

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.430 OF 2022

Suman Kanifnath Gawali Age.33 years, Occ. Business, R/o. House No.85, Plot No.06, Wadgaon Kolhati, Bajaj Nagar, Aurangabad, Tq. & Dist. Aurangabad.	..	Applicant [accused No.3 as shown in FIR]
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Versus

The State of Maharashtra Through Police Station, MIDC, Waluj, Aurangabad.	..	Respondent
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Mr.S.J. Salunke, Advocate for the applicant.
Mr.B.V. Virdhe, APP for the respondent/State.

CORAM	:	SMT. VIBHA KANKANWADI, J.
RESERVED ON	:	13.04.2022
PRONOUNCED ON	:	04.05.2022

ORDER :-

01. The applicant is apprehending her arrest in connection with Crime No.60 of 2022 registered with MIDC Waluj Police Station, Aurangabad, Dist. Aurangabad for the offence punishable under section 405 of the Indian Penal Code.

02. Heard Mr. S.J. Salunke, learned Advocate for the applicant and

Mr.B.V. Virdhe, learned APP for the respondent/State. In order to cut-short, it can be stated that both of them have vehemently made submissions in support of their respective contentions.

03. The learned Advocate for the applicant submits that the FIR has been lodged by the Human Resource Officer of ESS-DEE Industries. Upon audit they found that there is some problem with the quantity of raw material. Then inquiry was made and it was revealed that one Kanifnath Gawali who is Assistant Manager with the said company is involved in the activity. Kanifnath's wife Suman i.e. present applicant, one Amol Pratap Kulkarni and some employees, who had left the company have started one company by name IMR Industries and they have grabbed the raw material as well as finished product of ESS-DEE Industries, thereby causing them loss worth Rs.12 to 15 lakhs. The applicant has produced on record the documents of her company and also the tax invoices from ESS-DEE Industries to one Jay Bhagwan Engineering Works and other companies. The payments have been made by present applicant in respect of her business. It is not that the present applicant was taking raw material from same company, which was supplying the material to ESS-DEE Industries. But they have purchased raw material

from other companies also. No offence has been committed by present applicant and similarly situated persons were granted bail by the learned Additional Sessions Judge. Ad-interim protection was granted to present applicant by the learned Additional Sessions Judge. She has attended the police station and even given written statement about the affairs of her business. Now custodial interrogation of the applicant is not necessary. She is ready to abide by the terms of the bail.

04. Per contra, the learned APP has strongly objected the application and submitted that the main person involved in the crime is husband of the present applicant and also one Amol Pratap Kulkarni. They both were incharge of the raw material and finished product of ESS-DEE Industries. They have committed theft of raw material as well as the finished product and sold it through IMR Industries in which the present applicant is the official. The investigation done so far would reveal the involvement of the present applicant and therefore her custodial interrogation is necessary.

05. At the outset it is to be noted that though the FIR appears to have been lodged under section 406 of the IPC, later on Sections 381, 468 read

with section 34 of the Indian Penal Code have been added. As per the contents of the FIR, though the offence was registered against five persons and it was revealing that the wife of the employee of the said company i.e. present applicant was not employee of the ESS-DEE Industries, yet section 406 of the IPC was invoked. Section 406 of the IPC prescribes punishment for criminal breach of trust, whereas criminal breach of trust is defined under section 405 of the IPC. The ingredients of section 405 of the IPC requires entrustment of the property or with any dominion over the property dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust. The facts of the case i.e. the FIR as well as statements of witnesses do not show that there was any actual contact/contract between the informant or the officials of the ESS-DEE Industries with the company of the present applicant or with the applicant personally. Therefore, section 406 of the IPC cannot be invoked against present applicant.

06. For attracting section 381 of the IPC, the theft should be by clerk

or servant of the property in possession of master. There is no such relationship between the present applicant and the ESS-DEE Industries. At the most, it would be attracted against husband of the applicant but not herself.

07. Further as regards section 463 of the IPC is concerned, it provides for forgery for the purpose of cheating. For that purpose we will have to read sections 463 and 415 of the IPC together. However, the basic fact that for cheating there has to be some representation or deception should personal. There was no contact between the informant, his company and the present applicant. Which documents have been forged by the present applicant is not clear. Even if for the sake of arguments, we accept that some acts have been done by the husband of the applicant together with co-accused Amol Pratap Kulkarni, the custody of the present applicant is not necessary. The facts of the case and whatever evidence has been collected up till now in the investigation, do not show ingredients of the offences against which the case has been registered. Now the material that has been collected shows some foul play by the employees of the company of the informant but in order to tag them with the present applicant, the material which has been collected up

till now is short and therefore she deserves to be protected under section 438 of the Cr.P.C. Hence, following order :-

ORDER

- i) Application is hereby allowed.
- ii) In the event of arrest of the applicant – Suman Kanifnath Gawali, in connection with Crime No.60 of 2022 registered with MIDC Waluj Police Station, Aurangabad, Dist. Aurangabad for the offence punishable under section 406 of the Indian Penal Code, she be released on PR bond of Rs.50,000/- (Rupees Fifty Thousand) with two sureties of Rs.25,000/- (Rupees Twenty Five Thousand).
- iii) The applicant shall remain present before the Investigating Officer on every Monday between 10=00 a.m. to 02=00 p.m. till filing of the charge-sheet and should co-operate with the investigation. She should produce all those documents which are in her possession before the Police Officer as and when directed by the Investigating Officer.
- iv) The applicant shall not tamper with the evidence of the prosecution in any manner.
- v) The applicant shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]