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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.351 OF 2019

Akhtar Jamal Usman Gani Khan ..Applicant.

V/s.

The State of Maharashtra ..Respondent.

Mr.Nitin Sejpal with Ms.Akshata Desai for the applicant.

Mr. A.A.Palkar, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 8, 2019

P.C.:-

Heard learned counsel for the applicant and learned APP for the State.

2. In crime No.5/2019 for offence punishable under section 395 of the Indian Penal Code registered with Khopoli police station, Raigad, the applicant is seeking pre-arrest bail.

3. The prosecution case is, complainant Jayshankar Chaudhari, working as a watchman in RPM Industries, Dheku, Taluka Khalapur in the intervening night of January 5, 2019 and January 6, 2019 noticed certain activities and sensing trouble, he

called police staff from the nearest police station and the police party apprehended four persons from the spot of incident. It was found that four persons along with two other persons were extracting the cable fittings by committing the theft. In the F.I.R., the name of the applicant has been disclosed by one of the co-accused, involved in the offence.

4. In the aforesaid backdrop, learned counsel for the applicant submits that the applicant is entitled to be protected in the event of his arrest as his name divulged by co-accused cannot be relied upon for implicating him. According to him, the applicant is owner of the vehicle No.MH-46-BE-3404 and on the date of incident, he was travelling to Bihar i.e. his native place. Various Toll receipts would clearly justify the plea of alibi of the applicant. An additional submission is made that in all the earlier offences of similar nature, the applicant is acquitted.

5. Learned APP opposed the claim and submits that there is sufficient material available on record to justify the case of prosecution.

6. On the date of lodging of complaint i.e. January 6, 2019, four accused persons were apprehended from the spot and

name of the present applicant is specifically divulged.

7. Learned counsel for the applicant is right in pointing out that statement of co-accused cannot be relied upon in the form of evidence against the applicant. However, the said statement could be considered at the stage of investigation so as to confirm whether the investigation is on the right track. That being so, in the complaint itself, the name of the applicant is divulged as a person who is alleged to be involved in the crime in question.

8. So far as plea of alibi is concerned, the applicant has stated that he was travelling to his native place, to the State of Bihar. But for Toll receipts, there is no other material to infer that the applicant was in fact travelling to Bihar on the date of incident.

9. Learned counsel for the applicant also raised a plea that the applicant has indicted one police officer in an anti corruption case and hence he is falsely implicated. The said plea is not fortified by any documentary evidence placed on record. As such, the said contentions are rejected.

10. That being so, no case for grant of pre-arrest bail is made out. The application is rejected.

(NITIN W. SAMBRE, J.)