IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 812 OF 2019

Prashant Sadanand Gadekar … Applicant
V/s.
The State of Maharashtra & Anr. … Respondents

Dr. Uday P. Warunjikar a/w. Mr.Siddhesh Pilankar for Applicant.
Mrs. Veera Shinde, A.P.P. for Respondent No.1-State.
Mr.Tushar N. Sonawane for Respondent No.2.

CORAM : A.S. GADKARI, J.
DATE : 10th August 2021.

P.C. :

1. This is an application under Section 438 of the Criminal Procedure Code for pre-arrest bail in connection with C.R. No. I-112, dated 16th March 2019 registered with Mumbai Naka Police Station, District Nashik, for the offence punishable under Sections 406, 420, 506 of the Indian Penal Code.

2. Heard Dr.Warunjikar along with Mr.Pilankar, learned counsel for the Applicant, Mrs.Shinde, learned A.P.P. for the Respondent No.1-State and Mr.Sonawane, learned Advocate for Respondent No.2. Perused record, additional affidavit dated 26th July 2021 filed by the Applicant and the affidavit-in-reply dated 9th August 2019 filed by the Respondent No.2-informant.

3. By an Order dated 3rd April 2019, the Applicant was granted interim relief and was directed to attend the Investigating Officer on stipulated dates. By the same Order, the Applicant was also directed to provide proof of refund of Rs.10,00,000/- by him to the informant, to the Investigating Officer. As per record, till date the Applicant has not provided the said proof to the police.

4. The First Information Report is lodged by Mrs.Manisha Vidhate. The informant is paternal aunt of the Applicant. The Prosecution case in brief is that, the Applicant was in the business of tours and travels. As the Applicant is closely related with the informant, she was having full faith in him. The Applicant in due course of time induced informant to part with cash amount and her golden ornaments, under the guise of expansion of his business. Getting lured and mainly pressurized due to the constant demands of the Applicant, the informant in the absence of her husband and son from the year 2013 used to pay cash amount and also handed over gold ornaments to the Applicant. From time to time, the informant gave to Applicant cash totaling to Rs.10,00,000/- and 29 tolas of gold ornaments. The last such advancement of cash and/or gold ornaments was in the month of November 2018. The informant initially did not inform the said fact to her husband and children as she was having full faith in the Applicant. The informant subsequently demanded back the amount and her gold ornaments given to the Applicant.

The informant on 22nd February 2019 demanded the said amount and her gold ornaments, at that time, the Applicant threatened her that, if she makes any further demand from him for return of cash or gold ornaments, he would cause harm to his life. The Applicant thereafter on 1st March 2019 consumed poisonous medicine. The informant told to her husband and children the fact of her handing over of cash and gold ornaments to the Applicant for the purpose of his business on 16th February 2019 and thereafter the present crime is registered.

5. Dr.Warunjikar, learned counsel for the Applicant submitted that, as a matter of fact the Applicant has refunded Rs.10,00,000/- in cash to the informant from time to time. However, taking into consideration their inter-se relations, the Applicant did not execute any receipt in that behalf. He submitted that, the gold ornaments weighing about 29 tolas have been mortgaged with a finance company. As per his instructions, those have been identified and the same have been seized by the Police during the course of investigation. He drew my attention to the additional affidavit dated 26th July 2021 filed by the Applicant wherein certain receipts and the bank account statement issued by Cosmos Co-operative Bank Ltd., Nashik Branch, Nashik are annexed. He submitted that, substantial amounts were withdrawn from his bank account by the Applicant towards repayment of the amount accepted from the informant. He submitted that, the Applicant took a loan of

Rs.3,00,000/- from his friend Mr.Pravin P. Rokde for paying it to the informant. He therefore submitted that, the custodial interrogation of the Applicant is not necessary. He further submitted that, the Applicant is protected by interim relief for last more than two years and therefore, at this belated stage, the custodial interrogation of the Applicant is not necessary. He therefore prayed that, the present application may be allowed.

6. Per contra, Mrs.Shinde, learned A.P.P. vehemently opposed the present application. She submitted that, out of 29 tolas gold, the Applicant has mortgaged only 20 tolas gold with Manappuram Finance Limited Company, Nashik Branch and the balance of 9 tolas of gold is till date unaccounted. She further on instructions submitted that, as per the direction No.3(iii) passed by this Court by its Order dated 3rd April 2019, whereby this Court had directed the Applicant to provide proof of refund of Rs.10,00,000/- by him to the informant, till date the Applicant has not produced any receipt in writing in that behalf to the Investigating Officer. She further submitted that, though the Applicant had made a statement on 3rd April 2019 that, he would redeem the said ornaments from the finance company by making payment in that behalf, as per the report of the Investigating Officer, till today the Applicant has not complied with his statement. She submitted that, for recovery of the gold ornaments of the informant and to investigate, where the Applicant has invested the amount and for its recovery, the custodial

interrogation of the Applicant is necessary. She therefore prayed that, the present application may be dismissed.

