

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 404 OF 2017

1 Anil Lalchand Kesarwani
2 Jaiprakash Lalchand Kesarwani. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Santosh Bhamre i/b. Mr. V.L. Subramanianrajam, advocate for Applicants.

Mr. M.G. Patil, APP for State.

Mr. A.V. Wadhawa, PSI, Bhoiwada Police Station, Bhiwandi.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 8, 2017**

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State. Perused papers.

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 10 of 2017 registered at Bhoiwada Police Station on

21/1/2017 for offence punishable under Section 457, 380 read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 21/1/2017 Shahejad Badrialam Khan lodged a report at the police station alleging therein that he runs power loom at Bhiwandi. That on 20/1/2017 he had inspected the stock of the goods and had left the shop. On 21/1/2017 in the mid-night he received a phone call from Majid informing him that the shutter of the office is half open and that the bundles of cloth were stolen. They rushed there immediately and had noticed that the goods worth Rs. 1,55,000/- were stolen. He informed the incident to the police, on the basis of which, Crime was registered against unknown persons.

4 In the course of investigation, it had transpired that the said goods are concealed in the godown of the present applicant. A search was taken and the investigating agency could seize the stolen goods valued at Rs. 1,00,000/-. It was noticed that there was

communication between the applicant and absconding accused Raju @ Rajender Gupta. The applicant was summoned by the police. At that time, he had produced receipts showing that he has purchased the said cloth from Sumit Textile on 24/12/2016.

5 The learned APP submitted that Sumit Textile is a proprietary firm of the uncle of the applicants and therefore, these receipts are concocted only to show that the goods have been purchased and are not stolen goods.

6 The learned Counsel for the applicants submits that the applicants have been falsely implicated. That in fact, there was communication between the co-accused whose name is also Anil Sachu Yadav and therefore, it was presumed that the present applicant with similar name is involved.

7 Learned APP submits that it was the case of the applicants that there was no need to concoct the receipt to show that he had

purchased the goods from Sumit Textile. Since there is recovery of the stolen goods from the godown of the applicant, custodial interrogation would be imperative. Hence, no case for pre-arrest bail is made out.

8 However, it is made clear that the observations are prima facie and restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be considered at the time of trial.

9 The application stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)