

Shambhubhai Ranchhoddas Joshi vs State Of Gujarat on 17 July, 2023

Author: Ilesh J. Vora

Bench: Ilesh J. Vora

NEUTRAL C

R/CR.MA/8883/2023

ORDER DATED: 17/07/2023

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 8883 of 2023

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SHAMBHUBHAI RANCHHODDAS JOSHI
Versus
STATE OF GUJARAT

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Appearance:

MR YATIN OZA, SENIOR ADVOCATE WITH MS AISHWARYA H
CHAUDHARY(11539) for the Applicant(s) No. 1
MS SUDHIR NANAVATI, SENIOR ADVOCATE WITH MR DIGANT B
KAKKAD(6523) for the Respondent(s) No. 1
MR JENISH D RUPARELIYA(10660) for the Respondent(s) No. 1
MS ASMITA PATEL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA
Date : 17/07/2023
ORAL ORDER

1. Apprehending the arrest in connection with FIR being C.R.No.11205043221038 of 2022, registered with B- Division Police Station, Bhuj, Dist.: Kutch for the offences punishable under Sections 387, 389, 120B, 34 and 201 of the Indian Penal Code, applicant - Sambhubhai Joshi accused no.6 seeks pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973.

2. This Court has heard learned Senior Counsel Mr.Y.N. Oza assisted by Ms.Aishwarya Chaudhary, learned counsel appearing for and on behalf of the applicant, Mr.Sudhir Nanavati, learned Senior Counsel assisted by Mr.Digant Kakkar and Mr.J.D. Ruparelia appearing for and on behalf

NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined of original informant and Ms.Asmi Patel, learned APP for the respondent - State.

3. Facts of the case as are relevant for the deciding the present anticipatory bail application are that, present applicant Mr.Sambhubhai Joshi has been arraigned as accused no.7 in the alleged act of criminal conspiracy, extortion.

Accused no.1 Asha Ghori and her aid, accused nos.2 and 3 have been charged of demanding of Rs.10 crores from the informant businessman, after allegedly honey trapping him in the town referred in the FIR. As per the case of the prosecution, accused no.1 - lady Asha Ghori came into contact with the informant - Anant Tanna through social media whatsapp and accordingly, the informant reserved one room at Hotel Furn at Bhuj for meeting with her. The informant went to the hotel and maintained physical relationship with her and paid Rs.20,000/-. Accused no.1- lady, on the next day, asked the informant to book her ticket for Vadodara town and after reaching at Vadodara, she had demanded Rs.50,000/-, which was not accepted by the informant. Subsequently, in the month of July-2020, the informant received a phone call from accused no.2 NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined Vinay Reylon and he had informed that he is having recorded video clip of him showing the objectionable contents therein. The informant told him to meet personally. The meeting was arranged. In the meeting, accused no.2-Vinay Reylon and accused no.3-Haresh Kanthecha, saw him the video clip on laptop and asked the informant to settle the issue with accused no.1 and if he will not settle, then they will circulate the video clip in the social media. The informant had asked them what amount he has to pay for the settlement, for which they said that, the figure would be worked out later on. Meanwhile, the informant realized that he was trapped by accused nos.1 to 3 in the said honey trap and it is a case of extortion and blackmailing. Thereafter, accused no.3 informed the informant that the matter was referred to him by one Jayantibhai Thakkar, and therefore, for settlement of the matter, he has contacted him. After some days, the informant got a phone-call from accused no.5-Manish Mehta resident of Village Anjar and he told him that for the settlement of the matter, meeting with Ramesh Joshi, resident of Mumbai is necessary. Thereafter, news of the matter was published in the daily newspaper NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined "Divyabhaskar", wherein the police of Anjar was asked to inquire in the matter by one NGO namely Kutch Ladayak Manch, run by accused no.6-Ramesh Joshi. Ramesh Joshi is the permanent resident of Mumbai Kandiwali and originally he belongs to Kutch region and also holding the post of one charitable trust. Pursuant to the news article, accused-Manish Mehta contacted the informant and told him that Ramesh Joshi would solve the matter and meeting with him at Mumbai is necessary. However, the informant was not agreed to meet him as the factum of incident has already been disclosed in the social media. Meanwhile, the informant had also conversed with accused no.1 lady and she was insisted for settlement of the issue through mediation. Accused no.5-Manish Mehta is very much close to accused no.7-Sambhubhai Joshi, who happened to be a real brother of accused no.6 Ramesh Joshi. Accused no.5- Manish Mehta, in the presence of the informant, made a conversation on his phone call with the applicant accused no.7-Sambhu Joshi so as to convince the informant that meeting with accused no.6-Ramesh Joshi for resolving the matter at Mumbai is necessary. However, the informant was not agreed to settle the matter through the process NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined suggested by

accused no.6-Ramesh Joshi as he was asking one request letter from him stating therein, for intervention in the matter. Thereafter, with the assistance of one Mr.Ashok Bhanusali, the complainant submitted an application dated 09.10.2022 addressed to the Police Commissioner, Bhuj stating inter alia alleging a conspiracy hatched by the accused nos.1 to 3, allegedly executed by them with common intention to induce the complainant to obtain extortion amount. After making preliminary inquiry, an FIR came to be lodged for the offences, as referred in Para-1 of this order. After completion of the investigation, the police has filed the chargesheet qua accused nos.1 to 4. whereas, accused no. 5 to 7 are shown absconding in the chargesheet. Meanwhile, accused Ramesh Joshi has been arrested, whereas, present petitioner has been protected by the High Court vide its order dated 15.05.2023.

