

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 1278 OF 2018**

Vikram Shankar Sinha

....Applicant.

Vs.

State of Maharashtra

....Respondent.

Mr. Rahul Motkari for the Applicant.

Mr. M.G. Patil APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 29th JUNE, 2018.****P.C.:-**

This is an Application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in CR No. 403 of 2018 dated 3rd June, 2018 registered with Samata Nagar Police Station, Mumbai under Sections 392 and 504 of the Indian Penal Code.

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

3 The first information report is lodged by Shri Shailendra Dube. It is stated that he was having acquaintance with the Applicant. Eight months prior to the date of lodgment of the crime, the first informant had taken a hand loan of Rs.1,25,000/- from the Applicant.

That, the first informant along with interest had repaid the said hand loan. It is stated that on 2nd June, 2018 at about 8.40 a.m. when the first informant had been to a betel-leaf shop and was drinking tea, the Applicant approached and demanded his money from him. The first informant told him that, he had already repaid the entire amount, upon which the Applicant started abusing the informant and slapped him and therefore, the first informant had a fall. The Applicant again made an attempt to assault the first informant, at that time the informant took a bamboo available at the scene of offence and threatened the Applicant with the same. It is alleged that, the first informant thereafter tried to contact the police on 100 number for help and at that time, the Applicant snatched his mobile phone and ran away.

4 The learned counsel for the Applicant submitted that, as a matter of fact, the cheques given by the first informant towards the repayment of the said loan have been dishonoured and therefore, the Applicant has already issued a notice under Section 138 of the Negotiable Instruments Act on 2nd May 2018 through his Advocate to the informant. He submitted that, it is after the receipt of the said notice, the first informant has lodged the present crime.

The learned counsel appearing for the Applicant however, fairly conceded to the fact that, a scuffle took place at the scene of offence on the said day and date of the incident, however, the Applicant after snatching the mobile phone from the hands of the informant, threw it at the scene of offence itself and there is no question of recovery of the said mobile at the instance of the Applicant. He submitted that, the first informant, with a view to avoid repayment of loan advanced by the Applicant, has filed the present false complaint against him. He therefore prayed that, the Applicant may be protected by pre-arrest bail.

5 The record of investigation indicates that, the police have recorded statement of the owner of the said betel-leaf shop, who is corroborating the version of the first informant. As noted earlier, the learned counsel for the Applicant has fairly conceded about the fact of the said scuffle on the date and time of incident. The only aspect which remains for investigation is the recovery of mobile phone, which is allegedly in the possession of the Applicant.

6 It further *prima facie* appears that, there is substance in the contention of the learned counsel for the Applicant that, during the said scuffle, after snatching the said mobile phone the Applicant

banged and threw it at the scene of offence itself, and there is no question of recovery of the same at the instance of the Applicant. It further prima facie appears that, the first informant, with a view to avoid the repayment of loan amount and after receipt of legal notice issued under Section 138 of the Negotiable Instruments Act, has lodged the present crime.

7 In view of the above, the Applicant can be released on bail.

8 Hence, the following order.

- a) The Applicant be released on bail in CR No. 403 of 2018, registered with Samata Nagar Police Station, Mumbai on his furnishing PR bond of Rs.15,000/- with one or two local sureties in the like amount.
- b) The Applicant shall attend the Investigating Officer as and when called for between 10.00 a.m. to 12.00 noon, upon receipt of the notice issued under Section 160 of the Code of Criminal Procedure and shall join the process of investigation, till filing of final report.
- c) The Applicant shall not tamper with the evidence

and/or pressurize the prosecution witnesses.

9 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)