

Bombay High Court

Vimal Umeshchandra Jha vs The State Of Maharashtra on 16 June, 2021

Bench: S. V. Kotwal

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15-BA-1726-21-IA-1519-21.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1726 OF 2021

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|------------------------|-----------------|
| Vimal Umeshchandra Jha | .... Applicant  |
| versus                 |                 |
| State of Maharashtra   | .... Respondent |

WITH  
INTERVENTION APPLICATION NO.1519 OF 2021

|                      |                 |
|----------------------|-----------------|
| Navnath Narayan Gole | .... Intervenor |
|----------------------|-----------------|

IN THE MATTER BETWEEN :

|                        |                 |
|------------------------|-----------------|
| Vimal Umeshchandra Jha | .... Applicant  |
| versus                 |                 |
| State of Maharashtra   | .... Respondent |

.....

Mr.Subhash Jha i/b. Law Global Advocate, Advocate for Applicant.  
Smt.J.S. Lohokare, APP for the State/Respondent.  
Mr.Hemant Ingle i/b. Sugat P. Ingle, Advocate for Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th JUNE, 2021 (Through video conferencing) P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.137/2021 registered with Kharghar Nesarikar 2 / 17 15-BA-1726-21-IA-1519-21.odt Police Station, Navi Mumbai, under sections 323, 364-A, 365, 387, 506 r/w 34 of the Indian Penal Code.
2. Heard Mr.Subhash Jha, learned counsel for the Applicant, Smt.J.S. Lohokare, learned APP for the State and Mr.Hemant Ingle, learned counsel for the Intervenor.
3. The Applicant was arrested on 05/04/2021 in the early morning hours. However, there is a dispute as to exactly on which date he was arrested. According to the Applicant, he was taken in custody in the evening of 03/04/2021 and he was illegally detained on 04/04/2021.
4. The investigation is still in progress. The Applicant has preferred Writ Petition No.1840 of 2021 before the Division Bench of this Court, which is still pending. Vide order dated 19/05/2021, the investigation was transferred to State CID. This order was passed by the Division Bench in that Writ

Petition. Mr.Jha learned counsel for the Applicant submits that the said Writ Petition is still pending before Division Bench of this Court.

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5. The FIR is lodged by the first informant Navnath Narayan Gole. He has stated that he has three companies in the name of Ishakrupa Shipping Logistics India Pvt. Ltd., Gurukrupa Metal Mart and Aryan Mines and Minerals. He is the owner of those companies. Those companies are in the business of import and export. They are also looking after customs clearance. It is mentioned in the FIR, that, in November 2020, he got acquainted with the present Applicant, who was an Advocate. The Applicant is specialized in DRI and NCB cases. In May 2020, the owners of M/s J.M. Industry had lodged complaint against the informant, his wife and two staff members at MIDC police station, Ahmednagar vide C.R. No.329/2020 u/s 420, 120-A of IPC. The informant was arrested on 27/01/2021 in that connection, by EOW, Ahmednagar. The informant's wife and staff members were granted bail by the Hon'ble Supreme Court on 29/01/2021. After her release, the informant's wife met the present Applicant for getting the informant released on bail. The FIR mentions that the Applicant demanded Rs.70,00,000/- by 4 / 17 15-BA-1726-21-IA-1519-21.odt way of his professional fees. The FIR mentions that she transferred Rs.12,00,000/- in his favour through, RTGS, Rs.50,00,000/- were paid in cash. On 03/03/2021, the informant was granted bail by Sessions Court, Ahmednagar. The informant was directed to report to MIDC police station every Saturday. The informant used to attend that police station as directed. It is mentioned in the FIR that on 07/03/2021, the Applicant called him near his office. It is alleged that the Applicant demanded Rs.3 Crores for helping him in getting bail. It is alleged that, the Applicant threatened him that, if the money was not paid, the informant would be arrested again. The Applicant had allegedly threatened the informant that he would be implicated falsely in false cases.

6. On 02/04/2021, the informant called the Applicant telephonically at 09.30 p.m. The informant was asked by the Applicant to meet at 10.00 p.m. at his Belapur office. The informant went there in his Mini Cooper car. There, the Applicant started quarreling with him and demanded Rs.3 5 / 17 15-BA-1726-21-IA-1519-21.odt Crores. In the meantime, three unknown persons came there. They started supporting the Applicant. They were telling the informant to pay that amount. The FIR further mentions that he was forced to sit in a white Polo Volkswagen car. The Applicant took the informant's Mini Cooper car. All of them went to Patel Heritage, at 10.30 p.m. which was at sector 7, Kharghar. It is alleged that the Applicant removed three mobile phones from the informant and concealed them somewhere. All of them sat together in Volkswagen car. Then the informant was taken to a farm house at Karjat at midnight. It is alleged that at that place, those three unknown persons beat him with hands and kicks. They were demanding Rs.3 Crores. In the morning at about 06.00 a.m. the informant was taken to a farm house at Murbad. They stopped there for half an hour. Thereafter he was forcibly taken to a place known as Peruchi Baug, which was near Nashik. They reached there at about 01.00 p.m. They had lunch there. Again the Applicant demanded Rs.3 Crores. At about 02.30 p.m. the informant was left there with those three unknown persons. The Applicant went away. The FIR further mentions that, at 6 / 17 15-BA-1726-21-IA-1519-21.odt about 04.00 p.m., those three unknown persons took the informant to Big Bazar at Nashik Road. There, the informant made a request to an employee of Big Bazar to give him mobile phone, so that he

