

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

916 ANTICIPATORY BAIL APPLICATION NO.901 OF 2022

**HIRAL PRAFUL SHAH
VERSUS
THE STATE OF MAHARASHTRA**

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**Advocate for Applicant : Mr. S. P. Waghchaure h/for
Mr. Nilesh S. Ghanekar
APP for Respondents State: Mr. K. S. Patil
Advocate assists to PP: Mr. Vishal P. Bakal**

**CORAM : S. G. MEHARE, J.
DATE : 3rd AUGUST, 2022**

ORDER:

1. Heard learned counsel for the applicant, learned APP and learned counsel assisting him.
2. The complainant and her husband had a joint locker in a Bank where the applicant was manager. The first information report reveals that in the locker, the complainant and her husband were keeping currency notes which was not allowed. It has been alleged that on 15th February, 2022, the complainant used her locker and took away Rs. One lakh from the locker. On 22nd April, 2022, when she went to operate her locker, that time she revealed that valuable articles and currency notes kept in the locker were missing. So, she immediately called accused No.2 Sayali Ghadge and showed the locker and complained that the articles and currency notes were missing. Thereafter, the applicant was called. She also called one Mansur Wadiwala and Fatema in the Bank. Fatema told her that she should

not tell about missing of money to her husband- Mahamad. The FIR reveals that the said Fatema was knowing about the articles kept in the locker. The main allegations revolve around Fatema. The FIR further reveals that the complainant has migraine and she delivered key of the locker and some documents to Fatema on the say of her husband. However, it has been alleged against the applicant that he did not intimate immediately to the head office and he is protecting accused No.2. Therefore, he is in conspiracy in disappearing or removal of the articles and cash from the locker.

3. The applicant is a bank manager. A special officer- Accused no.2 was appointed for maintaining and handling the lockers of the locker holders. Register has also been maintained by the Bank to record entries of the use of the lockers by the account holders. The learned counsel for the applicant states that the applicant has no role to play. The another officer was posted for providing services to the locker holders and it was under the control of the said officer. Therefore, anticipatory bail may be granted to the applicant.

4. Learned APP, and Mr. Bakal, the learned counsel assisting APP, have vehemently argued that the modus operandi of the applicant of hatching conspiracy with co-accused is the evidence of *mens rea*. The applicant did not lodge complaint to the police station when the fact of disappearance of the valuables from the locker was brought to his knowledge. The applicant even did not report the incident to the higher authority. Learned APP has referred to the voice recording between one Mansur and applicant and tried to argue that this conversation shows that he was involved in the theft of valuables from the locker. It has also been vehemently argued that the offence is

serious. The applicant had knowledge about the theft. Hence custodial interrogation is required.

5. As discussed above, the FIR itself reveals that the complainant had handed over key of the locker to one Fatema on the say of her husband. The FIR further reveals that Fatema used to go with the complainant to operate the locker. Merely not lodging the report of the theft from the locker is not sufficient to believe that the applicant hatched the conspiracy. Whatever material placed on record by the prosecution is not sufficient to believe that custodial interrogation of the applicant is essential. Therefore the application deserves to be allowed. Hence the following order.

ORDER

- (i) The application is allowed.
- (ii) Interim protection granted to the applicant by order dated 20th July, 2022 is confirmed on the same terms and conditions.

(S. G. MEHARE, J.)

JPChavan