

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

ANTICIPATORY BAIL APPLICATION NO. 2087 OF 2018

Bharti G. Waghmare

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Shivraj Kunchge a/w Mr. Parmeshwar A. Bhise for the applicant.

Mr. A.R. Kapadnis, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 10th OCTOBER, 2018.

P.C.

1. This is an application for anticipatory bail in C.R. No. 68 of 2018 registered with Malabar Hill Police Station for the offence punishable under Sections 381 of Indian Penal Code. The FIR was registered on 17th August, 2018.

2. The case of the prosecution is that the applicant was working as a servant in the house of the father of the complainant at Godrej Baug, Napeansea Road, Mumbai. Applicant was working from 9.30 to 12.30 p.m. On 27th July, 2018 the complainant informed the applicant not to come on next day as the complainant and her father were going to Pune. It is further alleged that complainant and her father left for Pune and they returned on 15th August, 2018. It was noticed that the articles belonging to the father of

the complainant were missing from the house. They tried to open Godrej cupboard which could not be opened and the service of expertise from the company was sought and cupboard was opened. It was also noticed that the articles viz silver chip, golden ring, ear ring and golden necklace as well as cash of Rs.5000/- was missing. The value of the articles was to the tune of Rs.2,18,000/-. It was also noticed that one of the window of the house was found opened. Suspecting that the applicant is involved in the theft of the article, the First Information Report was lodged on 17th August, 2018. It was alleged that the applicant being a maid servant must have prepared duplicate key of the cupboard and by using the same she must have committed theft of the articles.

3. Applicant preferred an application for anticipatory bail before the Sessions Court which was rejected on 1st October, 2018, while rejecting the said application it was observed by the court that the applicant is avoiding to co-operate with the investigation agency. Applicant switched off her cell phone and is also not available at her residence. The record shows that applicant and her sister Nisha were in constant contact on phone but both are not traceable. There is *prima facie* material against the applicant,

investigation is in progress.

4. Learned counsel for the applicant submitted that merely on surmises, the applicant is sought to be arrested in the said case. It is submitted that admittedly, complainant and her father had locked the cupboard and the front door and had left the premises alongwith key. The question of applicant opening the cupboard does not arise. Making a duplicate key is also imagining. Applicant is willing to co-operate with the investigating agency. It is submitted that on account of lodging of the FIR, applicant is apprehending of arrest, therefore applicant could not approach the police. It is submitted that there is contradiction in the First Information Report and the supplementary statement of the complainant. In the supplementary statement she has stated that one of the articles was found lying in the cupboard. She has also made variation in the statement with a view to implicate the applicant in the crime.

5. Learned APP submitted that the investigation is in progress. The circumstance shows that the applicant is involved in the said crime. It is submitted that the supplementary statement of the complainant was recorded and circumstances reflected in the said statement shows the involvement of the applicant in the crime. It

is submitted that the complainant in her supplementary statement has referred to suspicious behaviour of the applicant. It is stated that on 16th July, 2018 three calls were received on the landline of the house of the complainant's father. The call was attended by the complainant, however, there was no response from the caller. The complainant asked for identity of caller. The complainant overheard the conversation by other side wherein one person had stated, they have returned. Subsequently on the basis of caller ID, the number was recorded and on scrutiny it was found that said number was of one Nisha. Information was provided to the police.

6. During the course of investigation, it was found that said mobile phone is switched off. The applicant as well as Nisha are not available. According to the prosecution Nisha and the applicant are real sisters. In the circumstances, the investigation is required to be conducted. Investigating conducted by the police shows that custodial interrogation of the applicant is required. Hence, no case is made out for granting anticipatory bail. Application stands rejected.

(PRAKASH D. NAIK, J.)

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by Sachidanand
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