7. Perusal of record indicates that, the first informant is the paternal aunt of the Applicant. By taking undue advantage of the close relations, initially the Applicant own over the confidence of the informant and pestered her for advancing hand loan to him. The informant accordingly paid Rs.10,00,000/- in cash and also gave her ornaments made up of gold metal weighing approximately 29 tolas to the Applicant. The Applicant did not return the said amount or the gold ornaments to the informant for substantial period and when the informant demanded it back, the Applicant ostensibly consumed poisonous medicine to cause harm to his life. It appears that, the Applicant adopted the said step only to prevent or desist the informant from lodging a police report against him. While granting interim relief to the Applicant by Order dated 3rd April 2019, a statement made across the bar by the learned Advocate for the Applicant that, the Applicant has refunded an amount of Rs.10,00,000/- to the informant and has mortgaged 29 tolas of gold with a finance company has been recorded. This Court therefore had directed the Applicant to provide proof of refund of Rs.10,00,000/- to the Investigating Officer. As noted in the submissions of the learned A.P.P., the Applicant till date has not provided the said proof of refund of Rs.10,00,000/- to the Investigating Officer. The Applicant has filed an additional affidavit

dated 26th July 2021. A receipt allegedly executed by the Applicant in favour of Pravin Prabhakar Rokde annexed thereto mentions that, the Applicant has accepted hand loan of Rs.3,00,000/- from him for paying it to his aunt. The said receipt is dated 5th August 2018, i.e. prior to lodgment of present crime on 16th March 2019. The bank statement annexed to the additional affidavit also indicates that, the Applicant has withdrawn certain amounts from his account and it is the contention of the Applicant that, the said amounts were paid to the informant in cash. It is a matter of fact on record that, the Applicant till date has failed to produce any receipt issued by the informant thereby admitting repayment of hand loan given by her to the Applicant. It is to be noted here that, if the Applicant can execute a receipt in writing while accepting hand loan from Mr.Pravin Rokde, the Applicant would certainly had executed receipt/s of repayment of Rs.10,00,000/- either in lump-sum or in tranches from the informant.

Respondent No.2 in her affidavit-in-reply dated 9th August 2019 on page No.24 has categorically stated that, the Applicant has not paid a single rupee out of the amount received from her in addition to the gold ornaments. That, the Applicant has not returned the amount of Rs.10,00,000/- as well as the gold of 29 tolas to her and the statement of the the Applicant recorded in Order dated 3rd April 2019 is absolutely false and not acceptable to her.

8. Perusal of bank statement of the Applicant would no where lead to draw even a remote inference that, the Applicant after withdrawal of the amount from his bank account has infact paid it to the informant. It prima-facie appears to this Court that, the receipt dated 5th August 2018 executed by the Applicant in favour of Mr.Pravin Rokde is a document created for building his defence and by way of an afterthought. Record further indicates that, out of 29 tolas of gold ornaments given by the informant to the Applicant, the Applicant has mortgaged only 20 tolas of ornaments with Manappuram Finance Limited Company, Nashik Branch, Nashik and 9 tolas of gold ornaments have been either misappropriated or utilized by the Applicant for his personal benefit. The Applicant after mortgaging the said ornaments received amount from the said finance company and the same also has been used by him for his personal benefit. The informant has been thus clearly cheated by the Applicant. Perusal of record prima-facie indicates that, the Applicant has committed criminal breach of trust of the informant and has further committed the act of cheating with her. The Applicant has taken undue advantage of the close relations of him with the informant, who is his aunt. The custody of the Applicant is necessary for recovery of the said amount of Rs.10,00,000/- so also the gold ornaments, which are in his possession.

Though at the time of grant of interim relief to the Applicant raised a specious plea before this Court that, the Applicant had agreed to get release the said gold ornaments from the finance company in two installments. In last more than 2 years, the Applicant has not complied with his said statement and it clearly appears that, the said statement was made before this Court only to get interim relief in his favour.

9. Apart from the recovery of property involved in the present crime as noted earlier, the Police will also have to find out whether the receipt dated 5th August 2018 annexed to the additional affidavit is a genuine document or is a manufactured document by the Applicant to build his defence before this Court.

10. In view of the above and after taking into consideration the serious allegations against the Applicant, the gravity of the offence and need of custodial interrogation of the Applicant, this Court is of the opinion that, the Applicant does not deserve to be protected by pre-arrest bail.

11. Application is accordingly dismissed.

12. At this stage, learned counsel appearing for the Applicant submitted that, the Applicant intends to challenge the present Order before the Hon'ble Supreme Court and the effect and implementation of the present Order may be stayed for a period of four weeks from today. At his request, the effect and implementation of the present Order is stayed for a period of four weeks from today.

[A.S. GADKARI, J.]