IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 431 OF 2021

Anand Suresh Gundecha .... Applicant

Versus

The State of Maharashtra .... Respondent

Mr. Aniket Nikam i/b. Aashish Satpute for Applicant.
Mr. H. J. Dedhia, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 05th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.1099 of 2020 registered with Faraskhana police station, Pune, under section 406 of the Indian Penal Code (for short 'IPC').

2. Heard Shri. Aniket Nikam, learned counsel for the applicant and Shri. Dedhia, learned APP for the State.

3. The prosecution story which is also reflected in the F.I.R. itself is as follows.

The First Information Report (for short 'F.I.R.') was lodged by the informant Debu Majumdar. He has stated that, he has a shop and a small workshop for making gold ornaments and selling them at Budhwar Peth, Pune. The applicant had business relations with the informant since 2017. It is alleged that the applicant used to take gold temple jewellery from the informant and he used to sell them to other businessmen for selling. In the process, the applicant used to earn commission. These business relations were continued smoothly for about two years. Therefore, the informant trusted him. It is his case that, since 2019 upto 20/09/2020 on various occasions the informant had given him gold. In the month of March, since the lockdown was imposed the applicant went back to his hometown at Kolhapur. At that time, the applicant had 5Kg. 816gm. of gold with him which was taken from the informant. The informant used to demand that gold, but the applicant used to give some excuses mainly regarding spread of pandemic. Even after March, 2020 there were instances in June and August when the applicant had taken some gold from the informant. On the last occasion, he took gold from the informant on 20/9/2020. It is the informant's case that the applicant had 5Kg. 899gm. gold which was taken from the informant. The informant was demanding back his gold, but finally on 05/10/2020 the applicant telephonically called the informant and told him that he was in a bad financial state and he was unable to return his gold. The informant was convinced that the gold was misappropriated. It was worth Rs.2,20,17,440/- and, therefore, this F.I.R. was lodged.

4. The investigation commenced. During the investigation the informant's supplementary statement was recorded on 10/10/2020, wherein, he stated that, actually the applicant had taken 5Kg. 899gm and 700mg. gold from the informant. The applicant was arrested on 09/10/2020 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

5. Learned counsel for the applicant submitted that the applicant had no intention to misappropriate the gold given by the informant. It was their usual business relations. Only because of spread of pandemic and consequent lockdown, the applicant's

business of earning commission by selling that gold to others came to a standstill and, therefore, he was not in a position to either return that gold or return the amount. He had forwarded gold to his various other customers. He submitted that the receipts which are tendered before the police, which are forming part of the charge-sheet do not really show the actual weight of the gold as what was mentioned in the F.I.R. It was much lesser. He submitted that, during the investigation gold worth Rs.70 lakhs was already recovered. This also shows that, beyond that the recovery of gold was not possible because the applicant did not have it. There was no other property, recovered by the police, connecting the applicant with the present offence. Shri. Nikam submitted that the maximum punishment provided for the offence under section 406 of the IPC is three years and the applicant is already in custody since October, 2020.

6. Learned APP relied on the F.I.R. He also relied on the factum of recovery at the instance of the present applicant. The gold was kept by the applicant with his relatives or friends. According to learned APP, it shows that the applicant never

intended to return that gold and it was actually misappropriated.

7. I have considered these submissions and with the assistance of both learned counsel I have perused the charge-sheet. The informant's case is supported by his employees' statements. The charge-sheet shows that some gold was recovered at the instance of the present applicant. There are panchanamas to that effect which show that 248 gms. of gold worth Rs.11 lakhs was recovered from one Pravin Chopda. He was knowing the applicant. Similarly, there is a statement of one Uttamsingh Rajput. The applicant had given him some gold. The gold weighing 201gm. of 22 caret was recovered from him. Similar recovery was effected from one Dinesh Oswal, who was brother in law of the applicant. His statement is recorded on 12/10/2020 and he has stated that 15 days back the applicant had given him gold weighing about 1Kg. It was recovered from this Dinesh Oswal.

8. The entire material in the charge-sheet shows that there was a business transaction between the applicant and the first informant. Some part of the gold which was taken by the applicant from the informant was recovered. The recovery also

shows that he had given some gold to traders for further transactions. 1Kg of gold, of course, is found with his brother in law, however, there is no real explanation as to why that 1Kg. of gold was found with the brother in law of the applicant and why the applicant had not returned it to the first informant. In any case, there is some substance in the submission of Shri. Nikam that, because of lockdown the applicant's business had come to a standstill and the gold could not be sold further to prospective purchasers at market price. As of today, the informant's case cannot be doubted. Some gold was taken by the applicant and it was not returned and money was also not given, but there are indications that the applicant was trying to sell that gold to various traders.

9. The applicant is already in custody since 09/10/2020. Maximum punishment provided for the offence under section 406 of IPC is 3 years. The trial is not likely to commence soon. If the applicant has committed this offence, he can be convicted and sentenced in accordance with law, during trial. There are no antecedents against the present applicant. Therefore, today there

is no impediment in granting bail to the applicant, considering all the above factors.

10. Hence, the following order :

ORDER

(i) In connection with C.R.No.1099 of 2020 registered with Faraskhana police station, Pune, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

(ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)