

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPLICATION (BA) NO. 36/2023

Toufel Khan s/o Selabat Khan

.. Applicant

versus

The State of Maharashtra

Th: PSO PS Paratwada, Dist. Amravati.

.. Respondent

.....
Mr.R.M.Daga, Advocate for the applicant

Mr. A.M. Kadukar, APP for Respondent -State
.....

CORAM: ANIL L. PANSARE, J.

DATED : 27th January, 2023.

PC:

Heard the learned counsel for the respective parties.

2. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 23.03.2022 in connection with Crime No. 227/2022 registered with Police Station Paratwada, Dist. Amravati, for the offences punishable u/ss. 364(A), 363, 384, 386 read with Section 34 of the Indian Penal Code along with Sections 4 and 5 of the Arms Act.

3. Briefly stated, the facts of the case are that one Roshan accompanied by four persons made the informant and his friend sit in the car, which was driven by Sagar Ramesh Aasre (one of the four persons who accompanied Roshan). Roshan is the one who pointed a knife at the neck of the informant and put him in a fear of injury and sought an amount of Rs. 70,000/-. It is the Roshan who made the phone call to the sister of the informant and instructed the informant to request her to arrange for Rs. 70,000/-. The sister however, refused to

pay the amount. Thus, four persons who have accompanied Roshan have not indulged in any overt act in the incident. Meanwhile, the police came and apprehended all the culprits. It is noticed that none of these four persons were possessing any arms. Thus, the prime role in the crime is of Roshan. The role assigned to his associates is that they accompanied him in the car. Of course, there are general allegations by the informant and his friend that these five persons had assaulted the informant and his friend and forcibly made both to sit in the car. With the aforesaid narration of the incident, the offences under question have been registered against five persons.

4. Section 383 of the IPC defines 'extortion' as under :-

383. Extortion – *Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".*

A bare reading of the provisions would show that the inducement is to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security. In the present case, a ransom of Rs. 70,000/- was not delivered to the accused persons. Hence, I am of the *prima facie* view that it will be challenging to the prosecution to prove the ingredients of extortion in the present case. Section 364A i.e. kidnapping for ransom etc. has been invoked and the ingredients of which appears to be attracted in the present case. The offence is punishable with death or imprisonment for life. In that sense, the offence under question is serious.

5. Mr. Daga, learned counsel for the applicant has invited my attention to the order dated 11th November 2022 passed in Criminal Application (BA) No.883/2022 and the order dated 7th December, 2022 passed in Criminal Application (BA)No.1319/2022, to contend that similarly placed accused persons have been released on bail. The accused in these two applications had accompanied Roshan, but they have been released on bail.

6. Though the learned APP opposed the application, there appears no reason why the benefit of parity should not be extended to the present applicant, who is identically placed.

7. On enquiry, the learned counsel for the applicant submits that the applicant is a student. He fairly submits that a case had been registered against the applicant u/s 354 of the IPC some time in the year 2019 and he has been released on bail. That aspect, in my view, could be dealt with by putting the applicant to appropriate terms.

8. I am, therefore, of the view that the applicant having been similarly placed with the co-accused who have been released on bail, he too is entitled to the benefit of parity. Moreover, the applicant is 23 years old and is a student. The learned counsel submits that he is residing in the house owned by his parents since quote long time. Thus he has roots in the society. Hence the order :-

ORDER

(i) The Application is allowed.

(ii) The applicant-Toufel Khan s/o Selabat Khan be released on bail, in Crime No. 227/2022 registered with Police Station Paratwada, Dist. Amravati, for the offences punishable under sections 364(A), 363, 384, 386 read with Section 34 of the IPC along with Sections 4 and 25 of the Arms Act, on he furnishing P.R. bond in the sum of Rs. 25,000/- with

one solvent surety in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number (s) to the Investigating officer and the Court concerned, and shall not change the mobile number and the residence till the final disposal of the case.

(iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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