

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

ANTICIPATORY BAIL APPLICATION NO.1578 OF 2021

Samuel Heral Pareira

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Bhagwan V. Thombre Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 21st FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 6th APRIL 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.331 of 2018 registered with MIDC Cidco Police Station, Aurangabad for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Thombre for the applicant and learned APP Mr. Kagne for the respondent – State.

3. Learned Advocate for the applicant has vehemently submitted that the applicant is an innocent person and has been falsely implicated by his wife, who is stated to be the co-accused and the relations between the applicant and his wife have been strained. In fact charge-sheet was filed in the year 2019 itself and the applicant was not absconding at all. Perusal of the charge-sheet would show that there is no direct or indirect evidence against the present applicant. Custodial interrogation is not required. The applicant is resident of Thane, whereas his wife is residing in Aurangabad. His wife has given ill-treatment to the applicant and in order to further harass the applicant, she has implicated him. The applicant is HIV+ and patient of epilepsy. He is under regular treatment. The applicant is ready to abide by the terms of the bail.

4. Learned APP has strongly opposed the Application. Further, when the queries were made, affidavit has been filed on behalf of the prosecution by PSI Mr. Gajanan Sontakke of Crime Branch, Aurangabad, showing how much efforts were made by the

Investigating Officer to arrest the present applicant. In his affidavit, he has stated that he had even sought help from the local Police Station i.e. Kashmira Police Station as well as Kapurbawadi Police Station in Thane District to know the whereabouts of the applicant. On the visit to the residence at Kalpavruksha Housing Society, Thane, it was transpired that the flat in which it was stated that the applicant is residing, is owned by some other lady. The applicant is avoiding his arrest. In fact, there are six offences pending against the applicant. Three out of which are in Thane District, one is in Palghar District, one is in Nagpur City and another is in Nashik city. The offences pending against the applicant are as follows:-

Sr. No.	Police Station where offence is registered	Crime No.	Sections under which offence is registered
1	Naupada Police Station, Thane	1440 of 2008	379 read with Section 34 of the Indian Penal Code
2	Kashimira Police Station, Thane	535 of 2021	379, 421 read with Section 34 of the Indian Penal Code
3	Vartaknagar Police Station, Thane	208 of 1993	380, 511 of the Indian Penal Code
4	Boisar, District-Palghar	8 of 2021	379, 427 read with Section 34 of the Indian Penal Code

5	Dhantoli, Nagpur	192 of 2004	379 read with Section 34 of the Indian Penal Code
6	Gangapur, District-Nashik	169 of 2013	379, 511 read with Section 34 of the Indian Penal Code

5. Learned APP further submits that the theft was of huge amount to the tune of Rs.30,00,000/- which was stolen from the bag kept in the Car, by breaking open the glass of the window. Investigation reveals that amount of Rs.24,98,340/- is still with the applicant. That amount is required to be recovered. The entire charge-sheet would reveal the involvement of the applicant and therefore, he does not deserve anticipatory bail.

6. At the outset it is to be noted that the First Information Report (for short "FIR") was against some unknown person. The informant has disclosed that he had some transaction with one Ashok Tupe and said Ashok Tupe had given him call that he should come in front of Indian Petrol Pump at Waluj and he would bring the amount from H.D.F.C. Bank, Waluj Branch. Accordingly, on 3rd November 2018 at about 1.30 p.m. informant went there. Said Ashok Tupe gave him an amount of Rs.30,00,000/-, which he had kept near the gear box of the Car

and then he started to go towards Aurangabad alone in the Car. At about 2.30 p.m. he reached near his office in Bharat Bazar area, Aurangabad. There was no place for parking and therefore, he parked his Car in the nearby area and locked the same and went in the office. His nephew Santosh Vaidya took the key of the vehicle from him at about 3.15 p.m. and went near the Car and then noticed that the right side window of the Car was broken. Informant was called. He noted the situation and also he noted that the amount has been stolen.

7. Charge-sheet reveals that accused No.1 - Vinay Rameshwar Rana and accused No.2 - Pushpa Samuel Pareira came to be arrested. Accused No.2 - Pushpa is the wife of accused No.3 i.e. present applicant. Amount of Rs.5,01,660/- has been recovered from accused No.2 - Pushpa. There is one eye witness to the incident, through whom the identification parade of accused No.2 has been taken. The charge-sheet also shows that time and again the Police party had gone to various places including Thane where the applicant is stated to be residing, however, he could not be found. Even once the wife of accused No.3 i.e. present applicant, while in Police custody, was

taken to their house at Thane, however, even at that time the applicant could not be found.

8. One more fact to be noted is that witness Sushantkumar Sahu had given statement that he is the owner of one vehicle Ford Figo and he has given his vehicle on rent for about 15 to 20 days and accordingly one agreement was entered into on 27th October 2018 between him and accused No.1 - Vinay Rana. He says that at that time accused No.2 - Pushpa, wife of the present applicant, was also present. Pushpa had given blank cheque under the signature of Vinay Rana to this witness. He is the person who had identified the accused No.2 - Pushpa after her arrest. Now, nothing has been shown by the applicant that his relations with his wife have been strained. No doubt his wife has taken the name of the present applicant and *per se* that may not be the acceptable evidence. But, definitely when it comes to the relationship of husband and wife and it is not shown that they are residing separately since long, then at least we can infer that they are residing together and further it is to be noted that some amount has also been seized from wife of the applicant.

9. At the cost of repetition, it can be said that serious efforts have been made by the investigating agency to arrest the applicant, however, his whereabouts could not be traced out by them. Further fact is that the applicant is involved in six crimes. The oldest one is of the year 1993 registered with Vartaknagar Police Station, Thane, for the offence punishable under Sections 380, 511 of the Indian Penal Code and it is stated that warrant has been issued against him. That means, he is not remaining present in the said case also. When these facts are coming forward, In view of the decision in ***Lavesh vs. State (NCT of Delhi), 2012 (8) SCC 730***, this is not a fit case where discretionary as well as extraordinary powers under Section 438 of the Code of Criminal Procedure should be exercised in favour of the applicant.

10. For the reasons stated herein above, the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]