IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2354 OF 2021

Riyaz Bhati .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Aabad Ponda, Sr. Advocate with Taraq Sayed for the applicant.
Mr.Shekhar Jagtap for the respondent.
API Vishal Patil from DCB CID Unit-IX.

CORAM: BHARATI DANGRE, J.
DATED : 2nd MARCH, 2022

P.C:-

1 Heard learned Senior counsel Mr.Aabad Ponda for the applicant and learned Special Counsel Shekhar Jagtap for the complainant.

2 The applicant is apprehending his arrest in connection with C.R.No. 971 of 2021, registered with Goregaon Police Station invoking Sections 384, 385 read with Section 34 of the IPC.

Pertinent to note that the aforesaid crime came to be registered at the instance of the complainant Shri Bimal Agarwal, resulting into registration of the offence of extortion against six accused persons, the applicant being arraigned as accused no.6.

Investigation of the crime was transferred to DCB CID, Unit-XI and the crime came to be re-numbered as C.R.No. 71 of 2021.

3 A brief perusal of the longish complaint lodged by the complainant refer to various transactions and events, right from the year 2009, when the complainant disclose as to how he came in contact with the police officers at various levels in the State of Maharashtra. The complaint state that the complainant came in contact with Shri Sachin Vaze, a Police Officer who had approached him in connection with an enquiry about tender process of the Municipal Corporation and he is candid in submitting that from the year 2010-2011, he remained in contact with him till registration of the FIR. Shri Sachin Vaze is arraigned as accused in the FIR. In March 2012, the complainant came to be arrested in connection with an offence registered with EOW.

4 The case of the complainant is that somewhere in January - February 2020, the accused no.2 Vaze came to meet him in his office at Malad and he tipped him by stating that his Special boss, the accused no.1 is likely to be deputed as Commissioner of Police, Bombay and therefore, the complainant can start his hotel business and he will take care of the rest, as the work of collection would be entrusted to him and he will create a set up for the complainant.

On an assurance being given, the complainant entered into partnership with one Mr.Aniket Patil and started operating a hotel in the name and style of BOHO Bar and Restaurant.

As per the prediction of Shri Vaze, the accused no.1 was appointed as Commissioner of Police of Mumbai on 31/3/2020 and Vaze came to be reinstated in the Police Department.

5 Further narration in the complaint reflect the strained relationship between the complainant and accused No.2-Shri Vaze, when he compelled him to shell out a huge amount as "*hafta*" for the month of December 2020 to March 2021 for smooth running of his hotel business and this amount of Rs.6.5 lakhs was paid to one person Sumit Singh was working for the accused Shri Vaze. The complainant state that on receipt of money, Sumit Singh used to make phone call to his partner Shri Vinay Singh @ Babloo and Riyaz Bhati i.e. the present applicant by informing, that the money was received and it will be sent to Shri Vaze in a day or two.

6 From the aforesaid conversation, which the complainant over-heard, he realized that Vinay Singh and Riyaz Bhati were working with Sumit and were participants in the

collection racket operated by Shri Vaze, by extorting money under threat.

7 The learned senior counsel, Shri Ponda would vehemently submit that reading of the FIR, which enlist various illegal activities in fact reflect upon the role of the complainant in the entire episode and he was once upon a time in extreme proximity of Shri Vaze and for that purpose, the learned senior Shri Ponda has invited my attention to the transcripts of audio conversation between Shri Vaze and the complainant. Shri Ponda would submit that the complainant himself is an extortionist and if he was so close to Shri Vaze, once upon a time, when he is involved in another C.R, and arraigned as an accused, he turned the table and lodged a complaint against Shri Vaze and implicated the present applicant who has no role to play in the entire episode. In any case, the submission is that the offence alleged is of extortion, which is punishable with Imprisonment of either description for a term which may extend to three years or a fine or both. As far as offence punishable under Section 385 of the IPC is concerned, it is bailable, and therefore, no custodial interrogation is necessary to investigate the said offence, is the submission.

8 Per contra, the learned Special Counsel Shri Jagtap would submit that it is settled principle of law that the police

machinery has every right to investigate an offence and an investigation cannot be scuffled by protecting the accused from arrest, particularly in an offence, as serious as the present one where high stake officials are involved. He would submit that a balance has to be maintained between the right of personal liberty of an individual and the right of the Investigating Agency to investigate into an offence and to effect arrest of the offenders, during course of investigation. Shri Jagtap would submit that grant of Anticipatory Bail, particularly in such offence, and in the wake of the peculiar circumstances which grappled the State of Maharashtra, when it's Commissioner of Police was required to be arraigned as an accused, it is necessary to have custody of the applicant since he was working as a close aid of accused no.2.

