

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 519 OF 2021

1. Anil Jagan Rathod, Age 21 years,
2. Jagan Bhima Rathod, Age 52 years,
Both Occupation Agriculturist,
R/o. Aadgaon Tanda,
Taluka and District Aurangabad. .. Applicants

Versus

The State of Maharashtra
Through the Police Inspector,
Mukundwadi Police Station,
District Aurangabad. .. Respondent

...
Mr. Akshay S. Radikar, Advocate for the applicants
Smt. V. S. Chaudhari, A.P.P. for the respondent-State
...

CORAM : MANGESH S. PATIL, J.

DATE : 15.06.2021

PER COURT :-

The applicants are seeking bail apprehending their arrest in connection with Crime No. 158 of 2021 registered with Mukundwadi Police Station, Aurangabad, for the offences punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. The sum and substance of the allegations are to the effect that the marriage between informant's daughter and applicant No.1 was to take place and engagement ceremony was held. The gold ornaments and cash were given by way of dowry. However, shortly before the date of marriage, applicant No. 1 refused to go ahead with the marriage. It is alleged that even the applicants refused to return the gold ornaments and dowry. The report was lodged and the offence was registered.

3. Learned Advocate for the applicants by referring to the decision of the Supreme Court in the case of ***Arnesh Kumar Versus State of Bihar***, reported in ***AIR 2014 SC 2756***, submits that this is a fit case which squarely falls under the decision. Accepting the allegations at their face value, merely because there is a breach of promise to solemnize the marriage *per se* would not constitute any offence of cheating. Since the gold ornaments and money alleged to have been given by way of gift, there would not be any entrustment. For whatever reason, the applicants have backed off prompting the informant to lodge the report. The applicants have been granted ad-interim bail and they have abided the terms and conditions. The same may be confirmed.

4. The learned APP opposes the application. She submits that since inception applicant No. 1 was not ready to go ahead with the marriage, still allowed the engagement ceremony to be performed and

received gold ornaments and money and has backed off just before the marriage. All these circumstances are indicative that there was an element of cheating. The gold ornaments and money have been appropriated, which are to be recovered. There are statements of witnesses, who had attended the engagement ceremony and at this juncture, the Investigating Officer deserves to be given free hand to complete the investigation.

5. It does appear that after performance of the engagement ceremony, applicant No.1 has backed off just before the date of marriage. However, accepting the circumstance as it is, there would be serious doubt as to if this circumstance *per se* would be sufficient to demonstrate existence of necessary ingredients for constituting the offence of cheating.

6. Even according to the First Information Report, gold ornaments and money alleged to have been paid as a gift, according to convention and custom and if that be so, it cannot be *prima facie* said that those were entrusted to the applicants.

7. It is true that there are statements of witnesses, who had attended the engagement ceremony, however, they specifically state not to have personal knowledge about the agreement between the parties regarding payment of dowry.

8. It is, in view of such peculiar facts and circumstances, when there are no allegations of breach of terms and conditions, subject to which interim protection was granted, *ad-interim* relief deserves to be confirmed.

9. The Anticipatory Bail Application is allowed.

10. *Ad-interim* anticipatory bail granted by order dated 25.05.2021 stands confirmed with the same terms and conditions subject to clarification that the condition regarding attendance before Investigating Officer would cease on filing of the charge-sheet.

(MANGESH S. PATIL)
JUDGE

mtk