

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2620 OF 2018

Shri.Haresh Dinanath Sharma & Anr. ... **Applicants**
 V/s.
The State of Maharashtra ... **Respondent**

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Mr.Rizwan Merchant with Ms.Chitra Salunke i/b. Salunke & Co.,
Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent/State.

Ms.Chetna Chaudhari, API, APMC Police Station, New Mumbai is
present in person.

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CORAM : PRAKASH D. NAIK J.

DATED : 19th DECEMBER 2018.

P.C. :

1 The applicant is apprehending arrest in connection
with Crime in 315 of 2018 registered with APMC Police Station for
the offences punishable under Sections 452, 392, 323, 504 and
506 read with Section 34 of the Indian Penal Code.

2 The prosecution case is that the complainant is wife of
one Manoj Sharma. She is carrying business of hotel which is
named and styled as 'Sindh Punjab Dhaba' at Nerul and APMC,
Navi Mumbai. Her husband was carrying on business of selling

old four wheeler vehicles. About twelve years ago, the complainant's husband has taken financial help from applicant No.1. At that time, the applicant No.1 proposed Manoj Sharma to form a partnership firm, which was denied by her husband and that is why the applicants have been harassing complainant's husband. On 23rd November 2018, at about 10.30 p.m., when the complainant was at her hotel, the applicant Nos.1 and 2 came along with two unknown persons and enquired about whereabouts of Manoj Sharma. The complainant informed that Mr.Sharma is in hotel at AMPC. The applicants started abusing the complainant and forcefully entered Hotel premises. They threatened the complainant and tried to assault the complainant and assaulted the waiter. The applicant No.2 had snatched the cellphone of one of the waiter.

3 The learned Counsel for the applicants submits that there are disputes between applicants and Manoj Sharma. The applicants had lodged a complaint against Manoj Sharma on 17th October 2015 with Vashi Police Station stating that Manoj Sharma of Shree Krishna Motors have cheated the applicant No.1 to the tune of Rs.7,00,000/- by selling his two vehicles and on demand of proceeds of sale, they were threatened that he will consume poison and implicate him in a false case. It is submitted that the applicant No.2 is son of the applicant No.1 and his marriage is fixed on 29th January 2019. The entire case of the prosecution is

false. There is no intention to commit robbery and the requisite ingredients constituting the said offence are completely absent. The offence of criminal trespass is not made out in the present case. The applicants had preferred an application for anticipatory bail before the Sessions Court. Interim protection was granted to the applicants and they were directed to attend the Investigating Officer. It is submitted that the applicants had reported the Investigating Officer. Hence, custodial interrogation of the applicants is not necessary.

4 Learned APP submitted that there is clear evidence of snatching the cellphone of one of the waiter. The version of the complainant is supported by CCTV footage. The First Information Report indicates that the applicants and two other unknown persons had visited the hotel of the complainant and thereafter the complainant and other staff of the hotel were abused and threatened and cellphone of one of the waiter was snatched. Therefore, the custodial interrogation of the applicants is necessary to know the whereabouts of the unknown persons, who were absconding and to recover cellphone.

5 Having heard both the sides, I have also gone through the documents on record. It appears that there is dispute between the applicants and Manoj Sharma. The complaint is lodged by wife of Manoj Sharma. It is also apparent that the applicants had lodged a complaint against Manoj Sharma. The applicants have

been charged under Section 392 of the Indian Penal Code for the offence of robbery. However, *prima faice*, it appears that during the scuffle, the cellphone was allegedly snatched. Considering the factual matrix of the case and also taking into consideration the fact that the applicants have already attended the Investigating Officer during pendency of their application before the Sessions Court, the custodial interrogation of the applicants is not necessary. Hence, I pass the following Order :

ORDER

- (i) In the event of arrest of the applicants in connection with Crime in 315 of 2018 registered with APMC Police Station for the offences punishable under Sections 452, 392, 323, 504 and 506 read with Section 34 of the Indian Penal Code, they be released on bail on furnishing PR Bond of Rs.20,000/- each and on furnishing one or more sureties in the like amount by each of them ;
- (ii) The applicants shall attend the Investigating Officer as and when called for till filing of the charge-sheet.
- (iii) For a temporary period of four weeks, the applicants are permitted to furnish cash security of Rs.20,000/- each.
- (iii) The application is disposed of accordingly.

(PRAKASH D. NAIK J.)