9 The case in which the applicant is arraigned as an accused is unparalleled and strange for the reason that the Commissioner of Police, of the financial capital of the country, Mumbai, who is supposed to be the protector of rights of the citizen, himself is arraigned as an accused.

The FIR alleges that on 3/2/2021, the accused Sachin Vaze conducted raid on the complainant's restaurant since the extortion of money was not paid as per demand. Crime came to be registered against his partner Aniket Patil for offence punishable u/s.188, 269, 336 of the IPC. On the next day, accused Sachin collected extortion money of Rs.Two lakhs from

Aniket. The FIR also allege that in December 2020, extortion money of Rs.Two lakhs was handed over to accused no.3 -- Sumit Singh which was an extortion money collected on instructions of accused no.2 Vaze. It further disclose that for the period from January 2021 to March 2021, a whopping sum of Rs.1,50,000/- per month was given as extortion money.

It is also alleged that accused Sumit Singh used to come to the restaurant every month for collecting the extortion money and on the collection being effected, he used to inform accused nos.5 and 6 about the amount being collected and that it would be made over to accused no.2 Vaze, shortly. The complainant is the business partner of Aniket Patil in BOHO Restaurant, from whom the extortion money was collected and, therefore, he is obviously the one affected by the act of extortion.

10 The reading of the FIR disclose a thickly entwined racket of extortion, which was operational in the city of Mumbai, by the accused persons, where the protectors of law, themselves indulge into unlawful activities. The situation is somehow like, the fence eating the crop.

The applicant is particularly named in the complaint as a part of the said racket, when one of the accused, on collecting the money, reported about the collection to accused no.5 and accused no.6 i.e. the present applicants and they would ensure that the money would reach the accused no.2 Vaze.

The Special P.P has invited my attention to various statements recorded during the course of investigation and as per the said statements, the present applicants and Aniket Patil are partners in Bombay Cocktail Bar, and on specifically asking whether they know the applicant, the statement is to the effect that Sumit Singh used to visit the hotel of the complainant along with his friend Vinay Singh and Riyaz Bhati frequently, and since they used to come to the hotel late in the night. The witness has deposed that they came to the hotel in January and February 2021. The fact that the applicant used to visit the hotel of the complainant with the accused persons *prima facie* indicate his connections with the co-accused, who are alleged to have extorted the amount from the complainant.

Further, statement of Aniket Patil u/s.164 of the Cr.P.C is also recorded before the Magistrate, who specifically depose that the present applicant had visited his hotel along with accused nos.3 and 4 and they demanded an amount and threatened him that if the amount is not paid, his establishment will be raided and this would land him in trouble. Aniket Patil, who is the partner of the present complainant, specifically state that in the month of December, he parted with an amount of Rs.2 lakhs as good luck on their say and for the month of January, February, March, he had paid an amount of Rs.1,50,000/- per month to accused no.3 Sumit Singh. From March 2020, his hotel remained shut on account of the lockdown.

Statement of another witness, who is a witness to the incident of extortion in the hotel is also recorded u/s.164 of Cr.P.C, when Aniket Patil was threatened to pay a monthly sum in absence of which he was threatened of a raid. Similar statement is recorded of the accountant in the bar, who has deposed before the Magistrate that the applicant used to visit the hotel and in December 2020, he had visited the bar at 8.00 p.m and some serious discussion took place, with the owner of the hotel. He has also witnessed the demand of specific amount per month in absence of which a threat of raid was given.

The aforesaid statements reveal the involvement of the present applicant.

Another two statements of the police officers recorded u/s.164 before the Magistrate refer to a deep conspiracy at the instance of the accused no.1, and it brings on record the deep routed activity of extortion, which was prevailing in the city of Mumbai, with the blessing of the so called protectors of law and order.

The aforesaid facts brought on record require a thorough investigation, and necessarily, a custodial interrogation.

11 The mere ground that the complainant himself was a participant in the crime along with the accused persons, once

upon a time, do no absolve the applicant of the accusations faced by him.

I am unable to accept the arguments advanced by the learned senior counsel Mr.Ponda, to the effect that the complainant himself is an extortionist and his statemente and allegation must be looked through a different lens.

12 Pertinent to note that the present applicant is absconding and even the proclamation is issued against him, and the learned counsel Mr.Jagtap would submit that despite notice issued to him u/s.41A, on 9/9/2021, he failed to abide by the same, which reflect upon his intention to affect the due process of law.

In the wake of the above, since the offence invoked though is punishable for not more than three years, on a larger front, to delve deep into the conspiracy hatched by the accused persons and since it may result into solving many extortion cases, which were committed under the guise of protection being offered by the police officials in permitting the illegal activities, in the city of Mumbai, the custody of the applicant is imperative.

13 For the aforesaid reason, Application deserve to be rejected and is accordingly rejected.

SMT. BHARATI DANGRE, J

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