

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 539 OF 2021

Snehal Shankar Misal
(Mrs. Snehal Pramod Farakate) ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Santosh Thakur, Advocate for the Applicant.

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

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CORAM : PRAKASH D. NAIK, J.

DATE : 21st APRIL, 2021

PER COURT:

1. The applicant is seeking pre-arrest bail in C.R. I-214 of 2020 registered with N.R.I. Sagari Police Station, Navi Mumbai for offence punishable under Section 408 of Indian Penal Code (for short “IPC”). The First Information Report (for short “FIR”) was registered on 24th August, 2020.

2. The prosecution case is that on 24th August, 2020 the first informant was informed by the Chief Manager, D-Mart Shop to verify C.C.T.V. footage as there were shortages in the cloth bags which were kept for sale to the customers at the billing counter since January, 2020. On checking the C.C.T.V. footage it was noticed that the goods and money were being exchanged between the customers

and the applicant at counter No.13. It is also seen that the applicant is demanding extra money from the customers who gave additional amount to her. The applicant pleaded that while selling bags to customers she would prefer to keep the money in her pocket instead of including in customer bill. The applicant was given responsibility of cash counter. She committed breach of trust.

3. The applicant had preferred application for anticipatory bail before the Sessions Court which was rejected by order dated 18th February, 2021.

4. Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. The applicant is a lady. She had married recently. The procedure of D-Mart shop is that before relieving the employees from daily duty, they have to tally their account to the D-Mart authority and after personnel scrutiny the employees are allowed to leave the work place. There was no complaint against the applicant in the past. She was working in D-Mart shop at Seawood, Navi Mumbai from 20th August, 2018 as Packer Scale-I and the allegation that she was deputed at cash counter is not correct. She relied upon the photograph of Pay-In-Slip issued by the employer. There was no complaint by the customer that cloth bags were sold to them without billing at the cash counter.

While the customers exits, they are checked by security personnel and they can notice if customers carry without billing the bags belonging to the D-Mart. There were no complaints from security personnel that the bags were sold without entering the amount in the bill. The learned Sessions Judge has committed error in observing that the applicant is seen in C.C.T.V. footage collecting the amount from customer. The amount is collected at the cash counter towards bill raised on the customers. There is no complaint of misappropriation in the account while relieving the applicant on daily duty. It is not correct that the applicant had admitted during inquiry that she has misappropriated the amount. It is difficult to believe that 3682 bags can be sold without billing to the customer from the cash counter. The applicant would cooperate with the investigation. Her custodial interrogation is not necessary.

5. Learned APP submitted that the applicant was employed with D-Mart. She is involved in misappropriation of the amount of Rs. 58,726/- collected against the sale of bags to the customers. C.C.T.V. footage shows involvement of the applicant. Her custodial interrogation is necessary.

6. The applicant is working with the complainant since, 2018. The FIR dated 24th August, 2020 mentions that the cloth bags

are sold at the D-Mart to the customers. The C.C.T.V. footage recording was checked. The employee at counter No.13 is seen accepting money from the customers and that she was found demanding additional amount from the customer which were paid by the customer. The applicant has allegedly confessed the crime. Merely on the basis of the version reflected in the complaint and the recording in C.C.T.V. footage it is difficult to infer that the applicant has sold large number of bags and collected the amount as alleged. The price of each bag was Rs. 19/-. It is alleged that Rs. 58,726 were misappropriated. In the light of factual aspects, it is difficult to believe that the applicant had any opportunity to accept such huge amount by selling several bags to the customers. There were no complaints in the past against the applicant. Hence, the applicant need not be subjected to custodial interrogation.

ORDER

- (i) Anticipatory Bail Application Nos.539 of 2021 is allowed;
- (ii) In the event of arrest of the applicant in connection with in C.R. I-214 of 2020 registered with N.R.I. Sagari Police Station, Navi Mumbai, the applicant be released on bail on executing P. R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(iii) Applicant shall report investigating officer on 28th, 29th & 30th April, 2021 between 11.00 a.m. to 1.00 p.m. and thereafter as and when called by the Investigating Officer, till filing of charge-sheet.

(iv) Anticipatory Bail Application stand disposed of accordingly.

(PRAKASH D. NAIK, J.)