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

ANTICIPATORY BAIL APPLICATION NO.1041 OF 2018

Baban Sambhaji Sonavane & Anr.

..Applicants

Vs

The State of Maharashtra

..Respondent

Mr. Rahul Kate for Applicant.

Mr. Ajay Patil, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 10th December 2018.

P.C.:

1] The applicants are apprehending arrest in CR No. 172 of 2018 dated 28.4.2018 registered with Wanwadi Police Station, Pune under section 380 read with 34 of the Indian Penal Code.

2] Heard the learned Counsel for the applicant and the learned APP. Perused the record of investigation.

By an Order dated 28th May 2018, the applicants were granted interim relief.

3] The first information report is lodged by Shri Madhav Deokate. The first informant is the father of applicant No.2 and father-in-law of

applicant No.1. The applicant Nos.1 and 2 are husband and wife. It is the prosecution case that, when the wife of the first informant was admitted to hospital at Pune between 6.6.2017 to 3.7.2017 the informant had given key of his flat situated at Subhash Park, Hadapsar, Pune to the applicants for taking care of the same. When he returned to his flat after three days, he noticed that, the applicants herein have committed theft of valuable articles from the said flat, alleged to have been given in the possession of the applicants. In the premise the first information report is lodged.

4] The Investigating Officer is seeking custody of the applicants for recovery of the ornaments and property mentioned in the first information report.

The record indicates that, before lodgment of the present crime, the informant had lodged a complaint with the same police station and a detailed statement of the applicant No.1 was recorded therein. After lodgment of the present crime and in pursuance of Order dated 28th May 2018 passed by this Court, the applicants have attended the Investigating Officer and in turn the police have recorded their statements. The report of investigation indicates that, it is the case of the applicant No.1 that, he is suffering from heart disease. When the wife of the informant was admitted

to the hospital, with a view to make up the expenses, under the instructions of first informant, the applicant No.1 has pledged certain ornaments with Sadguru Jewellers, Yashwant Jewellers and Siddhanth Jewellers, situated at Nehrunagar, Kurla and some ornaments were pledged with Hindustan Bank. The applicant No.2 has also specifically stated that, the Fixed Deposit which was jointly kept in her name along her mother was liquidated for making payment of medical expenses of her mother, Smt. Muktabai. The applicant No.2 has stated that, her father has also squandered money for fulfilling his vices.

5] During the course of hearing of the present application, when this Court made enquiry with the Investigating Officer about the fact, whether he has visited the shops of the said jewellers, it was casually answered by the Investigating Officer that, he did not do it till date. The demeanor of the Investigating Officer denotes his casual attitude and his non-seriousness in investigating the present crime. It further appears that, he is suppressing real fact from the Court and thereby trying to desist from co-operating in deciding the present application. There are substantial lacunae in the investigation conducted by the present Investigating Officer and despite the said fact, the concerned Investigating Officer is seeking the

custody of the applicants without there being any justifiable reason as contemplated under section 41 of Cr. P.C. It appears that, only for his satisfaction the Investigating Officer, is seeking custody of the applicants for alleged recovery of property in the present crime.

6] After taking into consideration the aforestated facts, it would undoubtedly cause undue hardship and loss of reputation to the applicants if their application for pre-arrest bail is rejected.

7] In view of the above, the applicants deserve to be protected by pre-arrest bail.

8] Interim relief granted by Order dated 28th May 2018 is hereby confirmed.

Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)