IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1801 OF 2017

Allarakha Adam Jodhater & Ors. ... **Applicants**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Rizwan Merchant with Sultan Khan with Sagar Shete with Shabbir Shora, Advocate for the Applicants.

Ms.P.N.Dabholkar, APP for the Respondent/State.

Mr.Ashraf Ahmed Shaikh, Advocate for the Intervenor/First Informant.

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CORAM : A.M.BADAR J.

DATED : 10th OCTOBER 2017.

P.C. :

1 The applicants/accused in Crime No.268 of 2017 registered with Police Station, Mahim, Mumbai at the instance of First Informant Smt.Rehana Satope, are seeking pre-arrest bail. Initially, crime in question was registered under Section 448 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC' for the sake of brevity) and during the course of investigation, the prosecution has added provisions of Section 452 read with Section 380 of the IPC.

2 Heard the learned Advocate appearing for applicants/accused. He argued that applicant Nos.1 to 3 are senior citizen, whereas applicant No.4 is son of applicant No.3. They all are landlords of the entire building, where disputed shop No.6 is situated. It is further argued that the information came to be received at the Police Station on 21/08/2017 and the incident in question took place on 20/08/2017. However, the crime in question came to be registered only on 15/09/2017.

3 It is further argued that record shows that shop No.6 was initially leased out to tenant named Smt.Chandrabhaga Shiv Balu. My attention is drawn to legal notices issued by Advocate for applicants to said Smt.Chandrabhaga Balu asking her to hand over the vacant possession of shop No.6 alleging that the said shop is closed since last eight years and the same is not in use and occupation by her. My attention is drawn to two similar public notices published in local daily newspapers. With this, the learned Advocate for the applicants argued that on 01/06/2016, a letter came to be addressed to the Senior Police Inspector of Mahim Police Station informing him that the said shop is closed since last eight years and the applicants are intending to take possession thereof. Then, on 05/04/2017, a letter came to be issued by the Advocate of the applicants to the Senior Police Inspector of Mahim Police Station informing that Mr.Hussain Miya – father of the First Informant has installed electric meter in shop No.6. With this, the learned Advocate for the applicants drew my attention to the

averments in the FIR to the effect that in April 2017 itself, the First Informant had received a call from B.E.S.T. informing that applicant No.2 Aziz Adam Jodhater had applied for change of the electric meter in the name of her father. The learned Advocate further argued that this shows that the First Informant was aware about this development in April 2017 itself, but she did not take any legal action. He further argued that ingredients of alleged offence are not made out from the case diary of the crime in question, which was initially registered for bailable offences.

4 The learned APP drew my attention to statements of witnesses and contended that considering the nature of offence, applicants are not entitled for pre-arrest bail.

5 The learned Advocate appearing for the First Informant drew my attention to letter addressed by the Advocate of the First Informant to various Authorities long back on 21st August 2017 disclosing grievances of the First Informant and contending that the applicants indulged in taking forceful possession of the shop and theft of goods belonging to the First Informant.

6 I have carefully considered the rival submissions and also perused the entire case diary. There is a witness, who states that in fact, the shop in question was in possession of the prosecuting party and Hussain Miya – father of the First Informant used to sell tobacco from the said shop. This witness has stated

that since his childhood he has seen the shop in possession of Hussain Miya. Other witnesses are also corroborating this version by stating that the shop in question was in possession of Hussain Miya since long. After death of Hussain Miya, his son Ismail was selling tobacco from this shop and then his sister Rehana i.e. First Informant was looking after the shop. The complaint dated 21st August 2017 made on behalf of the First Informant by her Advocate reflects that the prosecuting party was paying rent of this shop which used to be received by the applicants under a rent receipt in the name of Smt.Chandrabhaga Balu. Then, the case diary contains licenses issued by various statutory Authorities showing that the shop in question was in possession of Hussain Miya – father of the First Informant. Perusal of the case diary, *prima facie,* shows that the applicants are accused of non-bailable offences of which there is *prima facie* evidence in the case diary of the crime in question. It is *prima facie* seen that the applicants locked the outer door of the shop and committed theft of goods belonging to the First Informant kept in that shop. *Prima facie,* it is seen that there was a systematic plan chalked out for taking possession of the subject shop from the First Informant by creating evidence that the same is locked since last so many years. In fact, evidence collected and found in the case diary shows that the shop was being operated by members of the prosecuting party.

7 Considering the nature of offence and the manner in which it is committed, no case for pre-arrest bail is made out.

Hence, the application is rejected.

8 The learned Advocate for the applicants requested that interim protection may be granted to the applicants in order to enable them to approach the Honourable Apex Court. No interim Order passed by this Court was operating in favour of the applicants and as such, the request, so made, is rejected.

(A.M.BADAR J.)