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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.699 OF 2017

Lakhan Bhaskar Waghmare

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.B.A.Aloor, for the Applicant

Mr.S.S.Pednekar, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 14th JUNE, 2017

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No. 169 of 2016 registered with the Warje-Malwadi Police Station, Pune, for the alleged offences punishable under Section 395, 387 of the Indian Penal Code, under Section 4 (25) of the Arms Act, under Section 37(1) r/w 135 of the Bombay Police Act and under Sections 3(1) (ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

3. Learned Counsel for the applicant states that the applicant has been falsely implicated in the aforesaid case. He submitted that the custodial interrogation of the applicant is not required, considering the fact, that he had no role to play in the alleged offences. He submitted that the applicant's mother is in the hospital and that the applicant is running from pillar to post.

4. Learned APP has filed an affidavit of Kishor P. Naik, Assistant Commissioner of Police, Deccan Division, Pune City. Learned APP raises a preliminary objection, with regard to the maintainability of the aforesaid application, in view of the bar of Section 21(3) of the MCOC Act, to file an application under Section 438 of the Code of Criminal Procedure. He submitted that even on merits the applicant's role is spelt out in the FIR.

5. Perused the papers. Section 21 of the Maharashtra Control of Organised Crime Act, reads thus:-

21. Modified application of certain provisions of the Code.

(1) ...

(2) ...

(3) Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.

6. Considering the aforesaid, there is a bar under Section 21(3) of the MCOC Act, to entertain an application under Section 438 of Code of Criminal Procedure. Even otherwise, on merits, a perusal of the FIR shows that the applicant was present alongwith other co-accused. The complainant – Sandeep Shirsat has specifically stated that when he was returning home after work, 7 to 8 known persons stopped him near the ‘tapari’. He has named the applicant and other accused. He has stated that the present applicant alongwith others obstructed his two wheeler. He has stated that all the said persons were armed with iron rods and koytas. He has stated some of the co-accused demanded money from him and forcible removed a sum of Rs.15,000/- from his pocket.

7. Considering the material on record and the fact that the applicant has been specifically named in the FIR, this is not a fit case to grant pre-

arrest bail to the applicant.

8. Hence, the Application for pre-arrest bail is rejected and disposed of as such.

9. It is made clear that the observations made herein are *prima facie* for deciding the aforesaid application and if an application for regular bail is filed, the same shall be considered on its own merits, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)