

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 1133 OF 2018**

Mukeshkumar Mohanlal LahoriyaApplicant.

Vs.

The State of MaharashtraRespondent.

Mr. S.P. Chaudhari, appointed advocate for the Applicant.

Mr. N.B. Patil APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 30th NOVEMBER, 2018.

P.C.:-

This is an Application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in C.R. No. 66 of 2018 dated 1st May, 2018 registered with Kurduwadi Railway Police Station, under Sections 384 and 504 of the Indian Penal Code.

2 Heard the learned counsel appearing for the Applicant at length and the learned APP. Perused the record of investigation.

3 The first information report is lodged by Hemant Laxman Pawar on 30th April 2018. It is the prosecution case in brief that, on 28th April, 2018, at about 11.30 p.m. Mr. Sachin Shinde, brother-in-law of the first informant had been to the Kurduwadi Railway Station,

when the constables attached to the Railway Protection Force took him to their office. Upon the receipt of the information, the informant visited the office of RPF, Kurduwadi when the Applicant told him that, the said Sachin Shinde was found without having any lawful ticket on Kurduwadi Railway Station and therefore, he has been detained for recovery of fine amount. It is alleged that, the Applicant thereafter, forcefully took the valet from the pocket of the informant, containing of Rs.1,200/- and thereafter threatened the informant to bring more amount of Rs.5,000/- and then only the said Sachin Shinde will be released.

On 29th April, 2018, upto 11 a.m. Mr. Sachin Shinde did not come to home and therefore, the informant alongwith his mother-in-law again went to the RPF office, Kurduwadi. The Applicant again inquired with the informant as to whether the informant has brought a sum of Rs.5,000/-. When the informant expressed his inability on the ground that, he hails from the poor economical strata of the Society, the Applicant abused the informant and his mother-in-law in filthy language and made lewd gestures. In the premise, the first information report is lodged.

4 The learned counsel appearing for the Applicant submitted that, the brother-in-law of the informant namely Mr. Sachin Shinde is an accused in CR No. 366 of 2018, registered by the Applicant under Section 180 (g) of the Indian Railways Act i.e. for spitting tobacco on railway platform. That, Mr. Sachin Shinde has confessed his guilt and therefore, he was produced before the concerned Magistrate, at Daund, wherein the concerned Magistrate has fined him of Rs.500/- and in default of payment of fine to undergo two days of imprisonment.

 He submitted that, as the Applicant had initiated action against Mr. Sachin Shinde, the present crime is registered as a counter-blast. He further submitted that the Applicant has acted bonafide in performing his lawful duty and therefore, the Applicant may be protected by pre-arrest bail.

5 A bare perusal of the first information report would indicate that, the Applicant undoubtedly has exceeded the jurisdiction while performing his duty and has entered into the commission of offence of robbery. It is pertinent to note here that, the Investigating Officer of the present crime till date has not applied Section 392 of the Indian Penal Code to the present crime.

When confronted with the said fact to the Investigating Officer, he through the learned APP submitted that, appropriate steps for addition of Section 392 of the Indian Penal Code will be adopted within a period of 3 days from today. The said statement is accepted.

6 If the contention of the learned counsel for the Applicant is to be accepted as to the fact that, Mr. Sachin Shinde was detained in Police Station for an alleged commission of offence under Section 180(g) of the Indian Railways Act, then it was incumbent on the part of the Applicant to give the said information to the first informant Mr. Hemant Pawar, who along with the mother of Mr. Sachin Shinde i.e. the mother-in-law of the first informant, had been to the police station at Kurduwadi, wherein the Applicant was present on 29th April, 2018 at 11.00 a.m.. However, the conduct of the Applicant of not providing necessary and relevant information of detention of Mr. Sachin Shinde for an alleged cognizable offence was not provided by him to the informant.

7 *Prima facie*, it appears that, Mr. Sachin Shinde was detained by the Applicant only for the purpose of extortion of amount at the behest of his family members and nothing else. The allegation against the Applicant that he robbed the valet of the Applicant,

containing Rs.1,200/-, in the office of RPF Kurduwadi Station is undoubtedly a serious allegation and requires thorough interrogation at the hands of police.

8 In view of the above and after taking into consideration the gravity of the offence and serious allegations against the Applicant, this Court is of the considered view that, the Applicant does not deserve to be protected by pre arrest bail.

9 Application is accordingly rejected.

(A.S. GADKARI, J.)