

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

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CRIMINAL APPLICATION (BA) NO. 240 / 2023

Imran Khan Bismillah Khan
versus

..Applicant

The State of Maharashtra

Th: Its PSO PS Gadgenagar, Dist. Amravati

..Respondent

.....
Mr.PV. Navlani, Advocate for the applicant

Mr.S.M.Ghodeswar, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 17th March, 2023.

PC:

Heard learned counsel for both the sides, at length.

2. This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 10.02.2023 in Crime No. 187/2023 registered at Police Station Gadgenagar, Amravati for the offences punishable under Sections 354, 452, 294, 397 and 34 of the Indian Penal Code.

3. Briefly stated, the case of the prosecution is that on 04.02.2023 at about 9.30 am, when the informant's husband was returning back with his three-wheeler called 'Katla' (rickshaw), two unknown persons intercepted him and demanded Rs. 200/- at the point of knife. The husband has given Rs. 200/- to those persons. On 05.02.2023 at about 6.30 pm, again, those persons followed her husband

and forcibly entered the house, hurled abuses and outraged her modesty by touching her hand and chest. Those unknown persons pushed her daughter and threatened her husband as well. The co-accused then asked the informant's husband to sit on his motorbike by saying that if he does not sit, the co-accused will inflict a knife blow to him. Thereafter the accused persons are said to have hurled caste based abuses to the informant. The informant did not allow her husband to go and made a phone call on 112 and proceeded to Police Station for lodging the report. According to her, the accused persons again visited her house when she had been to the Police Station and used coarse language. She enquired with the neighbors about those persons upon which she came to know the names of the accused persons. The case diary indicates that the statements of husband and wife only have been recorded till now and not of the persons who disclosed names of the accused to the informant. Thus, a vital evidence is missing.

4. The learned counsel for the applicant claims that there is dispute between the applicant and husband of the informant upon payment of Rs. 2000/-. He further submits that that the informant and husband both are small time artist, doing paint work and also doing labour work.

5. The learned APP submits that the knife allegedly shown to the husband has been recovered at the instance of co-accused -Golu.

6. When enquired, the learned counsel for the applicant submits that there are no criminal antecedents against the applicant and is residing at the address given hereinabove since long. Moreover the

FIR has been lodged after seven days of the incident. The delay has not been explained at all. Nothing is to be recovered from the applicant.

7. In view of the above and considering the fact that the accused who are unknown at the relevant time and further the fact that the statements of the persons who have disclosed the names of the applicant have not been recorded so far and the presumption is that a person accused of commission of crime is considered to be innocent until proven guilty, in my considered view, no fruitful purpose would be served by keeping the applicant behind bars. The interest of prosecution can be protected by putting the applicant to appropriate terms.

8. Needless to mention, that the observations made hereinabove are for the purpose of deciding this Application only and the trial Court shall not get influenced by it. Hence, the following order :

ORDER

- (i) The Application is allowed.
- (ii) The applicant-Imran Khan Bismillah Khan, be released on bail, in Crime No.No. 187/2023 registered at Police Station Gadgenagar, Amravati for the offences punishable under Sections 354, 452, 294, 397 and 34 of the Indian Penal Code, on he furnishing P.R. bond in the sum of Rs. 50,000/- (Rupees fifty thousand) with one or two sureties in the like amount.
- (iii) The applicant shall attend the concerned Police Station on every Sunday from 2.00 to 5.00 pm, till filing of the charge-sheet.
- (iv) 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(s) and the residence till the final disposal of the case.

(v) After filing of the charge-sheet, the applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) 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.

(vii) The applicant shall maintain law and order.

(viii) In case of breach of any condition, 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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