Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3299 OF 2023

Suraj Santosh Ishi ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 4404 OF 2023

Mehernosh Jamshed Bharucha ...Applicant

In the matter between

Suraj Santosh Ishi ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Tapan Thate, a/w Vivek Arote, for the Applicant.
Mr. Tanveer Khan, APP for the State/Respondent.
Mr. Ashray Dave, a/w Tushar Halwai, for the Intervener.
PI Nawadkar, MRA Police Station, Wadala Police Station, present.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 28th MARCH, 2024
PRONOUNCED ON: 18th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the parties.

2. The applicant, who is arraigned in CR No.812 of 2022 registered with MRA Police Station, Mumbai, for the offences punishable under Sections 384, 386 and 420 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Section 66E of the Information Technology Act, 2000, has preferred this application to enlarge him on bail.

3. The indictment against the applicant and the co-accused runs as under:

The applicant had developed friendship with the first informant on Instagram on the pretext that he was equally interested in photography like the first informant, who trades in stocks at Mumbai. The applicant came to Mumbai in the month of February/March, 2022. There were physical relations between the applicant and the first informant .

4. After a couple of days of leaving Mumbai, the first informant alleged, the applicant forwarded a nude photo of the first informant on the latter's WhatsApp. When the first informant realized that the applicant had surreptitiously retrieved personal photographs and videos of the first informant in objectionable state, the first informant attempted to block the applicant. However, the first informant was coerced to unblock the applicant.

5. Subsequently, the first informant alleged, the applicant started to extort money from the first informant on the pretext that one of the contacts of the first informant had shared objectionable photos on applicant's mobile phone, which were seen by the applicant's wife and that resulted in the martial discord and a police report. The first informant alleged, the applicant, on one or the other pretext, made the first informant to transfer an amount of Rs.25,55,000/- in tranches to the various accounts as indicated by the applicant. In the supplementary statement, the first informant furnished further details and alleged that an aggregate sum of Rs.51,29,000/- was transferred to the accounts of the applicant, his wife, Dipak Koli, Yogesh Jadhav and other associates. On 30th November, 2022 the applicant allegedly forwarded nude photos and videos of the first informant on the mobile phone of the first informant in order to extort further amount. The first informant thus lodged the report.

6. The applicant came to be arrested on 4th December, 2022.

7. Mr. Thatte, the learned Counsel for the applicant, submitted that post the arrest of the applicant, thorough investigation has been carried out leading to filing of the charge-sheet. As per the prosecution case, a sum in the range of Rs.8,00,000/- only has been credited to the account of the applicant. As against this, an Ertiga car of the applicant has been seized. An amount of Rs.89,268/-, which stood to the credit of the account of the applicant with Canara Bank, has also been debit freezed. There is no material to connect the applicant with the rest of the amounts which the first informant had allegedly credited to the accounts of various persons. Mr. Thatte further submitted that, at best, it can be said that there is material to incriminate the applicant for an offence punishable under Section 384 of the Penal Code. However, no case for the offences punishable under Sections 386 and 420 of the Penal Code can be said to have been *prima facie* made out. The applicant has been in custody for almost 18 months. Therefore, the applicant be released on bail.

8. Mr. Khan, the learned APP, strongly opposed the prayer for bail. It was submitted that taking undue advantage of the proximity that was developed between the applicant and the first informant, the applicant extorted huge amount from the first informant by putting the first informant in fear of injury to the reputation of first informant. Taking the Court through the statements of witnesses and documents which evidence the transfer of the amounts from the account of the first informant to the alleged associates of the applicant and subsequent transfer of the said amount to the account of the applicant and his wife, Mr. Khan submitted that there is overwhelming material to show that the applicant had blackmailed the first informant. Therefore, the applicant may not be released on bail.

9. Mr. Dave, the learned Counsel for the first informant – intervener, also resisted the prayer for bail. A strenuous effort was made to draw home the point that the material on record indicates that not only the applicant but also his wife and the co-accused had put the first informant in fear of not only injury in reputation but of death or grievous hurt. Therefore, an offence punishable under Section 386 of the Penal Code can be said to have been squarely made out. In any event, having regard to the huge amount, which has been extorted from the first informant, the applicant does not deserve to be released on bail.

