

*Ladda*FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1305 OF 2015

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr Rajendra Shirodkar i/by Archit Sakhalkar for the applicant.

Ms PP. Shinde, APP for the State.

Mr Amit Nalawade for the Intervener.

PSI Shriram Patil, V.P. Road Police Station.

CORAM : A.S.GADKARI, J.

DATE : 3rd March, 2016

P.C.

1) The applicant is apprehending arrest in CR No. 241 of 2015 registered with V.P. Road Police Station, dated 21.7.2015 under section 408 read with section 34 of the IPC.

2) By a detailed order dated 2.9.2015 the applicant is protected by an interim relief. It is the prosecution case that the principal accused namely Gajendrasingh Rajput who was employed with the complainant committed theft of iron rods/pipes from the shop of the complainant Shri Mukesh Bokadia and sold those goods to the present applicant. It is further the prosecution case that the applicant herein is the receiver of the stolen property. During the course of investigation it was revealed by the investigating agency

that the applicant has purchased the goods worth Rs.3,25,000/-from the said principal amount, which is supported by documents such as receipts and vouchers. It is the further prosecution case that the applicant is the receiver of the stolen property who has accepted the property after making payment of the said amount to the principal accused Gajendrasingh Rajput.

3) Heard the learned counsel for the applicant and the learned counsel for the original complainant.

The learned counsel for the original complainant vehemently opposed the present application and submitted that the custody of the applicant is very much necessary for the police to recover the balance amount. He further submitted that though the applicant is charged section 441 read with section 34 of the IPC, it is a part of widespread conspiracy in pursuance of which the present crime is committed. He further submitted that though the principal accused Gajendrasingh Rajput has received the amount of Rs.20 lakhs from the present applicant and as the police have failed to recover any amount from the said principal accused, the present applicant may be sent to police custody for recovery of the balance amount as the complainant has suffered loss of Rs.20 lakhs from Gajendrasingh Rajput. He further submitted that though Section 120 of the IPC is

not applied to the present crime by police, it is in pursuance of the conspiracy amongst the accused persons, the said goods were initially stolen and subsequently purchased by the present applicant. It may be noted that the aforesaid submissions made by the learned counsel for the applicant are dehorse of any legal support to it and totally contrary to the fundamentals of law. It is the settled position of law that an accused cannot be fastened with vicarious liability for an offence committed by other accused person. The investigating agency did not dispute that Gajendrasingh Rajput, the principal accused, has in fact, received the amount from the present applicant. However, the failure on the part of the investigating agency to recover the amount from the said accused cannot be a reason for sending the present applicant to jail for recovery of amount which has already been squandered by the principal accused. It further appears that the investigating agency has not taken any pains in effecting the seizure of goods which are in the form of iron rods/pipes from the shop of the applicant till date. It further appears from the submissions of the learned counsel for the complainant that the complainant is more interested in humiliating the applicant and/or to tarnish his reputation in the society by arresting him.

4) The record further discloses that as stated herein above the documents i.e. receipts and/or vouchers for an amount of Rs.3,25,000/- were traced out by the investigating agency from the applicant which denotes that the applicant has accepted the alleged stolen goods worth Rs.3,25,000/- from the principal accused Gajendrasingh. During the course of hearing of the present application on 8.12.2015, the applicant with a view to prove his bonafied had submitted before this Court that he would deposit the said amount of Rs.3.25 lakh in the Registry of this Court. As per the record the applicant has in fact deposited the said amount which fact is not disputed by the Investigating Officer who is present in the Court.

5) In view of the above, I am of the considered opinion that the custodial interrogation of the applicant is not necessary. The interim relief granted by an order dated 2.9.2015 is hereby confirmed.

The application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)