



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1582 OF 2024

MANPRITSINGH @ SONU SURJAN SINGH AULAKH
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. V. D. Karande and
Mr. Granthi Manpreet Ajeet Singh
APP for Respondent : Mr. G. O. Wattamwar
...

CORAM : S. G. MEHARE, J.
DATE : 24-10-2024

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent.
2. The applicant seeks bail in C.R.No.129 of 2023 registered with Police Station Vazirabad, District Nanded, for the offences punishable under Sections 384, 385, 386, 387 read with Section 34 of the Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crimes Act, 1999 (for short, "*MCOC Act*").
3. On secret information, the P.S.O., Local Crime Branch, registered the first information report (FIR). The FIR contents that on 05.04.2024, on the say of one hardened criminal Harvindar Singh Rindha, his associates killed the builder. Thereafter, panic

spread in the town. Rindha was extracting a huge money from builders, medical practitioners and businessmen. The victims were apprehending their lives. Hence, nobody was coming forward. After June 2022, there were no complaints of extorting money and threatening the people in the town. He had received a secret information that since last 8 to 10 days in Nanded town, some people were threatened for extorting money by using sim cards from United Kingdom, Canada, etc. He tried to convince the victims, but they did not dare to lodge the report. He has also given a reference of crime No.122 of 2022 registered against Harvindarsingh Rindha and his associates. In that crime, the mobile handsets were recovered from the accused. A pistol was recovered from this applicant. He has also given the reference of crime of year 2016 in the FIR. He also mentioned in the FIR that the amount of Rs.40 Lakh was demanded from Yogesh Dhanraj. They had disappeared the evidence connecting the accused Harvindarsingh. In 2017, they had extracted Rs.5 Lakh and in 2022 again from the same witness, the applicant extracted Rs.7,50,000/-. In sum and substance, he gave a reference of the old incidents about the manner and way of extracting money and disappearing the evidence. However, the FIR is silent about recent incident, which was not connected with the earlier crimes. On secret information, the above FIR was registered. On the basis of above FIR, the police arrested the applicant on 11.07.2023. The

above FIR was registered on 21.04.2023. Before his arrest, the statement of the witnesses were recorded.

4. The prosecution case rests mainly on the statement of one Sayyed Sayeed Ali, which was recorded on 06.05.2023, who has given reference of the incident of year 2017 for which the crime was registered. However, he stated that on 21.09.2022, the applicant came to his shop, near one Mahavir Society, took him besides, and told him to come to the side and demanded Rs.15 Lakh from his master. After bargaining, on 24.09.2022, he paid Rs.7,50,000/- to the applicant. His master also corroborated him. Some of the witnesses though were examined did not state the fresh incidents. On basis of this material, the applicant has been arrested and he is languishing in jail.

5. The learned counsel for the applicant has raised first objection that, the FIR itself is defective, because at the time of registering the FIR, P.S.O., L.C.B. had no concrete information about day and time of the incident. The P.S.O. on secret information registered the crime first, and then he created evidence. Therefore, registering crime by the police itself is defective. In the circumstances, the detention of the applicant is illegal.

6. The learned A.P.P. is correct that any person who is aggrieved or not may put the law into motion.

7. Chapter XII of the Code of Criminal Procedure (for short, "Cr.P.C.") has a title "information to the police and their powers to investigate". Section 154 of the Cr.P.C. is about information in cognizable cases. The information in cognizable cases if given to police by any person, of the commission of cognizable offence, it should be reduced into writing. It should be read over to the informant and the informant should sign the information reduced to writing and verify the information.

8. Section 157 of the Cr.P.C. provides for "Procedure of investigation". Sub-section (1) of Section 157 of the Cr.P.C. provides, if from information received or otherwise, an officer-in-charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or depute one of his subordinate officers not being below such rank as the State Government may, by general or special order prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender.

9. The above section is divided in two parts. It speaks of the source of information. The information may be from the person

who is aggrieved or has the knowledge of the crime and second is the information received to the police 'otherwise'.

10. Honourable Supreme Court, in *Mukesh Singh v. State (NCT of Delhi)*, (2020) 10 Supreme Court Cases 120, in paragraph No.10, observed that;

"10. Therefore, considering Section 157 Cr.P.C., either on receiving the information or otherwise (may be from other sources like secret information, from the hospital, or telephonic message), it is an obligation cast upon such police officer, in charge of a police station, to take cognizance of the information and to reduce into writing by himself and thereafter to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender. Take an example, if an officer in charge of a police station passes on a road and he finds a dead body and/or a person being beaten who ultimately died and there is no body to give a formal complaint in writing, in such a situation, and when the said officer in charge of a police station has reason to suspect the commission of an offence, he has to reduce the same in writing in the form of an information/complaint. In such a situation, he is not precluded from further investigating the case. He is not debarred to conduct the investigation in such a situation. It may also happen that an officer in charge of a police station is in the police station and he receives a telephonic message, may be from a hospital, and there is no body to give a formal complaint in writing, such a police officer is required to reduce the same in writing which

subsequently may be converted into an FIR/complaint and thereafter he will rush to the spot and further investigate the matter. There may be so many circumstances like such. That is why, Sections 154,156 and 157 Cr.P.C. come into play.”

