

Viren Nitin Barne vs The State Of Maharashtra on 1 March, 2021

Author: Mangesh S. Patil

Bench: Mangesh S. Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.12 OF 2021

Sarfaraz Gulam Akthar Shaikh,
Age : 25 years, Occu. Business,
R/o 20, First Floor, Merulaxmi Society,
Randher, Bhesan, Surat City,
At and Post Surat, Taluka and
District Surat (Gujrat)

APPLICANT

VERSUS

The State of Maharashtra,
through Police Officers of
Ramananda Police Station,
Taluka and district Jalgaon

RESPONDENT

AND

ANTICIPATORY BAIL APPLICATION NO.13 OF 2021

Viren s/o Nitin Barne,
Age : 27 years, Occu. Business,
R/o ESW 640-617, Hariom Nagar,
GHB Pandesara, Surat City,
At & Post Surat, Taluka and
District Surat (Gujrat)

APPLICANT

VERSUS

The State of Maharashtra,
through Police Officers of
Ramananda Police Station,
Taluka and district Jalgaon

RESPONDENT

Mrs. Rashmi S. Kulkarni, Advocate for the applicants
Mr. S.W. Mundhe, A.P.P. for the respondent/State
Mr. Y.H. Jadhav, Advocate to assist the A.P.P.

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CORAM : MANGESH S. PATIL, J.

DATE : 01.03.2021 PER COURT :

These are the separate applications by two of the accused from Crime No.46 of 2019 (FIR No.130/2019), registered with Ramanand Police Station, District Jalgaon for the offences punishable under Sections 420, 384, 354-A, 354-D, 467, 468, 471, 504, 506 read with Section 34 of the Indian Penal Code and Sections 66D and 67 of the Information and Technology Act, seeking bail under Section 438 of the Code of Criminal Procedure in the event of their arrest in connection with that crime.

2. The sum and substance of the allegations in the FIR and the further investigation are to the effect that accused persons, by using different mobile numbers, contacted the informant, who happens to be a woman aged 24 years, made her to enter into some bogus agreement under the pretext of engaging her for data feeding activity and under the pretext of the work having been not done as per the terms and conditions of the agreement and by issuing false notices through their Advocates, managed to extort a sum of Rs.3,46,700/- from her, by threatening her and abusing her in filthy language. These applicants, stating to be the proprietors of two different establishments namely M/s Sterlite Pvt. Ltd. And M/s Spectrum Pvt. Ltd., respectively, it is being alleged, received an amount of Rs.2000/- in their 3 ABA12-13-2021 accounts from the informant.

3. Mrs. Kulkarni, learned Advocate for the applicants would, at the outset, point out that the co-accused Nitesh Vijaykumar Khawani, who is stated to be the main accused and who allegedly had indulged in several telephonic communications and exchange of text messages with the informant, has been granted anticipatory bail by this Court in Anticipatory Bail Application No.519 of 2020 by the order dated 28.08.2020. That applicant has already deposited the entire amount of Rs.3,46,700/- in this Court. She would, therefore, submit that since the cases of the present applicants stand on the same footing with the same allegations, rather less severe allegations, even the present applicants deserve to be similarly protected.

4. The learned Advocate further submits that there is delay of more than an year in lodging FIR. The text messages exchanged by the informant with the co-accused Nitesh Vijaykumar Khawani would clearly indicate that the informant has, in fact, tried to extort huge amount by threatening him of initiating a criminal proceeding. She would point out as to how in a daredevil manner the informant has even asked the money to be transmitted through hawala transaction. She would submit that he has also filed a complaint against her with Surat police for extortion.

5. The learned Advocate would, therefore, submit that though it is 4 ABA12-13-2021 now being tried to be projected as if there is some huge fraud, going by the facts and circumstances, custodial interrogation of the applicants is not necessary. The applicants are ready to cooperate the

Investigating Officer and may be granted anticipatory bail.

