

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed by
BHARAT
DASHARATH
PANDIT
Date: 2021.11.08
14:08:24 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 742 OF 2021**

MOTILAL ARJUNLAL CHORADIA Applicant.

V/s

THE STATE OF MAHARASHTRA Respondent

Mr. Kundalik R. Panchgange i/b Krishna Holambe Patil for the
Applicant.

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

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 26, 2021

P.C.:-

1] Applicant is seeking pre-arrest bail in C.R. No. 36 of 2020 registered with Goregaon Police Station for the offence punishable under Sections 406, 409, 420 of the Indian Penal Code.

2] Gurupad, who is a goldsmith, lodged a complaint alleging that co-accused Chandresh gave an order of making gold jewelry which was duly supplied by him on 6th July, 2019 against which the gold of 2616 grams was neither refunded nor consideration was paid.

3] The said accused initially absconded. However, while investigating a complaint of his missing lodged by his wife, said Chandresh was traced and was put under arrest.

4] During investigation of the said crime, it is noticed that co-accused Chandresh accepted gold jewelry as pledge and released an amount on interest to such jewelry owners. In turn, Chandresh kept jewelry with the present Applicant and availed additional finance on the said jewelry. Neither said Chandresh nor present Applicant returned jewelry to its owners who were willing to repay the amount of loan, resulting into registration of the offence.

5] Submissions of learned Counsel for the Applicant are, there is no privity of contract between the complainant and other mortgagors of the gold with the present Applicant, as it was co-accused Chandresh who has accepted jewelry and released the amount. According to him, at the most, there can be privity of contract between Chandresh and the Applicant and unless Chandresh returns the amount of money taken against the mortgaged gold, gold remains in lawful custody of the Applicant as a security which is a lawful transaction. As such,

according to him, Applicant is falsely implicated. It is further claimed that Applicant has co-operated with the Investigating Officer and is further willing to co-operate.

6] Learned APP while opposing the prayer, would urge that Applicant acted hand-in-glove with co-accused Chandresh and as of today from both these accused, out of balance fine gold of 2616 grams, more than 600 grams of gold remained to be recovered. As such, it is claimed that Applicant's custodial interrogation is very much justified.

7] On the last date, as this Court heard the matter at length when Counsel for the Applicant on instructions made a statement that Applicant shall deposit 600 grams of gold with Investigating Officer within a period of one week from 13th October, 2021, which he has failed to honour.

8] Apart from above, investigation carried out till this date depicts that co-accused Chandresh has accepted 7724 grams of gold from the complainant and other about 40 common people. Of the said jewelry,

504 grams of gold jewelry was recovered from the Applicant. However, 600 grams of gold is remained to be recovered, which he has promised to deposit with the Investigating Officer within the time stipulated. However, he has failed to deposit said 600 grams of gold with Investigating Officer. The call details and record collected during investigation depicts that Applicant has accepted the gold jewelry from the co-accused. Even other material collected during investigation pinpoints involvement of Applicant.

9] In the aforesaid backdrop, it is apparent that there is material to infer that Applicant acted hand-in-glove with co-accused Chandresh. That being so, no case for grant of pre-arrest bail is made out. Application as such fails and same stands rejected.

(NITIN W. SAMBRE, J.)