

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2008 of 2022**

Bilal Gulam Patel and Anr .. Applicants
Versus
The State of Maharashtra .. Respondent
...

Ms.Rushita Jain i/b Reshma Apte for the applicants.
Mr. S.H.Yadav, APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 25th JULY, 2022**

P.C:-

1 The applicants face accusation u/s.392 r/w Section 34 of IPC along with three other accused persons in C.R.No. 273/2022.

2 The subject C.R being registered on 28/4/2022 in respect of an incident which is alleged to have occurred on 7/5/2021.

3 Heard learned counsel for the applicants and the learned APP for the State.

4 On perusal of the complaint which invoke Section 392 of IPC, which contemplate punishment for robbery, the allegation of the complainant is, on 7/5/2021, when he was

present in Madarsa, the accused persons arrived there and the applicant is alleged to have asked him to show his mobile phone, as he was accused of playing black magic and videographing certain events. As per the complaint, at that time, the accused no.2 Sarfaraj forcibly removed the mobile from his pocket and thereafter, certain videos in the mobile were looked into by the accused persons and it is alleged that they pushed him. It is also alleged that Bilal Patel i.e. accused no.1 threatened him to part with the sum of Rs.One lakh. It is then alleged that from his mobile, certain transactions were made, and on 8/5/2021, a sum of Rs.95,000/- was debited. However, on 9/5/2021, the amount of Rs.90,000/- has been credited in his account but, he has not received Rs.5,000/-.

5 In the wake of the accusations, it is not clear as to how the offence of robbery is made out. Section 390 of IPC contemplate that in all robbery, there is either theft or extortion. The said section offer an explanation when theft would amount to 'robbery', only then the order to committing theft, the offender voluntarily causes or attempts to cause to any person, theft or hurt or wrongful restraint or fear of instant death or of instant hurt, or of instant lawful restraint. As far as the second explanation when extortion amounts to robbery is also, when the offender put a person in fear and commits the extortion, by putting that person in fear of death or instant hurt or wrongful restraint.

Since *prima facie* none of the ingredients of the said offence are not made out from the complaint, the custodial interrogation of the application is not warranted.

6 It is also not necessary for another reason that the complaint is lodged almost after 11 months of the incident, because of the delay in lodging the FIR which is unexplained. In any case, except for Section 392, no other offence has been registered for debiting the amount and that may be the reason that the substantial amount of Rs.90,000/- was credited into his account.

In the wake of the stale accusations, the applicants deserve the following protection. Hence, the following order :-

ORDER

- (a) In the event of his arrest, the Applicant no.1 Bilal Gulam Patel and applicant no.2 Sarfaraz H Shaikh in connection of C.R.No.273/2021 registered with Kashimira police station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.
- (b) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or

any Police Officer and should not tamper with evidence.

- (c) The Applicants shall attend the concerned police station on 27th and 28th July 2022 between 2.00 pm to 5.00 pm and thereafter as and when directed.

The Application is allowed in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)