10. The learned APP and the learned Counsel for the first informant also laid emphasis on the fact that the applicant is a history-sheeter. As many as 7 crimes have been registered against the applicant at various police station in Dhule District. Therefore, there is a strong possibility of tampering with evidence, threatening the witnesses as well as commission of identical offences, if the applicant is released on bail.

11. I have carefully perused the report under Section 173 of the Code and the material on record. The genesis of the alleged offences appears to be in the physical relations between the applicant and the first informant. The first informant alleged that after the alleged consensual act, the applicant started to extort money from the first informant by giving threats of making the photos and videos viral and thereby tarnish the reputation of the first informant.

12. *Prima facie,* there is material to indicate that the applicant had allegedly forwarded the objectionable content on the mobile phone of the first informant. There is also material to indicate that the first informant was made to transfer various amounts to the account of a number of persons. Two of the witnesses have stated that the first informant had credited the amount to their accounts at the instance of the applicant and they, in turn, paid and/or credited the said amount to the applicant and his wife.

13. At this stage, the Court may proceed on the premise that the applicant extorted money from the first informant by putting him in fear of causing injury in reputation. Thus, the offence punishable under Section 384 of the Penal Code can be said to have been *prima facie* made out.

14. Nonetheless, the question as to whether the alleged acts would constitute an offence punishable under Section 386 of the Penal Code appears to be debatable. From the tenor of the allegations in the FIR it appears that the allegations against the applicant and his wife of giving the threats were primarily with intent to cause injury to the first informant in reputation. Even the wife of the applicant had allegedly threatened to display banners in front of the house of the first informant. Likewise, whether the acts of the applicant would fall within the dragnet of the offence punishable under Section 420 of the Penal Code appears debatable. The elements of deceit coupled with injury, in the backdrop of nature of the accusation, do not appear to be *prima facie* evident. The indictment is such that it properly falls within the tentacles of extortion.

15. If the offence *prima facie* falls within the ambit of Section 384 of the Penal Code only, which entails punishment which may extend to three years, the prayer for bail deserves to be considered in a different perspective as the severity of punishment as well as the fact that the applicant has been in custody for almost 16 months bear upon the exercise of discretion.

16. At this stage, the Court need not delve deep into the aspect of the quantum of the amount allegedly extorted by the applicant and his associates. Suffice to note that, there is material to indicate that the first informant had transferred amounts to various accounts. At the same time, an Ertiga car of the applicant, which was allegedly acquired out of the extorted amount, has been seized and the amount which stood to the credit of the account of the applicant with Canara Bank has also been debit freezed. The investigation seems to be practically complete. The applicant has been in custody for over 16 months. Thus the further detention of the applicant as an under-trial prisoner does not seem warranted.

17. I have considered the nature of the accusation in the seven cases which are registered against the applicant. In five cases, the applicant has been arraigned for an offence punishable under Section 379 of the Penal Code. Sixth one is for the offence punishable under Section 392 of the Penal Code and the last one appears to have its genesis in the quarrel which the applicant had with his in-laws over the alleged disclosure of the relationship between the applicant and the first informant. The antecedents, therefore, do not appear to be such as to disentitle the applicant from bail if viewed in the context of the punishment the offences entail and the fact that the majority of the offences including the instant one are triable by the Magistrate.

18. I am, thus, inclined to exercise discretion in favour of the applicant. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

19. Hence, the following order.

: O R D E R :

(i) Application stands allowed.

(ii) The applicant be released on bail in CR No.812 of 2022 registered with MRA Police Station, Mumbai, on furnishing a P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(iii) The applicant shall mark his presence at Shahada Police Station, Dhule, on the first Monday of every alternate month between 10.00 am. to 1.00 pm. for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) The applicant shall not contact the first informant, his relatives and any person, in any manner whatsoever or tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) The applicant shall not enter the limits of Mumbai City, Mumbai Suburban and Thane Districts till the conclusion of the trial except for the purpose of attending the trial before the jurisdictional court of Metropolitan Magistrate.

(vi) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

In view of disposal of BA/3299/2023, IA/4404/2023 also stand disposed.

[N. J. JAMADAR, J.]