

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

ANTICIPATORY BAIL APPLICATION NO. 45 OF 2020

1. Mrs. Mangal Shantaram Kale

2. Amit Shantaram Kale

.... Applicants

Versus

The State of Maharashtra

.... Respondent

Mr. Karl. P. Rustomkhan for Applicant.

Ms. P. N. Dabholkar, APP for State/Respondent.

Mr. Madake and Dabhade, PSI, Wakad Police Station, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 10th FEBRUARY, 2021

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.1073 of 2019 registered with Wakad Police Station, under sections 395, 452, 323 and 506 r/w.34 of the Indian Penal Code (for short 'IPC').

2. The First Information Report (for short 'F.I.R.') is lodged by one Sampa Ganguli. She has stated that, she was

residing in the house owned by applicant No.1's husband Shantaram Kale since the year 2000. She was paying rent for such occupation. It is alleged that, on 18/11/2019 the informant was telephonically told by her son that both the applicants had removed their household articles and had kept them in a tempo. They had taken away all those articles. The informant met her son and sought further information. He told her that during the incident he was held by some people and others removed the articles, kept them in gunny bags and put them in a tempo and that they had obtained his signature on a blank paper. It is alleged that the articles worth more than Rs.92000/- were taken away. On this basis the F.I.R. is lodged.

3. Heard Mr. Karl Rustomkhan, learned counsel for the applicants and Ms. Pallavi Dabholkar, learned APP for the State.

4. Learned counsel for the applicants submitted that the story in the F.I.R. is not true. In fact, the first informant herself had removed the articles from the applicants' room. Admittedly, the

room belonged to the applicants. The husband of the applicant No.1 had passed away a month prior to lodging of F.I.R. and to harass the applicants, this F.I.R. is lodged. He submitted that the informant had vacated the room but the issue of balance payment of the rent was still not resolved and to avoid making payment of that amount, this false F.I.R. is lodged. He submitted that the applicants were on interim protection since 08/01/2020 and, therefore, further custody of the applicants is not necessary.

5. Learned counsel for the applicants relied on certain photographs annexed to this application. In those photographs, according to him, the informant and her son are seen loading the tempo with the household articles. These photographs were taken by the applicant No.2.

6. Learned APP could not really controvert the submission made by the learned counsel for the applicants in that behalf. A lady and the boy seen in those photographs are admittedly, the informant and her son. Learned APP, on

instructions made a statement that, except gold ornaments all other articles are recovered.

7. I have considered these submissions. There is considerable force in the submission of the learned counsel for the applicants that the photographs indicate that the informant herself had taken away those articles, otherwise, there was no reason for the applicants to have those photographs in their possession. There does not appear to be use of force or occurrence of any untoward incident reflected in those photographs. The applicants were on interim protection since January, 2020. As pointed out by the learned APP, most of the articles except ornaments are recovered. The informant's story about loss of ornaments can be tested by further investigation, but for that purpose, applicants' custody after lapse of this long period is not necessary. Apparently, it is a dispute between the landlord and tenant in respect of vacating that particular room. The applicants have, thus, sufficiently made out a case for their protection from arrest in this particular offence. Their custodial interrogation is not necessary. But they can be

directed to attend the concerned police station and to cooperate with the investigation.

8. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.1073 of 2019 registered with Wakad Police Station, the applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- (ii) The applicants shall attend the concerned police station, as and when called and shall co-operate with the investigation.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)