

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 533 OF 2018

Kratagya Mahendrakumar Bohara Applicant.
Vs.
The State of MaharashtraRespondent.

WITH

ANTICIPATORY BAIL APPLICATION NO. 906 OF 2018

Mr. Jagdish Goverdhan Prajapati Applicant.
Vs.
The State of MaharashtraRespondent.

WITH

CRIMINAL APPLICATION NO. 797 OF 2018

IN

ANTICIPATORY BAIL APPLICATION NO. 906 OF 2018

Kratagya Mahendrakumar Bohara Intervener.
Accused No.2.

In the matter of :-

Jagdish Gowardhan Prajapati Applicant.
Accused No.1
Vs.
The State of Maharashtra & AnrRespondents.

Mr. Nilesh Tribhuvan, Advocate a/w. Prerna Sharma for the Applicant in ABA No. 533 of 2018 and APPP 797/2018.

Mr. Noman Jafri, Advocate for the Applicant in ABA No. 906 of 2018.

Smt. Rutuja Ambekar, APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 3rd August, 2018.

P.C.:-

1) The applicant Kratagya @ Tipu Bohara in Anticipatory Bail Application No. 533 of 2018 was granted interim relief by an order dated 21st March, 2018 and was directed to attend the Investigating Officer on stipulated dates, to join the process of investigation.

The applicant Jagdish Prajapati was granted interim relief by an order dated 4th May, 2018 in ABA No. 906 of 2018 and was directed to attend the Investigating Officer on the stipulated dates, to join the process of investigation.

2) Heard the learned counsel for the applicants and the learned APP for the State. Perused the record of investigation.

3) The first information report is lodged by Smt. Anita R. Beniraz. Prosecution case, in brief, is that the first informant was in need of money for her personal reasons and therefore she along with her husband approached the applicant Jagdish Prajapati, owner of Chirag Jewellers for the same. She pledged her ornaments weighing 30 grams and accepted cash amount of Rs.50,000/- from him with a promise to pay 2% of interest per month on the said amount. On subsequent occasion also she pledged her ornaments weighing 41

grams and accepted Rs. 1 lakh on interest from him.

That from time to time, the first informant paid substantial amount to the applicant Jagdish Prajapati for redeeming her gold ornaments and redeemed certain ornaments. The applicant Jagdish Prajapati expressed his inability to further redeem the pledged ornaments despite the informant was ready and willing to pay the amount claimed by the applicant. Upon enquiry in the vicinity, it was revealed that, there are about 23 other similarly situated persons, who have pledged their ornaments with the applicant Jagdish Prajapati and despite their willingness to repay the amount agreed, the applicant Jagdish Prajapati is not returning their ornaments. In the premise, the first information report is lodged.

4) During the course of investigation, it was revealed that the applicant Jagdish Prajapati has further pledged those ornaments with Madhura Jewellers of which the applicant Kratagya Bohara is the owner. During the course of interrogation of the applicant Kratagya @ Tipu Bohara, it was revealed that, the applicant has further pledged those ornaments with India Infoline Finance Limited (I.I.F.L.) Company and has accepted money there from. The

police as of today have seized the said ornaments from said I.I.F.L. company at the instance of the applicant Tipu Bohara.

That during the course of a search of Madhuram Jewellers ornaments approximately weighing 293 grams have also been seized from the applicant Kratagya Bohara i.e. the owner of Madhuram Jewellers. Certain ornaments have also been recovered from Kaveri Jewellers, Ghatkopar and as of today ornaments weighing approximately 1760 grams are to be recovered by the police in the present crime.

