

Nitin and Others Vs. State of Maharashtra and Others

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Court : Mumbai

Decided On : Sep-17-2014

Judge : The Honourable Mrs. Justice Sadhana S. Jadhav

Appeal No. : Criminal Anticipatory Bail Application No. 1165 of 2014

Appellant : Nitin and Others

Respondent : State of Maharashtra and Others

Judgement :

P.C.

1. Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime No.304 of 2014 registered at Naupada Police Station on 29/07/2014 for offences punishable under sections 385, 347, 348, 368, 471, 448, 506 (2) r/w 34 of Indian Penal Code.

2. It is the case of prosecution that applicants herein are police personnels attached to the Naupada Police Station. It is alleged that on 16/06/2014, one Harjilal Patel filed a written complaint before Commissioner of Police, Thane city, Thane alleging therein that complainant happens to be a scrap dealer. On 10/06/2014 at about 11.30 pm, present applicants had gone to his house. They had forcibly dragged him out of the house and had forced him to open his shop. When he accompanied the applicants to his shop, he was assaulted in his shop. It is alleged that police i.e. present applicants had informed him that they have

received a complaint against him to the extent that he has stolen parts of pressure cooker worth Rs.13,00,000/-. According to him, he had informed them that he is very poor and has not indulged into said activities. He was brutally assaulted. Thereafter, they had initially demanded Rs.13,00,000/- from him. It is alleged that applicants had also assaulted the brother of the complainant. They had also threatened the complainant at gun point. Finally, they had demanded Rs.4,00,000/-. The brother of the complainant had given police officers Rs.2,00,000/- and subsequently, they had borrowed another Rs.2,00,000/- from their relatives and had given the same to the present applicants. It is alleged that thereafter, they had filled in the scrap in five bags and then along with the relatives, they had gone to the police station. Thereafter, complainant was released. They also returned 4 bags of scraps and had informed him to take away the remainder one bag after one week.

3. Commissioner of Police Thane, endorsed upon the same as follows: "DCP Zone 1 : The allegations are very serious. Conduct personal enquiry and take action immediately."

4. DCP Zone 1 had purportedly conducted preliminary detailed inquiry. He had again recorded the statement of the complainant. The complainant is alleged to have given details to the inquiry officer. He then recorded the statement of his brother, relative Gangaram Devji Patel, Pankaj Gavale who has only disclosed that a police vehicle had come to the house of the complainant on 10/06/2014. They had also recorded a statement of the present applicants. Inquiry report is placed on record for the perusal of the Court. It simply reveals that inquiry officer had called for call details record of the present applicants and he has observed in the concluding portion of the inquiry that their call details record would show that at the relevant time, they were within the jurisdiction of Naupada Police Station. Needless to say that the applicants were attached to Naupada Police Station on that day. The conclusion shows that the goods/scrap were seized as per the panchanama. There is no evidence that the complainants were assaulted on that day. Applicants had denied that they had demanded any amount, much less had received the said amount.

5. It is a sorry state of affairs that Commissioner of Police had only transferred the applicants from Naupada Police Station to the Control Room. There was no house search even to inquire as to whether the applicants, individually or collectively had received Rs.4,00,000/-. The Commissioner of Police had not bothered to direct the complainant to the ACB. The entire exercises/inquiry was a paper inquiry.

6. Learned senior counsel appearing for the applicants submits that in fact, complainant is a habitual complainant. Earlier, he had been booked for receiving stolen property. He has falsely framed the present applicants.

7. It is pertinent to note that complainant is shown as respondent No.2 in the present application indicating that the complainant shall remain present in this Court and appear at the time of hearing of the application as if the applicants were fully sure that they would be supported by the complainant. An affidavit is filed on behalf of respondent No.2, wherein complainant has stated that he had made the said complainant under mental pressure and that he has no grievance in the eventuality that the applicants would be granted pre-arrest bail. It is apparent on the face of the record that investigating agency, accused and the complainant are hand in glove. It does not appear that the Commissioner of Police had really taken the complaint seriously and had inquired into the truthfulness of the complaint. The so-called preliminary inquiry was only a farce.

8. There was no inquiry about the antecedents of the complainant as well. Since the inquiry officer has concluded that the complainant was not assaulted and moreover, there is no evidence of having received amount from the complainant, applicants have made out a case for pre-arrest bail. However, at the time of filing any report under section 173 or 169 of Code of Criminal Procedure, 1973 against the present applicants, the concerned Court shall take the affidavit filed by the complainant and hold a preliminary inquiry under section 340 of Code of Criminal Procedure, 1973. Such inquiry would be expedient in the interest of justice. Learned APP has no ground to even oppose the application filed by the present applicants under section 438 of Code of Criminal procedure, 1973. It appears from the papers of investigation that the applicants are supported by the investigating officer and the complainant as well. Taking into consideration the manner in which

the complaint is lodged, inquiry was conducted and the affidavit of the complainant, applicants deserve to be protected.

ORDER

(i) Application is allowed.

(ii) In the event of arrest, applicants be enlarged on bail on furnishing P.R. bond in the sum of Rs.15,000/- and one or two sureties in the like amount.

Application stands disposed of.

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