

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

CRIMINAL BAIL APPLICATION NO. 1332 OF 2020

Irfan Latif Mulani ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 207 OF 2021

Santosh Bapurao Rathod ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Harshad Inamdar & Ms. Harshita Jamgid i/b Mr. Yogesh Dandekar, for the Applicant in BA No.1332/2020.

Mr. Mihir Gheewala with Mr. Santosh Parkar and Mr. Farhad Panthaki, Advocate for applicant in BA No. 207/2021.

Mr. S. S. Pednekar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 12th MARCH, 2021

PC :

1. The applicants in both these applications were arrested in C.R. No.251 of 2020 registered with MIDC Police Station. The First Information Report (for short “FIR”) was registered on 22.04.2020 by Mr. Raj Kumar Luthra. The offences were registered under Section 454, 457, 380, 109, 120(b), 34 of Indian Penal Code.

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 company 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 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 applicant Irfan Mulani was arrested on 30.04.2020. The applicant Santosh Rathod

was arrested on 01.05.2020. On completing investigation, charge-sheet was filed.

3. The applications preferred by both the applicants were rejected by the Court of Sessions vide order dated 31.08.2020.

4. Learned Advocates appearing for both the applicants submitted that the applicants are in custody for substantial period of time. They are not involved in commission of theft. Investigation is completed and charge-sheet is filed. Further custody of the applicant is not necessary. At the most the applicants can be attributed role as receiver of stolen property.

5. Learned APP submitted that the offence is of serious nature. Charge-sheet was filed for offence under Sections 454, 457, 380, 109, 120-B read with 34 of the IPC. The applicants are involved in the crime. There is recovery of property from the applicants. Accused Irfan Mulani is involved in two other cases registered with MIDC Police Station vide C.R. No.442 of 2017 for the offences under Sections 294, 114 read with 34 of IPC and C.R. No.294 of 2018 registered with Varsova Police Station for the offences under Sections 448, 147, 149, 143, 323 of IPC. The value of

the property was around of Rs.7,09,48,992/-. Gold valued of Rs.9,55,231/- was recovered from Santosh Rathod. Rs.1,27,853/- were also recovered from him.

6. The FIR was registered against unknown persons. There is no evidence to show that the applicants were involved in committing theft of gold, gold ornaments, diamond and diamond ornaments. The applicants at the most could be charged as receiver of stolen property. In the FIR, the complainant had alleged that the value of the property stolen was around 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 allegedly revealed that the co-accused Vipul Chambaria had shown him the ornaments. The statement however, does not indicate that there was any recovery from Irfan Mulani. 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, Virpul 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/-.

7. There is no cogent evidence to show that the applicants were involved in theft/robbery. Whatever alleged ornaments being handed over to them were recovered. At most the applicants could be charged as receiver of stolen property. Further custody of the applicants is not necessary.

ORDER

- (i) Bail Application No. 1332 of 2020 and 207 of 2021 of are allowed;
- (ii) The applicants are directed to be released

on bail in connection with CR No. 251/2020, Registered with MIDC Police Station on furnishing P.R. bond in the sum of Rs.25,000/-(Rupees Twenty Five Thousand Only) each with one or more sureties in the like amount;

(iii) The applicants shall report concerned police station once in a month on first Saturday of the month between 11.00 am. To 1.00 pm for a period of six months and thereafter once in three months on the first Saturday of the month between 11.00 am. To 1.00 pm.;

(iv) Applicants shall not tamper with the evidence;

(v) The applicant shall attend Trial Court regularly on the dates of hearing of the case unless exempted by the Court;

(vi) Bail Applications stand disposed of accordingly.

(PRAKASH D. NAIK, J.)