

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3095 OF 2024

1. Tushar s/o. Sanjay Mhaske
 2. Rushikesh Balu Mhaske
 3. Swapnil Machindra Salve ... Applicants
Vs.
 State of Maharashtra ... Respondent

Mr. Kuldeep Kahalekar (through VC) a/w. Mr. Prashant Pandharikar for Applicants.

Mr. Babu V. Holambe-Patil, APP for Respondent-State.

Mr. Deepak Barge, Asst. Police Inspector, Hadapsar Police Station, Pune City.

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 22, 2024

P.C. :

1. Heard Mr. Kahalekar, learned counsel for applicants and Mr. Holambe-Patil, learned APP for respondent-State.

2. The applicants are apprehending arrest in connection with FIR No.1318 of 2024 dated 22.08.2024 registered with Hadapsar Police Station, District - Pune City, for offences punishable under Sections 137, 308(3), 351(2), 352 read with Section 3(5) of the Bhartiya Nyaya Sanhita, 2023 (BNS). Subsequently, offences under Sections 308(4) and (5) of the BNS have been added in the present case. It is these offences that are non-bailable and hence, the apprehension on the part of the applicants.

3. The informant has alleged that the applicants, on the date and time of the incident, picked him up and took him in a vehicle, asking for return of amount of ₹ 1 crore that was allegedly due from the

informant. It is alleged that the applicants then stated that they would be satisfied with an amount of ₹ 60 lakhs and if the informant failed to pay the said amount, his son would have to bring documents pertaining to property and vehicle. Thereafter, the applicants allegedly released the informant and thereupon, the FIR came to be registered.

4. The learned counsel for the applicants submitted that the allegations made by the informant do not make out the ingredients of offence of extortion under Sections 308(4) and (5) of the BNS. It was submitted that in the present case, there was no delivery of any property or valuable security, thereby indicating that the offence even *prima facie* cannot be said to be made out. It was submitted that the other offences registered against the applicants being bailable, this Court may allow the present application. Reliance was placed on the judgment of the Division Bench of this Court in the case of Hemant Dhirajlal Banker vs. State of Maharashtra and another passed in Criminal Application No.488 of 2020 and also, order dated 28.06.2024 passed by this Court in Bail Application No.3622 of 2023 and connected applications.

5. The learned APP, on the other hand, submitted that the allegations levelled against the applicants clearly make out the offences registered against them and that in any case, it can be said that the offence under Section 140(2) of the BNS pertaining to kidnapping in order to murder or for ransom, is made out against them, which is a non-bailable offence. It is submitted that serious allegations have been made against the applicants and therefore, the application deserves to be dismissed.

6. This Court has considered the rival submissions in the light of

the material placed on record. The statement of the informant leading to registration of the FIR shows that the allegations do not include any specific allegation of any property or valuable security being parted with by the informant due to the acts of the applicants. *Prima facie*, the allegation of extortion and particularly offences under Sections 308(4) and (5) of the BNS do not appear to be made out on the basis of the aforesaid allegations. At worst, offence of kidnapping or abduction could be alleged against the applicants, which is a bailable offence. Reliance placed on the aforementioned judgment of the Division Bench and Single Bench of this Court is appropriate as the ingredients of the offence of extortion have been discussed in detail and delivery of property or valuable security has been held to be a vital ingredient of the said offence.

7. This Court is of the opinion that the contention regarding offence under Section 140(2) of the BNS raised by the learned APB, cannot be accepted in the light of the nature of allegations levelled by the informant against the applicants. A case for granting anticipatory bail is made out. Hence, the application is allowed in the following terms:-

- A. In the event the applicants are arrested in connection with FIR No.1318 of 2024 dated 22.08.2024 registered with Hadapsar Police Station, District - Pune City, they shall be released on bail on furnishing PR Bond of ₹ 50,000/- each with one or two sureties each in the like amount;
- B. The applicants shall remain present before the investigating officer on 26.11.2024 and 27.11.2024 between 10:00 a.m. and 12 noon and thereafter, as and when called by the investigating officer. They shall co-

operate with the investigation;

- C. The applicants shall not influence the informant, witnesses or any person concerned with the case and they shall not tamper with the evidence.

8. Needless to say, violation of any of the aforesaid conditions would make the applicants liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicants in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

9. The application is disposed of.

(MANISH PITALE, J.)

Priya Kambli