11. In *Lalita Kumari versus Government of Uttar Pradesh and others*, (2014) 2 Supreme Court Cases 1, it has been held as under;

“The word “shall” used in Section 154 leaves no discretion in police officer to hold preliminary enquiry before recording FIR. Use of expression “information” without any qualification also denotes that police has to record information despite it being unsatisfied by its reasonableness or credibility. Therefore, the officer in charge of a police station has to reduce such information alleging commission of a cognizable offence in writing which may be termed as FIR and thereafter he is required to further investigate the information, which is reduced in writing.”

12. Reading Sections 154, 156 and 157 together, it can be understood that the information received to the police either from the person acquainted with the facts of the crime or to be an aggrieved or otherwise should be specific to form an opinion that the cognizable offence is committed and investigation is required. Unless the facts as regards to the commission of the cognizable offence is reduced to writing, the police officer cannot proceed with the investigation.

13. The learned A.P.P. relied on the case of *A. R. Antulay v. Ramdas Srinivas Nayak and another*, AIR 1984 Supreme Court 718, and referred to the findings of the Honourable Supreme Court that the Police Officer may proceed with the investigation for all the offences which are prohibited by the other offence, he cannot tie his hand and wait till the person aggrieved came forward. Therefore, it cannot be said that the police cannot register the offence.

14. The observations recorded by the Honourable Supreme Court in *Mukesh* (supra), are clear that the information of the commission of the offence should be specific to form an opinion that such cognizable offence happened and it needs investigation immediately without waiting for formal information by any person.

15. The learned A.P.P. further referred to the paragraph No.7 of the case *A. R. Antulay* (supra), and argued that *locus standi* of the complaint is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complaint, by necessary implication the general principle gets excluded by such statutory provision.

16. The question was, does the so-called FIR registered at the instance of Inspector, L.C.B. is the FIR in the eyes of law?

17. It is not the case that the police had received information on

telephone, from a hospital or from any institution where the incident happened or from a person secretly giving an intimation based upon witnessing incident nor the evidence was available and the formal complainant did not come forward.

18. In this case, on secret information, the FIR was registered, but the FIR is silent about exact incidents. The Investigating Officer first recorded the FIR and then collected the evidence. The law does not say so. The powers to proceed with the investigation under the law provides that on specific. Information though secret, the police officer cannot proceed to investigate the crime, unless he reduce the information to writing. It was not happened in this case. Therefore, the FIR registered on secret information without mentioning the specific incidents of place, is incorrect. Such an FIR is not the FIR in the eyes of law.

19. Secondly, so far as merit is concerned, the applicant has been arrested in the crime on the basis of the evidence of the witnesses as stated in reference to the offence of 2017 that again extortion was done. It was in the context of the offence in which the crime was already registered. Except the gun, nothing has been recovered from the applicant.

20. The learned A.P.P. has also refer to the statement of the accused under Section 18 of the M.C.O.C. Act and if argued that statement bind the accused is the question to be determined in

the trial. In the facts and circumstances of the case, the Court is of the view that such statement of the accused would not come in his way to seek bail.

21. The learned A.P.P. also opposed the application on the ground that four crimes have been registered against the applicant. So there is possibility of repeating the crime at his hand. On this ground also, he does not deserve bail.

22. While considering application for bail, the Court has to consider the role attributed to the applicant in the crime in which he seeks bail, when the arguments were advanced not to grant bail for antecedents. One of the similarly situated co-accused has been granted bail. Hence, apart from merit, the applicant deserves bail on parity. Hence, the order:-

ORDER

- i) Bail Application is allowed.
- ii) Applicant- Manpritsingh @ Sonu Surjan Singh Aulakh, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- with one solvent surety of the like amount, in the above crime for the aforesaid offences, on the conditions that;
 - (a) He should not tamper with the prosecution witnesses.
 - (b) He should attend the police station on every first and last Friday of every month till the trial is concluded.
 - (c) He should not leave the place of his residence without

written permission of the police station till trial is concluded.

- (d) He should not contact any of the co-accused either on phone or anybody else till trial is concluded.
- (e) He should attend the trial on each and every effective date.

(S. G. MEHARE)
JUDGE

rrd