

Shaikh Shafiq s/o Shaikh Hasan ... **Applicant**
Age 38 years, Occu: Business and Agri.
R/o Phulepimpalgaon Tq. Majalgaon
District Beed.

The State of Maharashtra, ... Respondent
Through Police Station Majalgon(Rural),
Tq. Majalqaon, District Beed.

CORAM : V. G. BISHT, J.
DATE : 21st August, 2021.

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 102/2021 registered with Majalgaon Rural Police Station, District Beed for the offence punishable under Sections 379 r/w 34 of the Indian Penal Code, 1860.

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3. Mr. Vinod I. Thole, learned counsel for the applicant, submits that though the alleged incident took place on 13.07.2021, the complaint only came to be lodged on 16.05.2021. The delay of three days is nowhere explained. The learned counsel then next submitted that the Poklane machine in question was neither owned by the applicant nor it was seized from his custody and therefore, he would not have benefited from taking away that Poklane machine from the custody of the informant. Moreover, the said machine can only be shifted by means of a trailer and humanly it is not possible to lift the same. There being no direct evidence implicating the present informant, the interim relief granted by this Court needs to be confirmed, urged learned counsel.

4. Mrs. Vaishali S. Chaudhari, learned A.P.P., opposed the submissions by contending that the informant had seen the applicant and other persons near the spot of the incident and taking advantage of the fact that he had gone to attend nature's call, the applicant and other person removed the machine in question without permission of the informant. Investigation is in progress and in such circumstance, the present application should not be allowed, urged learned A.P.P.

5. The learned counsel for the applicant is right in his submission that there is delay of three days in lodging the first information report which is nowhere explained. Since it is the case of the prosecution that the informant had seen the applicant loitering nearby the place where

the machine was kept and immediately after he came after attending the nature's call he did not find the machine in its place, he could have lodged the report immediately but that was not done. During the course of argument, this Court confronted the learned A.P.P. as to whether it was possible to remove the machine humanly to which learned A.P.P. replied in negative. In my considered opinion, prima faice, there is no cogent and convincing evidence to show the complicity of the accused in the alleged incident. I am satisfied that the applicant has made out a case for consideration. In the circumstances, I am inclined to allow the present application.

6. Hence following order.

- i. The application is allowed.
- ii. Interim relief granted by this Court on 14.07.2021 is made absolute and is confirmed.
- iii. The applicant shall attend concerned police station as and when called and shall cooperate with the police in the investigation.

(V. G. BISHT, J.)

JPC