5) Mr. Jafri, the learned counsel appearing for the applicant Jagdish Prajapati submitted that, as a matter of fact, the applicant Jagdish Prajapati has further pledged the ornaments with Madhuram Jewellers and has accepted amount from him for payment to his customers and in fact, has paid the said amount to his customers. He submitted that, the said ornaments are with Madhuram Jewellers and he has no dominion over it. Upon a query put by this Court to the learned counsel for the applicant Jagdish Prajapati, whether his client is ready and willing to redeem the balance quantity of ornaments and/or to deposit the amount equivalent to the weight of the said gold ornaments i.e. about 998

grams, he on instructions, expressed his inability to do so. He further submitted that, it is the normal practice in the trade of money lending that money lender accepts ornaments by pledging it and pays the amount to the needy customers on higher rate of interest and further pledges those ornaments with financier on lesser rate of interest. He submitted that, the said ornaments are undoubtedly pledged with Madhura Jewellers and it is only because of financial constraints on the part of the applicant Jagdish Prajapati, he is unable to redeem it. He therefore prayed that applicant Jagdish Prajapati be protected by pre-arrest bail by imposing any condition.

6) Mr. Tribhuvan, the learned counsel appearing for applicant Kratagya @ Tipu Bohara submitted that as a matter of fact his client has accepted about 815 grams ornaments from co-accused Jagdish Prajapati and had advanced payment of the same to him. He submitted that as applicant Jagdish Prajapati did not redeem the said ornaments within stipulated period, he has further pledged those ornaments with IIFL Company and accepted payment for the same. He submitted that, as of today the police have seized ornaments from the said IIFL Company weighing approximately 671

grams and has also seized ornaments weighing approximately 293 grams from his shop. He submitted that nothing is balance at his instance to be recovered by the police and therefore the applicant Kratagya Bohara may be granted pre-arrest bail.

7) The record of investigation indicates that the total quantity of gold ornaments involved in the present crime is approximately 2500 grams, out of which approximately 815 grams ornaments are seized at the instance of applicant Tipu Bohara by the police and from the applicant Jagdish Prajapati practically nothing is seized or recovered by the police till date. As per the record of investigation, police are yet to recover approximately 1760 grams of ornaments from Prajapati.

8) It is to be noted here that, the needy customers who pledged their ornaments with the applicant Jagdish Prajapati while accepting amount from him, did not give their express consent for further pledgment of ornaments with another jeweller or financier to Jagdish Prajapati and therefore the applicant Jagdish Prajapati under the law was not entitled to further pledge those ornaments for availing loan/amount at lesser rate of interest. In the absence of consent by the victims needy persons for further pledging those

ornaments with any other person by Jagdish Prajapati, applicant Jagdish Prajapati was not entitled to do the said act and therefore an offence under Section 406 of the IPC has been clearly made out as against applicant Jagdish Prajapati.

As noted earlier, during the course of investigation, it is revealed that certain quantity of ornaments are yet to be recovered from the applicant Jagdish Prajapati and the same is not possible unless he is thoroughly interrogated by the police.

9) As far as applicant Kratagya Bohara is concerned, the facts narrated hereinabove would indicate that, he under bona fide belief had accepted the said ornaments from applicant Jagdish Prajapati for pledging it and has advanced substantial amount to him against the same. Thus, it appears that applicant Tipu Bohara has no direct role to play in the present crime.

11) In view of the above and after taking into consideration the serious allegations against applicant Jagdish Prajapati and the gravity of offence qua him, A.B.A. 906 of 2018 is hereby rejected.

12) As far as Anticipatory Bail Application No. 533 of 2018 of applicant Kratagya @ Tipu Bohara is concerned, in view of the above, interim relief granted by order dated 21st March, 2018 is

hereby confirmed. However, the applicant Kratagya Bohara is directed to attend the concerned Investigating Officer as and when called for after receipt of notice under Section 160 of Cr.P.C. between 11:00 a.m. and 1:00 p.m. and to join the process of investigation till submission of final report.

13) ABA No. 533 of 2018 is allowed in the aforesaid terms.

14) In view of order passed in ABA No. 906 of 2018, Criminal Application No. 797 of 2018 does not survive and is accordingly disposed of.

(A.S. GADKARI, J.)