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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2463 OF 2018

Mistri Jafar Pawar ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr.Kamal A.Patel for the applicant.

Mr.N.B. Patil, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 8, 2019

P.C.:-

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

2. In crime No.352/2017 for offence punishable under section 379, 353, 115, 189, 511, 504 and 506 read with 34 of the Indian Penal Code and sections 8 and 5 of the Environment (Protection) Act, 1986 registered with Mangalwedha police station, Solapur, the applicant is seeking pre-arrest bail.

3. The allegations against the present applicant is that he was a part of the gang of accused persons who were engaged in excavating sand illegally from river bed.

4. In the aforesaid backdrop, the police had conducted raid on August 3, 2017 and as such the applicant along with his father and other relatives are named as accused in the crime in question.

5. Learned counsel Mr.Patel for the applicant would urge that the applicant is falsely implicated in the crime in question. According to him, the applicant is an employee of an education institution by name Shri Vidya Vikas Mandal which runs a college of arts and commerce wherein the applicant is engaged as a peon / watchman. According to him, the Principal of the said college has certified that on the day of incident i.e. August 3, 2017, the applicant was on night duty. According to him, applicant's presence at the spot of offence was by virtue of the duty assigned to him and not with an intention of commission of crime in question. He would then urge that the attendance register placed on record at page 43 in categorical terms speaks of his presence in

the institution on the date of incident. Learned counsel would then urge that the vehicle which is owned by him, seized from the spot, was being used by his father or relatives. That being so, the custodial interrogation of the applicant is not warranted.

6. Learned APP opposed the claim based on the investigation carried out.

7. The investigation papers depicts that co-accused Nivrutti has named the present applicant as one of the accused who was involved in the commission of the crime in question. Though for the purpose of prosecuting the applicant, the statement of co-accused cannot be considered, however, so as to ascertain whether there is any proper investigation in the matter or not, the statement of co-accused can be considered only for limited purpose.

8. Apart from above, the statement of the Principal of the college where the applicant is employed speaks of the applicant's duty hours on the day of incident as, from 7.30 a.m. to 6.00 p.m. The incident in question has taken place in early hours of August 3, 2017 and as such, the fact remains that the statement of the

Principal of the college would not support the applicant that at the relevant time, the applicant was discharging his duties.

9. There is one more facet to the matter i.e. the seizure of the vehicle from the spot of offence. The fact remains that the applicant was owning the said vehicle, the number plate of the vehicle was purposely removed from the said vehicle. As such, there is sufficient iota of evidence to presume involvement of the applicant in the crime in question. That being so, no case for grant of pre-arrest bail is made out. The application fails and is rejected.

(NITIN W. SAMBRE, J.)