

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

BAIL APPLICATION NO. 2055 OF 2021

Shankar Kumar Yesu ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Khwaja Shaikh, Advocate for the Applicant.

Mr. H. J. Dedhia, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 25th JUNE, 2021

PER COURT:

1. The applicant is arrested on 27th April, 2020 in connection with C.R. No. 251 of 2020 registered with M.I.D.C. Police Station, Mumbai for offences under Sections 454, 457, 380, 109, 120(B) r/w Section 34 of Indian Penal Code (for short “IPC”).

2. The case of the prosecution is that the complainant is conducting business at Gala No.110 in the name of Niraj Industrial Estate, Mahakali Caves Road Andheri (E), Mumbai. The Head office of the Company is situated at Karolbaug New Delhi. The company is conducting business of casting, filing and polishing and wax setting of diamond and jewellery. The workers from the company were residing at Virar, Nalasopara, Goregaon, MIDC etc.

Due to pandemic of Corona, the workers had requested for two days holiday. On 20.03.2021 and 21.03.2020 the workers were given holiday. The premises was closed on 19.03.2020 at 08:00 p.m. Thereafter lock down was declared from 22.03.2020. The workshop continued to be closed. On 22.04.2020, the complainant visited company premises. On opening Gala No.110, he found that the articles were lying scattered. The DVR of CCTV camera was missing. The gold powder weighing about 440 gm from grinding machine valued about Rs.15,00,000/- was missing. Gold, gold ornaments, diamond, diamond jewellery were also missing. The safe was broke open by using cutter. The FIR was registered against the unknown person. Supplementary statement of complainant was recorded on 24.04.2020. He stated that the cement roof was broken by the thieves for making entry into the Gala. The complainant also gave description of missing articles. The co-accused Irfan Mulani was arrested on 30.04.2020 and Santosh Rathod was arrested on 01.05.2020. On completing investigation, charge-sheet was filed.

3. Learned Advocate appearing for applicant submitted that the applicant is in custody for substantial period of time. Applicant is not involved in commission of theft. Investigation is completed and charge-sheet is filed. Further custody

of the applicant is not necessary. Except statement of co-accused there is no evidence against applicant.

4. Learned APP submitted that the offence is of serious nature. The accused were involved in theft of ornaments and gold. There is recovery of ornaments valued Rs. 6,10,62,968/-. Some of the ornaments are yet to be recovered.

5. The FIR was registered against unknown persons. There is no evidence to show that the applicant was involved in committing theft of gold, gold ornaments, diamond and diamond ornaments. In the FIR, the complainant had alleged that the value of the property stolen was around Rs. 15,00,000/-. Subsequently, on the basis of alleged verification and valuation, it was stated in supplementary statement that the value of the stock estimated on 19.03.2020 worth Rs. 7,09,48,992/-. Co-accused Vipul Chambria was arrested on 27.04.2020. Memorandum statement of the said accused was recorded on 27.04.2020. At his instance ornaments worth Rs.5,29,80,823/- were recovered. Memorandum statement of applicant Irfan Mulani was recorded on 30.04.2020. In the said statement it was revealed that the co-accused Vipul Chambaria had shown him the ornaments. Memorandum statement of Himmat Chotalal Chauhan was recorded on 30.04.2020. At his

instance ornaments worth Rs.7,27,857/-were recovered. Memorandum statement of Santosh Rathod was recorded on 01.05.2020. The said statement does not indicate recovery of any articles from him. Memorandum statement of Irfan Mulani was recorded on 03.05.2020. As per the said statement, Vipul Chambaria had handed over him the ornaments. The statement led to recovery of ornaments worth Rs.14,22,845/-. Memorandum statement of Santosh Rathod was recorded on 05.05.2020, which led to recovery of ornaments worth Rs.9,55,231/-. The memorandum statement of Santosh Rathod was subsequently recorded on 07.05.2020, which has resulted in recovery of ornaments worth Rs.1,27,853/-.

6. There is no cogent evidence to show that the applicant was involved in theft/robbery. Further custody of the applicant is not necessary.

ORDER

- (i) Criminal Bail Application No. 2055 of 2021 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 251 of 2020 registered with M.I.D.C. Police Station, Mumbai on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (iii) The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. for a period of six months and thereafter, once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m till further order;
- (iv) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- (v) The applicant shall not tamper with the evidence.
- (vi) The applicant shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court for some reason.
- (vii) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)