

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

ANTICIPATORY BAIL APPLICATION NO. 2074 of 2018

Shivaji Anandrao Powar	...Applicant.
Vs.	
The State of Maharashtra	...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 2075 of 2018

Shri. Avinash I. Kalgutki	...Applicant.
vs.	
The State of Maharashtra	...Respondent.

Mr.S.R.Borulkar I/by for the Applicant.
Mrs. Rutja Ambekar, APP. for the Respondent/State.

CORAM : A.S.GADKARI, J.
DATE : 30th November, 2018

PC :

1. This is an application under Section 438 of the Code of Criminal procedure for pre-arrest bail in CR No. 119/2018 dated 12.3.2018 registered with Shiroli MIDC Police Station, District Kolhapur under Section 353, 332, 506 read with 34 of the Indian Penal Code.
2. Heard Shri. Borulkar, the learned counsel appearing for the

applicants and the learned APP. Perused the record.

The first information report is lodged by Mr. Ganesh P. Barge, Circle officer attached to Pethvadgaon, Revenue Circle District Kolhapur.

The prosecution case in brief is that on 12.9.2018 at about 10.15 a.m. when the concerned Government Officer was proceeding for his official work, he noticed a truck from which water was dripping. He therefore suspected that, the said truck might be carrying sand. He therefore, accosted the said truck and asked the truck driver to park the said truck by the side of the road. He thereafter took photographs of the said truck and its driver. In the mean time, the driver of the said truck called the applicants on phone. Within a few minutes the applicants arrived at the scene of offence and threatened the Circle Officer to release the truck. The truck driver and the applicant Avinash Kalgutki also assaulted the said Officer. At that time the applicant Shivaji Powar told the said Government Officer that he will take away the said truck and he will see who obstructs his way. It is alleged that, the applicants took away the said truck. The said Circle Officer therefore, approached Shirol MIDC Police Station, Kolhapur and in view thereof the present crime is registered.

3. Mr. Borulkar, the learned counsel appearing for the applicants

submitted that, as of today there is no evidence brought on record by the persecution to the effect that there was in fact sand in the said truck and the said truck was carrying illegally excavated sand. He submitted that, the concerned Circle Officer was proceeding to his duty for some other reason and was having no authority to intercept and accost the said truck. He submitted that, as the concerned Officer has exceeded his duty, the present crime ought not to have been registered at all. He therefore, submitted that the custodial interrogation of the applicants is not necessary and the applicants may be protected by pre-arrest bail.

4. A perusal of the first information report would indicate that, the concerned Circle officer was proceeding to his duty for conducting panchanama of the disputed land and on his way he noticed a truck carrying sand and suspected that it might be illegally excavated sand, accosted the said truck. The Circle Officer being a Revenue Officer, it is also his duty to prevent the loss to Government exchequer and being a Government officer he accosted the said truck. The record indicates that the driver of the said truck failed to show any lawful document for carrying and/or transporting the sand and therefore a safe inference can be drawn that, the sand which was being carried in the said truck was illegally

excavated sand. As noted earlier upon a call given by the driver of the said truck, the applicants arrived at the scene of offence immediately and have assaulted the said Government officer with a view to take away the said truck which was accosted by him. The applicant Shivaji Powar has also administered threats to the said Government Officer.

5. A perusal of the record would prime facie indicate the clear complicity of the applicants in an offence punishable under Section 353 of the Indian Penal Code. The investigation of the present crime is at nascent stage. The applicants have fled away from the scene of offence along with truck in question i.e. bearing No. MH-11-AL-7245 and the same is yet to be seized. The police are yet to investigate from where the applicants procured the sand which was inside the truck.

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

Applications are accordingly rejected.

(A.S.GADKARI, J.)