4. In the aforesaid facts, it is alleged against accused -

present applicant - Shambhu Joshi that he participated in the alleged criminal conspiracy and aided an abetted the accused, in the attempt of demanding ransom amount and being a brother of accused no.6, he had actively referred the name of his brother - accused no.6 for settlement of NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined the matter.

5. Mr.Yatin Oza, learned Senior Counsel appearing on behalf of the applicant, submitted that the applicant herein has been falsely implicated in the alleged offence, merely on the ground that he is the brother of accused no.6 Ramesh Joshi; that both the brothers are residing in different areas and their working fields are also different; that based on the transcript of call conversations made between the accused-Manish Mehta and present applicant, without examining the material thereof, with ulterior motive, the applicant herein roped into alleged offence; that the applicant never demanded any ransom amount nor in any way connected with the accused nos.1 to 5 and during the offence period i.e. 01.07.2022 to 17.10.2022, was not in contact with any of the accused. The applicant is not in any way connected with the NGO runs by his brother. The transcript of calls relied by the prosecution, accepted as it is then also no offence is made out against the applicant.

6. In the aforesaid submissions, learned Senior Counsel Mr.Oza submitted that so far as role attributed to present applicant is concerned, at no point of time, he threatened the informant that he will file a false case for which a NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined complaint is ready if he would not succumb to the settlement proposed by accused nos.1 to 3. Referring to the transcript of call conversations produced at Pages-59 to 76, he has submitted that nothing being suggestive of the fact that the applicant being the brother of accused no.6 in any manner interested to execute the alleged criminal conspiracy allegedly hatched by accused nos.1 to 3 so as to obtain them ransom amount.

7. Mr.Oza, learned Senior Counsel submitted that the allegations if they are taken in face value and accepted in their entirety do not prima facie constitute an offence of extortion or make out the case against the applicant. Thus, he has submitted that during the course of investigation, the statement of the applicant has already been recorded and due to sudden illness of his brother Ramesh Joshi, he could not join further with the investigation. In these circumstances, he has submitted that the custodial interrogation of the applicant is not necessary as the entire case is based on the call

conversation so far role of the applicant is concerned and now, it is in the custody of the investigating officer.

8. Relying on the broad principles laid down in the case of NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined Siddhram Satlingappa Mehtre Vs. State of Maharashtra (2011 (1) SCC 694), he has submitted that when the accusations have been made only with the object of injuring or humiliating the applicant by arresting him based on the false allegations, the Court shall protect the personal liberty of the applicant as enshrined under the Constitution of India.

9. Lastly, learned Senior Counsel Mr.Oza has submitted that considering the role attributed to present applicant herein, and material collected during the course of investigation, there is no iota of evidence against the applicant herein to raise the reasonable inference of his involvement in the alleged conspiracy and therefore, when there is no prima facie case, against the applicant and his false involvement is established from the prosecution case, the judicial exercise can be exercised to prevent unnecessary harassment and protect the liberty of the applicant.

10. On the other hand, countering to the submissions advanced by the applicant, learned Senior Counsel Mr.Sudhir Nanavati, has submitted that the applicant was very much aware about the alleged act of extortion and blackmailing, despite of these facts, he was in contact with NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined co-accused Manish Mehta and had also talked to the informant from the device of Manish Mehta and pressurized the informant to meet his brother to resolve the matter what has proposed. Relying on the transcript of conversation and the material collected during the course of investigation, he has submitted that accused no.6 Ramesh Joshi had took disadvantage of his social media platform and pressurized the informant to resolve the matter with monetary advances. If present applicant would have not any interest in any manner, then he could have avoided conversations with co-accused Manish Mehta, which suggestive of the fact that the applicant was the part of alleged criminal conspiracy.

11. Mr.Nanavati, learned Senior Counsel submitted that the applicant and his brother are residing together and that factum at this stage, is very vital to arrive at the conclusion that the applicant being brother of accused no.6 was interested in the settlement. Thus, therefore, he has submitted that there is prima facie case, involving the applicant herein the alleged offence and considering the nature and gravity of the charge, no any exceptional case is made out to exercise judicial discretion.

NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined

12. Ms.Asmita Patel, learned APP for the respondent-State adopting the contentions advanced by learned Senior Counsel Mr.Nanavati, contended that so far as role of present applicant is concerned, the investigation is not yet completed and his personal interrogation is necessary and the offence alleged is affecting society at large and thus, in the larger interest of the society, the Court may not exercise judicial discretion in favour of the applicant.