could call his wife. The informant then gave two missed calls to his wife and one call to his wife's brother Nitin. The unknown persons then took him outside Big Bazar. It is alleged that the informant was given blows with a pen on his shoulder and thigh. At about 05.00 p.m. he was taken to Natural Health Farm House at Deolali. There he was made to swim in the swimming pool. At about 09.00 p.m. one of them received a phone call. The phone call was kept on speaker. The informant heard the conversation. It was between the Applicant and that person. The Applicant was telling that person that, the Applicant was called to Kharghar police station as the informant's family had lodged complaint with Kharghar police station about the informant's missing from his house. After that, those three unknown persons got scared and the informant was dropped at Dwarka Chowk in Nashik and was left there. Those three unknown persons then went away in their Volkswagen car. The 7 / 17 15-BA-1726-21-IA-1519-21.odt informant then came to Mumbai. He took treatment from his family doctor. After that, he came to police station to give his complaint, which was taken at 03.15 a.m. on 05/04/2021.

7. Mr.Jha, learned counsel for the Applicant submitted that from 03/04/2021 in the evening the Applicant was detained illegally at Kharghar police station. The FIR was lodged at odd hours i.e. at 03.15 a.m. in the early morning on 05/04/2021. The Applicant was shown arrested at 04.39 a.m. on 05/04/2021. He submitted that, his entire detention on 03/04/2021 and 04/04/2021 was illegal. He was not produced before Magistrate within 24 hours and therefore on that ground alone, the Applicant deserves to be released on bail as he was illegally detained.

8. Mr.Jha submitted that prosecution case is doubted by the Division Bench and therefore the case was transferred to State CID for investigation. He relied on the case of Ram Govind Upadhyay Vs. Sadarshan Singh and Ors. as reported in AIR 2002 SCC 1475.

8 / 17 15-BA-1726-21-IA-1519-21.odt In that judgment Hon'ble Supreme Court has held thus; "Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

9. Mr.Jha relied on a few orders to contend that illegal detention of an accused is a ground for releasing him on bail. For that purpose he relied on an order passed by Single Judge of this Court on 27/07/1993 in Criminal Bail Application No.1005 of 1993 passed in case of Suaibo Ibow Casamma Vs. Union of India. He relied on few other judgments for the same proposition. He further submitted that the story of prosecution is absurd. The informant was allegedly taken to five different places at some distance, where there were toll plazas, hotels and shops and yet no grievance was made by the informant. He submitted that, CCTV footage available at Murbad, Karjat etc., in fact, will show that the informant was not put under pressure.

9 / 17 15-BA-1726-21-IA-1519-21.odt No weapon was used as per the allegations. There was no reason why the informant did not try to seek help.

10. Mr.Jha invited my attention to a Memorandum of Understanding entered into by the parties on 28/12/2020. It was between informant as the flat owner and the Applicant as the flat purchaser. In that MOU, the price of the flat was fixed at Rs.80,00,000/-. There is mention of receipt of Rs.50,00,000/- by the first informant. Mr.Jha submitted that this MOU is not referred to in the FIR at all. He submitted that therefore informant's case is not genuine. It is a concocted story to pressurize the present Applicant. He submitted that Rs.12,00,000/- were paid by wife of the informant to the Applicant, but that was used for paying lawyer's fees, to meet expenses for approaching Supreme Court and Court in Ahmednagar for getting the informant and his wife released on bail.

11. Learned APP Smt.Lohokare opposed this application. She submitted that from 10/04/2021, the Applicant is in 10 / 17 15-BA-1726-21-IA-1519-21.odt hospital because he was infected with Covid-19. She submitted that therefore practically he was not in jail at all. She submitted that the investigation was transferred to State CID only on 19/05/2021 and therefore sufficient opportunity should be given to the investigating agency. She submitted that 90 days are getting over in first week of July and investigating agency will have to file charge-sheet before that. Therefore the Applicant should not be granted bail before filing of the charge-sheet. She submitted that the other accused are still absconding. Volkswagen vehicle is yet to be recovered. There is serious apprehension of tampering of the witnesses. She submitted that there is hairline skull fracture to the informant and therefore matter has assumed seriousness.

12. Learned counsel for the informant also opposed this application strongly. He submitted that the Division Bench of this Court is examining question of illegal detention of the Applicant and therefore that should not be a ground for his release on bail. He submitted that MOU relied on Mr.Jha has no 11 / 17 15-BA-1726-21-IA-1519-21.odt relevance, as the allegations in the FIR are about the particular incident of abduction. He submitted that if the Applicant is released on bail, at this stage, there is a strong apprehension of tampering with the evidence. He submitted that the Applicant did not lodge protest because he was threatened. He submitted that the MOU in question referred to by Mr.Jha was executed under coercion. The MOU is signed by one of the co-accused Pankaj as an witness. However Mr.Jha replied that it was some other person.

