawful act is the demand for ransom, or to compel the doing or abstention from doing an act by the government, foreign state, international body or any person. Referring to the decision of the Apex Court in *Malleshi v/s State of Karnataka (2004) 8 SCC 95*, it was observed that to attract the provisions of

Section 364A what is required to be proved is (i) that the accused kidnapped or abducted the person ; (ii) kept him under detention after such kidnapping and abduction ; and (iii) that the kidnapping or abduction was for ransom. The Division Bench of this Court has observed that *“The Supreme Court noted that to pay a ransom means ‘to pay a price or demand for ransom’. The Court noted that while the object of abduction is ransom, ‘it cannot not be laid down as a straitjacket formula’ that the demand for payment has to be made to a person who ultimately pays. A person may be abducted and may be told that in order to secure his release the members of his family would have to pay a certain amount of money. The money may actually belong to the person abducted. The payment for release is made by a person to whom the demand is made. Merely because the demand could not be conveyed to some other person after it was made to the kidnapped or abducted person as the accused is arrested in the meantime, that does not take away the offence out of the purview of Section 364A. The Supreme Court noted that the true test is : ‘What was the object’ of the kidnapping or abduction: Ultimately the question to be decided is ‘What was the intention ? Was it demand of ransom? ”*

12. In the instant case, the FIR prima facie reveals that the Applicant No.2 had compelled the complainant to sit on his motor cycle under a threat to kill. He took the complainant to the house of the Applicant No.1 and that the Applicant No.1 demanded an amount of Rs.50 lakhs. When he expressed his inability to pay the amount, he was compelled to canvass for him in an election and was allowed to go after he agreed to canvass.

13. The FIR also prima facie reveals that the Applicants have extorted money in the name of the gangster – Munna Bajrangi and by putting the complainant in fear and by threatening to demolish his building. The material on record reveals that the Applicants had compelled the complainant to purchase a motorcycle which was to be given as a prize to the best player in the cricket tournament. This is also corroborated by the statement of Irfan H. Ansari. The statement of Sherunissa Altaf Momin also prima facie reveals that the Applicants were extorting money from the complainant. She had paid Rs.25,000/- to the accused no.3 who had allegedly demanded the money at the instance of Applicant No.1. She has stated that her daughter had taken a video clip when she paid the money to the accused no.3. The statement of Shawan Juber Sheikh also prima facie reveals that the Applicant No.1

used to constantly threaten the complainant and would send the other co-accused to demand the money. She has stated that in her presence, the co-accused have collected total Rs.16 lakhs from the complainant at the instance of the Applicant No.1. The statement of Abul Faiz Khan also reveals that the complainant had paid Rs.8 lakhs to the Applicant No.1 as he used to constantly threaten to get the building demolished from the Corporation.

14. Similar statements are made by several other witnesses. The material on record particularly the panchanama dated 24/09/2020 also prima facie shows that the Applicant No.1 was caught by the police while accepting Rs.1 lakh from the complainant. In the house search panchanama dated 26/09/2020, apart from the other incriminating material, several aadhar cards, blank ration cards, koyta and choppers were recovered from the house of the Applicants. The statement of the Rationing Officer prima facie reveals that all the blank ration cards which were recovered from the Applicants are forged and fabricated. Some of the persons whose aadhar cards were found in the house of the Applicant No.1 have stated that they did not know how their aadhar cards were found in the residence of the Applicant No.1.

15. The material on record prima facie reveals that the Applicants are involved in extortion and abduction with an intention of demand of ransom. In an affidavit filed by the Investigating Officer, details of the crimes registered against the Applicants have been mentioned. The records indicate that as many as 29 crimes are registered against the Applicant No.1. Shri. Mundargi, learned Senior counsel states that the Applicant is acquitted/discharged in 08 cases. Nevertheless, the affidavit indicates that the Applicant No.1 is involved in over 20 crimes which include crimes for offences under sections 307, 324, 326, 363, 376, 385, 386, 387, 395 of the Indian Penal Code. Similarly, the Applicant No.2 is also involved in several crimes including crime for offence under section 3 of MCOC Act. These Applicants have committed these crime while on bail in previous cases and have thereby misused the liberty. The Intervenor has also filed an affidavit stating that while the Applicant No.2 was produced before the trial Court, he threatened the advocate representing the complainant. NC complaint has been lodged in this regard, a copy of which is placed on record.

16. Considering the nature of accusations against the Applicants and particularly the criminal antecedents and keeping in mind societal

interest, in my considered view, this is not a case for grant of bail.

Hence, the Bail Application stands dismissed.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

Digitally signed by
PREETI H JAYANI
Date: 2022.05.06
18:11:32 +0530