IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 254 OF 2024

Mobin Ahmad s/o Shamshuddin Ahmad Sheikh **V/s** State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr. B. H. Sheikh, counsel for applicant.
Ms. T.H. Udeshi, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/06/2024.

1. Apprehending the arrest at the hands of Police, in connection with Crime No. 792/2023 registered with Police Station, Yashodhara Nagar, Nagpur for the offence punishable under Section 386 of the Indian Penal Code, 1860, the applicant approached this Court for grant of pre-arrest bail.

2. Learned counsel for the applicant submitted that as far as the recitals of the FIR is concerned, it shows that the informant has obtained the amount of Rs. 20,000/- which he has not paid, and therefore, the applicant has demanded the amount of Rs. 2,00,000/- from him, and thus, it is alleged that the complainant was put under the fear of payment of money, and thereby committed an offence punishable under Section 386 of the Indian Penal Code, 1860.

3. Learned counsel for the applicant submitted that as far as the allegations are concerned, the offence under

Section 386 is not made out, as there is no material to show that either the complainant was put under the fear of death of any grievious hurt, and demanded any amount from him. He submitted that it is the transaction of the hand-loan between the complainant and the present applicant, in which the hand-loan amount was demanded, and therefore, this false FIR is lodged against the present applicant. As far as the custodial interrogation is concerned, the applicant has cooperated with the investigation agency and has attended the concerned police station. In view of that, interim protection granted to the applicant deserves to be confirmed.

4. Learned APP strongly opposed the said application on the ground that during the investigation, it reveals that there was a hand-loan transaction between the present applicant and the complainant, and the complainant has obtained the amount of Rs. 20,000/-, but he could not pay some amount within a reasonable period and therefore, the applicant has demanded money from him of Rs. 2,00,000. Not only this, the applicant was threatened with dire consequences for non-payment of the said loan.

5. She invited my attention towards the statement of one Rajesh Sundarlal Amge, in whose presence the threat was given by the present applicant to the complainant. She submitted that in view of the offence under Section 386 is made out by the present applicant, and therefore, the present application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers. From which, it reveals that there was a hand-loan transaction between the present applicant and the complainant. As far as the allegation is concerned, it is alleged that the informant has already paid the amount but the applicant is demanding the additional amount. It further reveals from the recitals of the application filed by the applicant that the applicant was in prison for 14 months, in view of the detention order passed by the Police Commissioner, Nagpur.

7. Learned APP submitted that it shows that there are criminal antecedents against the present applicant. On that ground also, the bail application of the present applicant deserves to be rejected. It is well settled that mere criminal antecedents are not sufficient to deprive the applicant from his liberty. As far as the investigation papers are concerned, from which it reveals that the hot exchange of words took place between the present applicant and the complainant, on account of the money transaction. As far as the offence of extortion is concerned, the definition given under Section 383 of the Indian Penal Code,1860 is shows that – *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".*

These ingredients from the investigation papers whatever carried out by the investigating agency appears to be absent.

8. Moreover, at this stage, only it reveals that out of money transaction, the said incident of communication and threatening by the present applicant is alleged to be appeared. Considering that the applicant has cooperated with the investigating agency as there is no complaint that he has not attended the Police Station, the ad-interim protection granted to him deserves to be confirmed. In view of that, I proceed to pass the following order:

ORDER

a) The criminal application is allowed.

b) In the event of his arrest, in connection with Crime No. 792/2023 registered with Police Station Yashodhara Nagar, Nagpur for the offence punishable under Section 386 of the Indian Penal Code, 1860, the applicant – Mobin Ahmad s/o Shamshuddin Ahmad Sheikh, shall be released on anticipatory bail, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.

c) The applicant shall attend the concerned police station once in a week i.e. on every Monday between 10.00 a.m. and 01.00 p.m. and till filing of the charge-sheet.

d) The applicant shall not directly or indirectly make any inducement and threat or promise to any witnesses acquainted with the facts of the present case.

The criminal application is **disposed of.**

[**URMILA JOSHI-PHALKE, J.]**