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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.849 OF 2023

Bhavesh Prabhakar Chauhan @ Lalu ...Applicant

vs.

State of Maharashtra ...Respondent

Mr. Shambhu M. Jha with Mr. Suraj Pandey i/b Mr. Jitendra S. Tiwari
for the Applicant.

Mr. H. J. Dedhia APP for the Respondent-State.

Mr. Suryawanshi, API, Achole police station present.

CORAM : S. M. MODAK, J.

DATED : 10TH APRIL 2023

P.C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The present offence is registered with Achole police station on 21st October 2022, being C.R. No.I-526 of 2022, under sections 386 read with 34 of IPC. It was on the complaint of one Rahul Rakeshkumar Rai. He is a rikshaw driver, who plies his auto rikshaw

on road passing from Nalasopara (East) railway station to Alkapuri. Whereas present Applicant also owns 15 to 16 auto rikshaw. Co-accused Prabhakar Singh Chavan and Abhishek Chavan are the Applicant's father and brother respectively. They have been granted anticipatory bail by this Court as per order dated 16th February 2023, passed in Anticipatory Bail Application No.146 of 2023.

3. Sum and substance of the allegation is that the first informant has refused to pay certain sum of money either daily or on monthly basis to present Applicant towards extortion and that's why present Applicant threatened him of dire consequences. The recent incident took place on 19th October 2022, and it is recorded by the first informant in his mobile handset.

4. According to learned Advocate for the Applicant, the FIR does not mention that the Applicant put the first informant in fear of death or grievous hurt. According to learned APP, the allegations in the FIR need to be considered as a whole and it discloses offence under section 386 of IPC. It is true that if there is fear of death or grievous hurt, the offence under section 386 of IPC is invoked, however, when there is threat of only injury, offence under section 385 of IPC is disclosed.

5. According to learned Advocate for the Applicant, in fact, rickshaw owners and drivers have formed an Association and its registration certificate is there at page 37. It is submitted that in fact rickshaw drivers are paying contribution voluntarily and out of sum collected, they are giving financial aid to its members. Even though it may be true, however, any receipts issued by the Association are not annexed.

6. The Applicant claims that his father is President of that Association and now the first informant is desirous of becoming the President. There is an application filed on behalf of the Association dated 5/11/2022, addressed to Achole police station thereby mentioning that either the Applicant or co-accused has not demanded any amount towards extortion from them.

7. I have read the orders passed by the Court of Additional Sessions Judge. It is true that there allegations in the FIR, the police have recorded certain statements of the witnesses, however, before the Additional Sessions Judge these witnesses filed affidavits. They have stated that statements are given to the police due to misguidance. It is reflected in paragraph 6 of the order. However, the Court of Additional Sessions Judge has refused to grant protection

for the reason that prima facie involvement of the Applicant is there and custodial interrogation is required.

8. It is also submitted that proposal is moved for his externment as per provisions of the Maharashtra Police Act. Even though it may be true that there is separate offence bearing No.636 of 2022 registered against present Applicant under section 392 read with 34 of IPC., learned APP admits that there is "B" summary report submitted in the said offence.

9. Learned Advocate for the Applicant read over the said report, which is there in his mobile. Let the Investigating Officer be careful in giving instructions to learned APP and under pretext that different Investigating Officer is investigating that offence, he should not give incorrect information. In view of that registration of that offence cannot be considered.

10. After taking overall view of the situation, this Court feels that the Applicant can be granted protection from the arrest. It is for the reason that co-accused has already been granted protection from the arrest. It is true that in fact there is allegation against them that they have threatened first informant to be killed if the money is not paid.

11. Learned APP tried to submit that extortion is done by the Applicant and in his name, co-accused have threatened the first informant to be killed. However, in the entire FIR there is no specific allegation against present Applicant that he has threatened first informant and put him in fear of death or grievous hurt. So the Applicant deserves to be protected from arrest. The police can do rest of the investigation by putting conditions to attend police station.

12. In view of above, the following order is passed :

O R D E R

- (a) In the event of arrest, all the Applicant-Bhavesh Prabhakar Chauhan @ Lalu be released on bail on furnishing personal bond and surety bond of Rs.25,000/- each in C.R. No.526 of 2022, registered at Achole police station for the offences punishable under sections 386 read with 34 of IPC.
- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The Applicant shall give attendance to the Achole police station on Friday and Wednesday till filing of charge sheet from 10 am to 12 noon and cooperate with police

- (d) Needless to say, violation of the conditions above will make the Applicants liable for cancellation of anticipatory bail, after notice to the Applicant.
- 13. Application is disposed of accordingly.
- 14. These are my prima facie observations and the trial Court may not be influenced by that.
- 15. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]