

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.406 OF 2016

Biswajit S. Das	... Applicant
vs.	
The State of Maharashtra	... Respondent

Mr. Shashi Pandey h/f. Mr. Vincent D'silva, for the Applicant.
Mr. Shrikant Yadav, APP for Respondent – State.
API. Sandip Kale, D.N. Nagar, police station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **7th MARCH, 2016**

P.C.:

1. This is the first date. The application is moved for pre arrest bail as the applicant/accused is facing charges for the offence punishable under Section 379 of the Indian Penal Code in C.R. No. 112 of 2016 registered with D.N. Nagar police station, Mumbai.

2. It is the case of the complainant that he got a tin stall fabricated for Rs. 22,000/- and paid Rs. 15,000/- to one Javed who fabricated it, for selling vada-pav. He put a banner of a political party and kept that stall near one bus stop but away from his house. He could not take that stall at the place which was given to him for

keeping that stall as the two wheels of the said stall were broken. It is the case of the complainant that, on the next date, he found that his stall is not there. Therefore he gave complaint on 17th February, 2016 about the theft of the said stall. The police recorded a statement of eye witness where the name of the applicant/accused along with co-accused Mustafa Mohd Shaikh are mentioned.

3. The learned counsel for the applicant/accused submitted that the applicant/accused is not involved in the present case. He submitted that the conduct of the complainant as to where he kept this stall, when he came to know about the theft of the stall and lodged the complaint is to be taken into account. He lodged complaint after 3-4 days. He submitted that the applicant/accused is innocent and he be released on pre arrest bail.

4. The learned prosecutor submitted that pursuant to the statement of Mustafa Shaikh, the main culprit, police visited the spot however, they did not find the said stall. The learned prosecutor relied on the statement of the eye witness. He submitted that the name of the applicant/accused and one Bhangarwalla lambu are

taken along with the main culprit Mustafa. There is no recovery of stall till today. Therefore, the custody of the applicant is necessary.

5. Perused the First Information Report and the police papers which are brought by the investigating officer. The statement of eye witness discloses the name of the applicant/accused along with other culprit Mustafa and Bhangarwalla lambu. The said eye witness attributed the shifting of stall from the spot in the tempo. There is no recovery of stall till today. Under such circumstances, I am not inclined to grant pre arrest bail to the applicant.

6. Hence, the anticipatory bail application stands rejected.

(MRS.MRIDULA BHATKAR, J.)