IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1633 OF 2018

Mohammad Imran Mohd. Shafi Shaikh … Applicant
Versus
The State of Maharashtra … Respondent

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Ms. Anjali Awasthi i/b Mr. Moinuddin Khan for Applicant.
Mr. Y. M. Nakhwa, APP for taahe State.
Mr. Kunal Ambulkar for first informant.

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CORAM : PRAKASH D. NAIK, J.

DATE : 20th AUGUST, 2018.

P. C.:

1. This is an application for anticipatory bail in connection with C.R.No.180 of 2018 registered with Azad Maidan Police Station, Mumbai for the offence under Section 408 read with 34 of Indian Penal Code.

2. The prosecution case is that the accused was the employee of the complainant. The complainant is dealing with electronic goods. It was noticed that several electronic goods which were purchased from the company by the complainant and to be sold to the customers, were missing from the shop and the godown. The inquiries were made with the accused. The verification of the cell

phones provided by the complainant to the accused was done and it was noticed that the applicant who was working as Manager with the company in the office of the complainant had received a text message from the co-accused. In pursuant to that, further inquiries were made and allegedly the accused had admitted before the complainant that the goods were misappropriated by them. It is further alleged that the applicant had purchased a flat in the name of his wife.

3. The applicant preferred application for anticipatory bail before the Court of Sessions, which was rejected on 21st July, 2018. Hence, the present application preferred before this Court.

4. The learned Advocate for the applicant submits that there is no evidence against the applicant to connect him with the alleged crime. He was working as Manager in the office of the complainant. The goods were allegedly misappropriated from the godown. The applicant was not concerned with the goods which were lying in the godown and there is no evidence to establish that the applicant in any manner is involved in misappropriation of the goods. It is further submitted that the co-accused were attributed the overt act being the persons who were connected

with the godown were not arrested and the applicant is being made scope good. It is further submitted that the text message which is referred to by the prosecution does not make any inference that the applicant had been committed alleged offence. The applicant has not replied to the said message. It is submitted that the co-accused were godown In-charge and were concerned with the goods lying in the godown and the applicant had no concern. The flat was purchased from his own money and it has nothing to do with the proceeds of crime.

5. Learned APP submitted that having noticed that the goods were lying in the shop premises as well as godown, were missing, inquiries were carried out by the complainant and it was noticed that the accused who were his employees were involved in misappropriation of the goods. It is submitted that the applicant was Manager with the complainant and was required to maintain stock, who is responsible for the said act. He acted in connivance with the co-accused. The text message received by the applicant showed his involvement in the crime. The co-accused has transferred the amount into the account of the applicant. It is further submitted that the applicant is the main person who has

engineered the misappropriation in connivance with the other accused. The applicant has purchased flat premises in the name of his wife for consideration of Rs. 9,78,000/-. The investigating machinery has collected the documents during the course of investigation, which reveals that the cash of Rs.4,78,600 was paid towards consideration for executing the said transaction. The learned Counsel for the intervener-complainant also reiterated the submissions advanced by learned APP. It is submitted that the applicant was employed as Manager in the said office and was instrumental in committing crime in connivance of co-accused. It is submitted that the goods were missing from godown and also from the shop.

6. I have gone through the documents and investigation papers produced by learned APP. Although, the FIR refers to some part of the text message, it is actually in much detail. It is also noted that an amount of Rs.49,000/- was transferred to the account of applicant from the account of accused No.4. The amount of Rs.49,000/- has been transferred on 6th April, 2018 from the account of wife of accused No.4 to the account of applicant. Similarly, on 7th April, 2018 the amount of Rs. 4,88,000/- has

been transferred from the account of accused No.4 to the account of applicant. On perusal of FIR it is apparent that the case of the prosecution is that the accused had acted in connivance with each other and has shared the amount towards proceeds of crime by misappropriating the goods which were allegedly missing from the shop and godown of the complainant. It is submitted that the co-accused are absconding. Learned Counsel for the applicant submitted that initially, the police did not take any steps to apprehend the co-accused. It is also submitted that the amount was transferred into the salary account of the applicant. If, the applicant was involved in the crime, he would not have permitted the co-accused to transfer the amount into his salary account.

7. Be that as it may, considering nature of the allegations made in the FIR and the investigation conducted by the police, the case for grant of anticipatory bail is not made out. In the circumstances, the application requires to be rejected. Hence, I pass the following order.

O R D E R

Anticipatory bail application stands rejected.

(PRAKASH D. NAIK, J.)