6. The learned A.P.P., duly assisted by the learned Advocate for the original informant, opposes both the applications. He submits that the offence is serious. All the accused persons in a systematic manner induced the informant to part with money and even successfully extorted an amount of Rs.3,46,700/- by threatening her of criminal cases by falsely attributing her with her lack of skill in data feeding in a timely and accurate manner. Even legal notice pretending to be served through their Advocates, the accused persons have threatened her and the matters require custodial interrogation of the applicants. There is evidence to show that an amount of Rs.2000/- has been transferred by her in the accounts of the applicants and the applications be rejected.

7. After having heard both the sides and perusing the record, it appears that this Court has granted anticipatory bail to co-accused Nitesh Vijaykumar Khawani, whose case stands on a similar footing as that of the present applicants. After having considered the facts and circumstances, this Court granted anticipatory bail vide order dated 28.08.2020 passed in Anticipatory Bail Application No.519 of 2020 with following observations:

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"8. I am, however, inclined to grant the applicant anticipatory bail for the reason that there is delay of one year in lodging the F.I.R. The applicant is not alleged to have issued lewd messages to the informant. There are some documents on record to indicate that dispute between the applicant and the informant was settled way back on 08th June, 2018. The applicant deposited a sum of Rs.10,164/- in the bank account of the informant on the same day. The informant acknowledged receipt of amount and agreed to give quietus to the issue. She even expressed regret for everything. Thereafter also ensued number of communications through calls and Whats App chats between the two. A number of text and Whats App messages have been produced on record. Same indicates that once the informant asked the applicant to pay her Rs.30,000/-, then she enhanced the demand to Rs.1.5 crores. She threatened the applicant that if the demand is not met, she will spill his beans. The same indicates that if the demand of money was satisfied, she did not want to take the matter to a logical conclusion in a legal way. The text messages further indicate that she had asked the applicant to pay the amount of Rs.1.5 crores to her father and uncle, who were to pass from Surat in a train. Thereafter she asked him to pay the amount through Hawala. The informant even gave him name of a Hawala agent. That person in Aurangabad was to receive the money.

9. It is true that as stated above if the applicant and his associates have some business transactions with others, those are nothing short of fraud or cheating them. It is also true that the informant in her affidavit has given some names, who have similarly been duped. The police report, however indicates nobody has yet lodged complaint against the applicant and his associates. The transaction with the applicant took place in the year 2017-18. A period of about two years has passed thereafter. If any F.I.R. with similar allegations is registered against the applicant and his associates, the same would necessarily be taken to its logical conclusion. The applicant, in such circumstances, may not be entitled for grant of anticipatory bail. As stated above, facts of the case at hand indicate the informant to have had settled the dispute with the applicant in June 2018 6 ABA12-13-2021 by

accepting a sum of Rs.10,164/-. The applicant had deposited with this Court a sum of Rs.3,46,700/-, the informant has alleged to have paid. As such, no amount is to be recovered from the applicant now."

8. Since the reasoning is aptly applicable even in respect of the present applicants, I find no hesitation in subscribing to them and granting anticipatory bail to the present applicants for the same reasons.

9. The applications are allowed. In the event of arrest of the applicants in connection Crime No.46 of 2019 (FIR No.130/2019), registered with Ramanand Police Station, District Jalgaon for the offences punishable under Sections 420, 384, 354-A, 354-D, 467, 468, 471, 504, 506 read with Section 34 of the Indian Penal Code and Sections 66D and 67 of the Information and Technology Act, they shall be released on bail on their executing personal recognizance for an amount of Rs.15,000/- (Rupees Fifteen thousand) each and furnishing a solvent surety each in the like amount subject to following conditions :

a] They shall attend the concerned Police Station as and when called by the Investigating Officer.

B] They shall not tamper the evidence or influence the witnesses.

[MANGESH S. PATIL] JUDGE npj/ABA12-13-2021 7 ABA12-13-2021