

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 755 OF 2019

Akhtar Ali Qutubullah Choudhary	...Applicant
Versus	
The State of Maharashtra	Respondent

Mr. Rohit P. Sawant, for the Applicant.
Mr. J. P. Yagnik, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 27th MAY, 2019
(Vacation Court)

PC:-

- 1.** Heard. This is an application for pre-arrest bail.
- 2.** The applicant apprehends arrest in CR No.313 of 2018, registered with Mumbra Police Station, for the offences punishable under Sections 452, 454, 427, 506(2) read with 34 of Indian Penal Code. In fact, this is a second application before this Court. The first application, bearing Anticipatory Bail Application No.474 of 2019, was withdrawn by the applicant on 22nd February, 2019, after the Court declined to grant the relief.
- 3.** The allegation against the applicant is that on 10th June, 2018, the applicant along with his associates, broke open the room of the first informant, bearing Room no.203,

Zeena Apartments, Tanwar Nagar, old Mumbai – Pune road, Kausa, Mumbra, Thane, and removed the articles of the first informant therefrom and kept his own articles in the said room. It is alleged that during the course of said incident, mischief was caused to the property of the first informant. Thus, the first informant lodged the report on 12th June, 2018.

4. The applicant contents that the said room belongs to Mrs. Maimoona Q. Choudhary, sister of the applicant. A settlement was arrived at between the sister of the applicant and the applicant, in the presence of the first informant, whereunder the applicant was to pay certain amount to the said Mrs. Maimoona and the first informant was to hand over the possession of the said room to the applicant. The first informant accordingly voluntarily handed over the possession of the said room to the applicant. However, a dispute arose as the sister of the applicant, Mrs. Maimoona, started to make demand of exorbitant amount from the applicant. In the wake of the said dispute, the first informant lodged report against the applicant at the behest of Mrs. Maimoona.

5. Heard Mr. Sawant, the learned Counsel for the Applicant and Mr. Yagnik, the learned APP for the State/Respondent.

6. It was submitted on behalf of the applicant that having regard to the nature of the occurrence, the applicant deserves the grant of pre-arrest bail. The learned Counsel for the applicant would urge that the applicant was aware of the occurrence on 10th June, 2018 itself and had, in fact, received the articles belonging to him, which were transported in a tempo on 10th June, 2018 and, thereafter, the FIR came to be lodged on 12th June, 2018, which is a creature of an afterthought. The applicant is 62 year old person. In the circumstances, the custodial interrogation is not at all warranted, urged the learned Counsel for the applicant.

7. In opposition to this, Mr. Yagnik, the learned APP pointed out that the first informant's wife was put in possession of the room, in pursuance of an Agreement for Sale executed by the owner Mrs. Maimoona in the year 1998. Since then the first informant had been in possession of the said room. The overt act attributed to the applicant of breaking open the room of the first informant and removing

all articles therefrom is, in a sense, uncontroverted and is of grave nature. Investigation is therefore warranted.

8. At the outset, it is required to be noted that this Court had indicated its disinclination to grant the relief and thereupon the earlier bail application came to be withdrawn. There does not seem to be any substantial change in the circumstances so as to afresh exercise the discretion in favour of the applicant.

9. The allegations against the applicant of breaking open the house of the first informant and removing the articles therefrom and forcibly establishing possession over the said room, find requisite support in the statements recorded during the course of investigation. There is material to indicate that the first informant and his wife have been in long standing possession of the said room (since 1998). The applicant's claim over the said room is rested in the alleged settlement with Mrs. Maimoona. The applicant doesn't claim any jural relationship with the first informant so as to exercise the right of entry. In this backdrop, the action of breaking open the house of the first informant, in broad daylight, assumes gravity. It has the propensity to undermine the authority of law and promote lawlessness. In the

circumstances, the custodial interrogation of the applicant seems necessary. A direction for the release of the applicant on bail, at this stage, would impede a fair and effective investigation. Hence, I am not inclined to exercise the discretion in favour of the applicant. Hence, the following order:

: O r d e r :

The application stands rejected.

[N. J. JAMADAR, J.]