

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4384 OF 2016

Shaikh Ashfaq S/o Shaikh Ishaq,
Age : 25 years, Occu. Business,
R/o Shah Bazar, Aurangabad.

... APPLICANT

VERSUS

The State of Maharashtra

... RESPONDENT

. . .
Advocate for Applicant : Mr. M. A. Latif.
APP for Respondent/State : Mr. A. S. Shinde.

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CORAM : A. M. BADAR, J.

DATE : 29th AUGUST, 2016.

PER COURT :

1] The applicant / accused in crime No. 41/2016, registered at Police Station Phulambri, Dist. Aurangabad, for offences punishable under Sections 395, 109, 201 of Indian Penal Code, at the instance of informant Anil Raghunath Dandke, by this application is seeking pre-arrest bail.

2] Heard learned counsel for applicant / accused. He argued that, initial registration of crime for the offence punishable under Section 392 of I.P.C. is itself wrong as the F.I.R. does not show that while committing robbery there was an attempt to cause death, hurt or wrongful restraint, or fear of instant death or of instant hurt,

or of instant wrongful restraint. The learned counsel further argued that, the F.I.R. itself eloquently states the amount looted as well as even number of currency notes. However, subsequently, the amount is enhanced by making a supplementary statement. Therefore, according to the learned counsel for the applicant, the informant who was not owner of the cash looted, might have grabbed the amount and lodged a false F.I.R. The learned counsel further argued that, three co-accused are already released on bail and therefore the applicant be granted pre-arrest bail.

3] The learned APP opposed the application.

4] It will be at the time of trial and that too after recording of the evidence, the job of ascertaining what offence, if any, committed by the accused. This is a premature stage to assess the exact offence committed by the accused. Similarly, falsity, if any, in the prosecution case can be assessed only after cross-examination of the witnesses. At the stage of investigation, no findings can be recorded that the prosecution case is false.

5] It is seen from the papers of investigation that co-accused, are naming present applicant as one of the members who committed dacoity. At the stage of investigation, the Investigator can certainly look into the statement of the co-accused in order to effectively investigate the crime in question. No doubt, at the time

of trial, the court can not look into the statement of accused persons. However, there is no such bar so far as investigator is concerned. The crime in question is serious and according to the prosecution case, it was a daylight robbery involving huge amount. No case of pre-arrest bail is made out. Application stands rejected.

[A. M. BADAR]
JUDGE