IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 599 OF 2020
WITH
INTERIM APPLICATION NO. 1 OF 2020

Nitesh Rameshchand Agroya ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Sandeep Ladda and Mr. Adnan Ansari, Advocate for the Applicant.
Mr. Niranjan Mundargi for the intervenor.
Mr. H. J. Dedhia, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 23rd MARCH, 2020.

PC :

1. This is an application for anticipatory bail in connection with C.R. No. 54 of 2020, registered with L. T. Marg, Police Station, Mumbai for the offences punishable under Sections 409, 420 of Indian Penal Code, 1860 ('IPC' for short).

2. The First Information Report ('FIR' for short) was lodged on 26 January, 2020, alleging that, the complainant is Jeweller and conducting his business in the name as Swarnsiddhi Jewellery by manufacturing gold ornaments. In 2016, he got acquainted with accused no.1. He had sold the ornaments. There were transactions between complainant and the accused No. 1, with regard to sale of ornaments. On

16th August 2019, accused No. 1 took ornament stating that there is marriage ceremony in the family. He informed that he had purchased all the ornaments. The ornament was weighing about 1226.100 gram, which included gold necklace bangles etc. valued of Rs. 47,20,000/-. The accused No.1 promised that the amount would be paid. However, inspite of promises the payment was not received. Subsequently, he blocked the phone number of the complained. In pursuant to registration of FIR, the investigation proceeded. The accused No. 1 conducts his business at Aurangabad. His shop premises were visited. The applicant is brother of accused No.1. Accused No. 1 was arrested. During course of investigation, he led the investigation machinery to his shop. During interrogation he also disclosed the involvement of the applicant. The panchnama dated 8th February, 2020 was recorded, which indicate that, the accused No. 1 had led the investigation agency to his residence. His mother and wife of the applicant was present. accused No. 1 was present. It was disclosed by the mother of the applicant that the gold ornaments, which were lying in the house, were taken away by the applicant.

3. The applicant had preferred an application for anticipatory bail before the Court of Session. The said application was rejected by Order dated 15th February, 2020.

4. The accused No.1 had preferred an application for bail. The said application was allowed by the learned Session Judge vide order dated 11th March, 2020.

5. Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. There is no proof and the evidence to show that the gold ornament as alleged by the complainant were parted to accused No.1. Although, in the memorandum panchanama dated 8th February, 2020 it was stated that, the mother of the applicant had informed that the box containing ornament was taken away by the applicant, they have not made such statement before the investigation agency. The applicant can not be subjected to custodial interrogation. The brother of the applicant was arrested, and granted bail. While granting bail the learned Session Judge has observed that the dispute is of civil nature. It is submitted that the accused No.1, while pleading his application for bail, had contended that the case of the complainant itself is false. There were transactions between both of them. The ornaments were sold to accused No.1 in the past and the payment was made. There was no marriage in the family. The question of taking the gold ornament from complainant for the purpose of marriage does not arise. The complainant has not produced any document to substantiate that that gold ornaments were lying with him and the same were parted to the accused No.1. It is submitted that GST for period of August 2019 to December 2019 would show that lastly through invoice dated 21st August 2019 and 23rd August 2019, the business of Rs. 7,04,975.76 and Rs. 4,57,837.07 was done on 21st August 2019 and 23rd August 2019 respectively. However, there is no mention of the goods allegedly delivered on 16th August 2019 as alleged in the FIR. It is submitted that GST 2 A form make it clear that the lowest

transaction as per the record between GST tax payers dated 23rd August 2019 do not tally with the amount mentioned in the FIR. Hence, it cannot believed that on 16th August 2019 goods were allegedly delivered but no entry of the sale was done either on 16th August 2019 or thereafter. When allegedly as per the statement of the complainant the confirmation of sale was given by accused No. 1 on 23rd August 2019. It cannot be accepted that the ornaments of 1226.100grm were purchased by the accused No. 1 on 23 august 2019. The relevant entry should have appeared in the GST records of the complainant as well as the accused no1. Learned counsel for the applicant further submitted that the accused no1 had produced the relevant invoices of transaction between the complainant and the accused No. 1. The invoice dated 21st August 2019 and 23rd August 2019 falsify the claim of complainant. It is submitted that even the applicant had transaction in past with the complainant. It is therefore submitted that custodial interrogation of the applicant is not warranted and hence anticipatory bail may be granted to the applicant.

6. Learned APP submitted that, during the course of investigation the complicity of the applicant has been disclosed. The co-accused and the mother of the applicant had disclosed that the ornaments were kept in box at the premises taken away by applicant. The custodial interrogation of the applicant is necessary.

7. Learned counsel for the intervener, supported the submission of the learned APP. It is submitted that huge quantity of the gold was

parted to accused No.1. Value of the gold is Rs. 47,20,000/-. Since the involvement of the applicant disclosed, during the courses of investigation, the custodial interrogation of the applicant is necessary. The ornaments are required to be recovered. There was no recovery from arrested accused.

8. I have perused the First Information Report, and the documents annexed to the application and tendered by learned APP. The case of the complainant is that there were transaction between accused No. 1 and the complainant relating to sale of gold ornaments in past. However, on the 16th August, 2019 gold weighing 1226.100grm was taken away by the accused No. 1 on account of marriage ceremony in the family. Subsequently, he confirmed that the he want to purchase the same. However the price was not paid. It is apparent that, there were transaction between the complainant and accused No. 1. There were also transaction of sale of gold between complainant and the applicant. The prosecution is however relying upon the memorandum panchanama dated 8th February, 2020 recorded during the investigation, when accused No.1 had led police to the residential premises of the accused No. 1 at Aurangabad. The prosecution relies on the statement allegedly made by mother of applicant that ornaments were taken away by the applicant, as reflected in panchanama. However, it is pertinent to the note that the learned Session Judge, while granting bail to the accused No. 1, who was in custody after his arrest, has observed that the said accused has placed on record previous receipts of delievering goods by the informant to him. He also

produced the bank accounts extract. Those are in respect of the gold delievered by the accused No. 1 by deducting goods and service tax. The accused No. 1 placed on record the invoices. It appears from all documents that there were business transaction between informant and the accused No.1 and that the said accused had ordered goods by making payment. Therefore, it cannot be said that the said accused had committed offence of breach of trust and gold entrusted to him by deceiving informant. The dispute between accused No.1 and informant is of recovery of money. The complainant has remedy to recover his money through the court by appropriate proceeding. It would not be proper to keep accused No. 1 in custody. Thus all the various aforesaid observations bail was granted to accused no. 1 who was in custody after his arrest for substantial time. Considering the factual aspect as stated here-in-above and the documents on record and the observations made by the Sessions Court, the applicant need not be subjected to custodial interrogation and the case for anticipatory bail is made out.

9. Hence I pass the following Order:

ORDER

i) Anticipatory Bail Application No. 599 of 2020, is allowed;

ii) In the event of arrest of applicant in C.R. No. 54 of 2020, registered with L. T. Marg Police Station, Mumbai the applicant be released on bail on furnishing P. R. Bond in the sum of Rs. 25000/- (Rupees Twenty Five Thousand), with one or more sureties in the like amount;

iii) The applicant shall report investigation officer on 7th to 9th April, 2020 between 11.00 am. to 1.00 pm ;

iv) Application stands disposed of accordingly;

v) Interim application stands disposed accordingly.

(PRAKASH D. NAIK, J.)