

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 63 OF 2015

Shamrao Eknath Shelke. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Sachin B. Shetye, advocate for Applicant.

Mr. A.S. Shitole, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 30, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP.

2 The learned Counsel for the applicant upon instructions has submitted that after the machine was sold to Shelar, the applicant had never taken custody of the said machine. In the first information report, it is specifically alleged that the machine was parked in front of the house of Shelar. However, while this Court was deciding the application filed by Chandrakant Shelar on 5/1/2015, the

Investigation Officer was present before the Court and had made categorical statement that the machine is with Mr. Shamrao Shelke i.e. the present applicant. The Investigating Officer had sought custody of Shri Shelar for recovery of the machine and therefore, this Court was of the opinion that the Investigating Officer is making frail attempt to mislead the Court only to see that the application of the applicant is rejected.

3 Today, the learned APP has drawn the attention of this Court to the statement of Chandrakant Shelar which was recorded on 18/10/2014 i.e. prior to granting him pre-arrest bail on 5/1/2015. On 18/10/2014 Chandrakant Shelar had stated before the police that after registration of the FIR and after he had filed an application for pre-arrest bail. Shamrao Shelke i.e. present applicant had taken away the machine under coercion and that he had permitted the present applicant to take away the machine since he was scared. Although this statement was recorded prior to the final order passed in favour of Chandrakant Shelar, this statement was never brought to the notice

of this Court and a bare statement of the Investigating Officer that the machine was with Shelar was falsified and therefore, Shelar was protected.

4 It prima facie appears that the whole dispute is over the machine which in fact, was hypothecated to the complainant. The Investigating Officer is present in the court and it is directed that the Investigating Officer shall take assistance of the complainant and locate the machine as the present applicant has categorically stated that the machine is with Shelar.

5 The applicant is present in the court. The learned Counsel for the applicant upon instructions seeks liberty to withdraw the application. Liberty as prayed for is granted in the interest of justice. The applicant is protected till 5 p.m. of 9/2/2015. In the intervening period, the applicant shall cooperate with the investigating agency to locate the machine. The learned Magistrate shall consider the application under Section 437 of the Code of Criminal Procedure,

1973 and decide the same on its own merits without being influenced by the fact that the application has been withdrawn before this Court. The learned Magistrate shall also ensure about the present position of the machine.

6 The learned Counsel has also specifically submitted on instructions that during the pendency of the application filed by Shri Chandrakant Shelar under Section 438 of the Code of Criminal Procedure, 1973, the machine was parked next to Karjat Police Station.

7 The application stands dismissed as withdrawn and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)