13. Before advertng to the rival contentions raised herein, it is apt to refer the recent decision of the Supreme Court in the case of Pratibha Manchandana Vs. State of Haryana and another (Criminal Appeal No.1793 of 2023, decided on 07.07.2023). In Paras-17, 18 and 19, after referring the constitutional bench judgment Siddhram Satlingappa Mehre (supra), has highlighted the factors, ought to be borne in mind while considering the anticipatory bail application and observed thus:

"17. In Siddharam Satlingappa Mhetre v. State of Maharashtra, this Court carefully considered the principles established by the Constitution Bench in Gurbaksh Singh Sibbia v. State of Punjab case. After a thorough deliberation, this court arrived at the following conclusion:

NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023
undefined

122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice; iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

18. In Sushila Aggarwal v. State (NCT of Delhi), the Constitution Bench reaffirmed that when considering applications fro anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence

are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."

14. In light of the settled position of law and applying to the facts of present case, this Court is of considered view that the informant was came into contact with accused no.1 and maintained physical relationship with her at the hotel.

Thereafter, she had demanded more money. The informant then informed by accused nos.2 and 3 about recording of his video clipping, showing him therein in compromising position with accused no.1 and threatened him to settle the matter in terms of monetary gains, otherwise, they will circulate it in the social media to damage his reputation. It needs to be noted that till date, it has not come on record that despite demand of ransom amount, nothing being paid to the accused by the complainant. The issue cropped up when accused no.6 published an article in a daily newspaper, for proper inquiry by Kutch police, in the matter.

15. So far as the role attributed to present applicant is concerned, accused no.5 Manish Mehta phoned him and appraised the applicant that his brother Ramesh Joshi NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined insisted the complainant to meet personally at Mumbai and also sought a request letter so as to process the matter. It is in this context, accused Manish Mehta and present applicant Mr.Joshi made conversations and the complainant had also talked during the conversation between Manish Mehta and present applicant. If we peruse the transcript of call conversations, at no point of time, the applicant herein demanded any ransom amount nor directly or indirectly agreed the demand made by accused nos.1 to 3 and there is no allegation against the applicant of blackmailing or administered the threat or pressurized the informant to settle the matter of alleged video clipping in lieu of monetary advances. On the contrary, upon careful reading of the transcript of phone conversations, it prima facie appears that it was accused Manish Mehta who insisted the applicant herein to convince his brother Rameshbhai for his intervention to resolve the matter and the answer on the part of the applicant that he has nothing to do with the alleged act of extortion, however, he has categorically clarified that he has no time to interven in the matter and said that if the complainant intents to resolve the matter, he can meet his brother Ramesh Joshi as being NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined a social worker, he can extend possible help to come out from the situation. Upon persual of the mobile transcript of the call conversations, there is nothing to suggest that the applicant herein directly threatened the complainant that the another complaint is ready with him, if he would not meet his brother Ramesh Joshi. Thus, therefore, prima facie it appears that there is no material to show that the applicant had any motive to extort the complainant. It is on record that both the brothers are residing separately in the Mumbai and their field of works are also different and the applicant, in any manner, is not connected with the NGO run by accused no.6.

16. For the foregoing reasons, having regard to the facts and circumstances peculiar to the instant case, as have been analyzed hereinabove, without much discussion, on the merits of the case, and

considering the role attributed to present applicant herein and evidence in support of charge, this Court is of the prima facie view that there is no reasonable ground to believe that the applicant is involved in the offence and accusations seem to have been made with object to injuring or humiliating him so as to arrest him in the offence.

NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined

17. In these circumstances, this is a fit case to exercise judicial discretion to grant pre-arrest bail and accordingly, the application is allowed. The applicant is ordered to be released on bail in the event of his arrest in connection with a FIR being C.R.No.11205043221038 of 2022, registered with B-Division Police Station, Bhuj, Dist.:

Kutch on his executing a personal bond of Rs.10,000/-

(Rupees Ten Thousand Only) with one surety of like amount on the following conditions:

(a) shall cooperate with the investigation and make himself available for interrogation whenever required;

(b) shall remain present at concerned Police Station on 28.07.2023 between 11.00 a.m. and 2.00 p.m.;

(c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

(e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change their residence till the final disposal of the case till further orders;

(f) shall not leave India without the permission of the Trial Court and if having passport shall deposit the same before the Trial Court within a week; and

(g) it would be open to the Investigating Officer to file an NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined application for remand if he considers it proper and just and the learned Magistrate would decide it on merits;

18. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. The applicant shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions,

as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted, and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

19. The observations made hereinabove are tentative in nature and the learned Trial Court shall decide the case on its own merits, without their being influenced of the NEUTRAL CITATION R/CR.MA/8883/2023 ORDER DATED: 17/07/2023 undefined observations made hereinabove.

20. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(ILESH J. VORA,J) Rakesh