

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 525 OF 2016

Shri. Rajkumar Rangnath and anr.

..Applicants.

vs.

The State of Maharashtra.

..Respondent.

Mr. Satish Maneshinde i/by Ms. Lakshmi Raman for the Applicant.

Mr. Deepak Thakare, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 18th August, 2016

P.C.

1) This is an application under Section 438 of the Cr.P.C. for pre-arrest bail.

The applicants are apprehending arrest in CR No.487/2015 dated 7.11.2015 registered with Oshivara Police Station under Section 380, 454 and 457 of the Indian Penal Code.

2) The first informant Smt. Poonam Mishra has lodged the report dated 7.11.2015 against the unknown persons. In the said report she has stated that two months prior to 7.11.2015 she had been to Delhi. While going to Delhi she had locked her residential premises. When she returned to Mumbai on 7.11.2015 she found that new Television of Sony Company was not in the house. She also noticed that golden ornaments which were kept in the wooden cupboard were also missing. She realized that some unknown persons has committed lurking trespass and theft in her residence. In the premise, she lodged the report with police.

3) During the course of the investigation, the police have recorded the statement of the watchman of the building. The said watchman in his statement has stated that Applicant No.1 i.e. the owner of the said flat had been to the said premises at-least on two occasions in last two months within a span of 15 days. Initially the applicant No.1 had entered into the flat alone and after a gap of about 15 days both the applicants entered the said flat. At that time the mother in law of the applicant was standing at the entrance of the building. That, when the applicants returned from the said flat the applicant No.1 was holding a Television in his hand and thereafter he kept the said Television in the dicky of his car and left the place.

4) It is the contention of the learned counsel for the applicants that the applicant No.1 is the owner of the property and in view of the leave and licence agreement entered between the parties inter-se he was also having one key with him. As the complainant did not pay the rent of the said flat, after giving prior intimation to her he entered into the premises and collected the television which according to him belongs to the applicant. The learned counsel further submitted that the applicants are holding high position in the society. That, the applicants are protected by way of interim relief since March, 2016 and they have co-operated in the process of investigation and therefore, their custodial interrogation is not necessary and they may be granted pre arrest bail.

5) It is to be noted that though the applicant No.1 is the owner of the said property, he had given the said premises on leave

and licence basis to the complainant. The complainant had locked the said premises and went to Delhi. It is the specific allegation of the complainant that golden ornaments which were kept in the wooden cupboard were missing. It is to be noted here that in view of the statements of the witnesses recorded by the police it is clear that the applicants are the perpetrators of the crime. Though the applicants contend that they attended the Investigating Officer in pursuance of the orders passed by this Court the said interrogation did not yield in fruitful purpose. The Supreme Court in the case of State represented by CBI Vs. Anil Sharma reported in (1997) 7 SCC 187 has held that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by pre-arrest bail order during the time he is interrogated. That, very often interrogation in such a condition would reduce to a mere ritual.

According to this Court, unless and until the applicants are interrogated custodially, the recovery of alleged stolen ornaments of the complainant is not possible. After taking into consideration the serious allegations against the applicants and the gravity of the offence I am of the view that this is not a case to grant pre-arrest bail. Application is accordingly dismissed.

6) The learned counsel for the applicant at this stage submitted that the applicants are protected by way of interim relief by the Orders of this Court since 22.3.2016 and the same may be continued for a period of four weeks from today as the applicants

intend to question the correctness of the present order before the Apex Court. The learned APP. opposed the said prayer. As the present application for pre arrest bail is dismissed on its merits by this Court, the said prayer of the applicants cannot be entertained and is accordingly rejected.

(A.S. GADKARI, J.)