13. I have considered these submissions and I have also perused the investigation papers produced before me. The medical certificate issued by District Hospital, Panvel shows that there were three injuries. Two injuries were simple, which were because of hard and blunt pointed object. However, there is one contusion on high parietal region of dimension 3.5 x 3.5 cms. That injury is described as grievous as it discloses hairline fracture on right parietal bone. The probable weapon used is mentioned as hard and blunt. Mrs.Lohokare strongly relied on this medical certificate.

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14. In this context, it is important to look at the allegations in the FIR. The FIR was lodged by the informant after he had composed himself and had sufficient time to gather his thoughts. There is absolutely no mention of assault by any hard and blunt weapon on his head. Other two injuries are attributed to blows with a pen outside Big Bazar at Nashik. Therefore there is sufficient doubt

created about this particular head injury. Mr.Jha submitted that there is no skull fracture. The injury certificate is based on some investigation conducted in a private hospital and therefore it is not reliable. At this stage, it is not proper to observe anything further because the matter is still under investigation. However, sufficient doubt has been created about this particular head injury, as there is absolutely no reference in the FIR to such injury or any assault by hard and blunt weapon on the informant's head.

15. From reading the FIR it appears that story mentioned therein is difficult to believe. The informant was taken to various places as follows;

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- (i) Patel Heritage, Sector 7, Kharghar,
- (ii) Farm House at Karjat,
- (iii) Farm House at Murbad,
- (iv) Peruchi Baug at Nashik,
- (v) Big Bazar, Nashik; and finally
- (vi) Natural Health Farm House at Deolali.

At none of these places, the informant had raised any alarm, had sought help or had lodged any protest. The investigation papers contain statements of the care taker at Farm House at Karjat. There she has described as to how five persons had come there in two vehicles. The Applicant was one of them. They had reached the farm house at about 03.30 a.m. on 03/04/2021. They left the place at 07.30 a.m. This witness significantly has not stated that the informant had resisted or had raised any alarm. Her statement is supported by her husband Dinesh.

16. It is significant to note that, on the way to Nashik, there are various toll plazas, where employees are always available. At none of these places the informant had sought help 14 / 17 15-BA-1726-21-IA-1519-21.odt or raised alarm. The FIR does not say that the informant was threatened at the point of any weapon. Therefore it is more surprising that the informant had not sought any help. It also does not stand to reason that an abducted victim would be taken to a crowded place like Big Bazar.

17. There is statement of one Manish whose phone was used by the informant to make a phone call from Big Bazar. This witness has stated that two persons had taken away the informant outside the mall after he had made phone calls. Here again the informant had not told this witness anything further.

18. The investigation is still in progress. However, at least some serious doubt is created about the occurrence of the incident as narrated in the FIR. The allegation of the first informant are that, the informant was abducted to pressurize him to pay Rs.3 Crores. There are allegations that the

informant's wife had paid Rs.70,00,000/- to the Applicant. However, this payment is not really supported by any written 15 / 17 15-BA-1726-21-IA-1519-21.odt document. Rs.12,00,000/- were transferred through RTGS. However for payment of cash, there is no direct or indirect evidence except the bare words of the informant and his wife. The informant had sufficient time to gather his thoughts before he gave his FIR. The dispute specifically mentions about amount of Rs.3 Crores which the Applicant was allegedly demanding. However, the informant has not made any reference to the MOU regarding that flat, which also mentions receipt of Rs.50,00,000/-, by the informant. It was not a small amount and yet it was not mentioned in the FIR at all. Therefore there is definitely something more to the entire story than meets the eye. Suffice it to say at this stage, that reasonable doubt is created in respect of the allegations.

19. The Applicant had suffered Covid-19 infection. Admittedly his only one Kidney is functional. This fact is admitted by the learned APP. Therefore merely because the charge-sheet is likely to be filed in first week of July, I do not feel it proper to allow the Applicant's detention during 16 / 17 15-BA-1726-21-IA-1519-21.odt remaining period till filing of the charge-sheet. The apprehension of tampering with the evidence, can be taken care of by imposing suitable conditions on the Applicant. Based on above discussion, I am inclined to grant bail to the Applicant.

20. Hence, the following order :

ORDER

(i) In connection with C.R.No.137/2021 registered with Kharghar Police Station, Navi Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one or two sureties in the like amount.

(ii) The Applicant shall deposit his passport with the Investigating Officer before being released on bail.

(iii) The Applicant shall not leave India without prior permission of the trial Court.

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(iv) The Applicant shall attend the office of investigating agency twice a week till filing of the charge-sheet and then once every month for a period of one year after filing of the charge-sheet.

(v) In addition, the Applicant shall attend the office of investigating agency as and when

called and shall cooperate with the  
investigation.

- (vi) The Applicant shall not tamper with the evidence directly or indirectly.
- (vii) Application stands disposed of accordingly.
- (viii) In view of the disposal of the Bail Application, the connected Intervention Application is also disposed of.

(SARANG V. KOTWAL, J.)