

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

ANTICIPATORY BAIL APPLICATION NO.468 OF 2022

Rekha Pinkesh Nahar Applicant

versus

State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.469 OF 2022**

Mukesh Ratanlal Bafna Applicant

versus

State of Maharashtra Respondent

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- Mr.Kripashankar Pandey a/w Nagendra S. Dube a/w Pooja N. Dube, Advocate for Applicants in both ABAs.
- Smt.Rutuja Ambekar, APP for the State/Respondent in ABA No.468/22.
- Smt.A. A. Takalkar, APP for the State/Respondent in ABA No.469/22.
- Ms. Sharanya Sankaranarayanan, Advocate for Intervenor.

CORAM : SARANG V. KOTWAL, J.
DATE : 22nd FEBRUARY, 2022

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1. A common order is passed in these applications

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because they arise out of the same investigation and same registered FIR. Wherever necessary, the Applicants are referred to by their names.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.863/2021, dated 23/11/2021, registered with Malad Police Station, Mumbai, under sections 454, 457, 380 of the Indian Penal Code.
3. Heard Mr.Kripashankar Pandey, learned counsel for the Applicant, Smt.Rutuja Ambekar and Smt.A. A. Takalkar, learned APPs for the State and Ms. Sharanya Sankaranarayanan, learned counsel for the Intervenor.
4. The FIR is lodged by one Abhay Nahar. According to the learned counsel for the Applicant, the informant is cousin of Applicant Neha's husband. The other Applicant Mukesh is the Rekha's brother. The informant has stated that he was working as a legal advisor with M/s Royalline Resources Limited. Earlier

they had office at Malad. Thereafter they shifted their office to Kachpada No.1, Malad (W). The company was closed and either the informant or somebody sent by the informant used to open the premises. There was an automatic lock and there were two keys. One of the keys was with the informant and the other one was with the company's owner Sachin Nahar. Incidentally the informant Abhay is cousin of Sachin. The Applicant Rekha's husband Pinkesh is the real brother of Sachin. Therefore there is some family connection between informant and Applicants.

5. On 22/11/2021 one of his employees called the informant and told him that the lock of the premises was changed and there was some signs that the latch was tampered with. On the next day, on 23/11/2021, the informant went to inspect the premises. He saw that the lock was changed. He opened the premises. He went inside. He saw that the digital locker was missing. Some articles were missing. According to him, some toys and gift articles worth Rs.70,000/- were missing. Two laptops worth Rs.80,000/- were missing. Besides aforesaid

digital locker, there is no mention in the FIR as to how much amount was kept in that locker and what articles were kept in that locker. On this basis the FIR is lodged.

6. Learned counsel for the Applicant submitted that the Applicant Rekha Nahar is a child psychologist and as mentioned earlier she is wife of Pinkesh Nahar i.e. sister-in-law of Sachin. The FIR is a result of bitter matrimonial dispute between Rekha and Pinkesh. Learned counsel submitted that toys were actually owned by the Applicant Rekha. She had given those toys to different schools, but during lockdown she was asked to take those back. Initially toys were kept in the earlier godown of the company and thereafter those were shifted to the premises, which is the subject matter of this case.

7. Learned counsel has pointed to 'whatsapp' messages, particularly on page No.37, where the Applicant Rekha had requested Pinkesh to send keys of the godown, from where she could collect the articles. He submitted that Rekha was caught in

a situation that she was forced to go to the premises to collect her articles. Though it is her case that she was given a key by the employee of the company, the lock could not be opened. The employee, subsequently in his statement has denied having given that key on that day. She went there on 20/11/2021 she opened the lock by calling a key maker and collected the toys. She had taken photographs of the entire incident. Those photos showed presence of the site supervisor. Learned counsel for the Applicant submitted that no offence was committed and at least she had no intention to commit any offence. She only wanted to collect her articles. Her conduct shows that she had done it in presence of other persons in the building and therefore it can never be said that it was an offence. He further submitted that the Applicant Mukesh had merely accompanied his sister i.e. Applicant Rekha as she was not able to collect the articles alone. Learned counsel submitted that she has 11 years and 13 years old children and her custodial interrogation would not be necessary in this case. The other Applicant Mukesh has not played any role. He submitted that Rekha's children are chess

champions and she has to accompany them to a tournament outside Mumbai before 25th to 28th February.

8. Learned counsel for the Intervenor appeared and opposed the application.
9. Learned APP opposed this application and strongly contended that the offence of house trespass and theft is made out and it is almost admitted by the present Applicant. She submitted that the investigation has revealed that there was cash of Rs.5 lakhs and gold ornaments weighing 250 gms. in the locker. Therefore custodial interrogation of the Applicant is necessary.
10. I have considered these submissions. At the outset, it can be said that the Applicant Rekha has not done any acceptable act in law. She had no authority to enter the premises without permission of the owner of the premises. Having said that it has to be seen whether in the background of these facts her custodial interrogation is necessary. As far as second

Applicant Mukesh is concerned, he had merely accompanied his sister Rekha and there are no serious allegations against him.

11. The FIR itself does not mention as to who was the owner of the toys. Therefore at this stage there is no reason to disbelieve the Applicants Rekha's case that the toys belonged to her and she was the rightful owner. It is another matter that she should not have entered the premises, but the facts show that there was bitter dispute going on between the Applicant Rekha and her husband Pinkesh. All these facts are not mentioned in the FIR. The dispute between Pinkesh and Rekha has importance in the background of the case. In my opinion it appears to be a family matter more than a case of theft or trespass. Custodial interrogation of the Applicants will not serve any purpose. As far as cash amount and gold ornaments are concerned, the FIR itself does not mention that there was cash amount of Rs.5 lakhs and gold ornaments weighing 250 gms. in the locker. The FIR was lodged after the owner Sachin was informed about the incident, as he could not come to police station. The informant Abhay had

given this complaint. At that time, no allegations were made about missing of Rs.5 lakhs and gold ornament worth 250 grms. In any case as mentioned earlier, it appears to be a family dispute. The Applicant Rekha has two young children. The Applicant Mukesh has only accompanied Rekha. There are photographs taken by the Applicant Rekha herself, which also suggested that she may not have realized the serious consequences of her act and the possibility of registration of FIR in this case. Be that as it may, in this background her custodial interrogation is not necessary. She can be directed to attend the concerned police station and co-operate the investigation. Same principles will have to be applied to the Applicant Mukesh. He also can be directed to attend the concerned police station and to co-operate with the investigation.

12. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.863/2021, dated 23/11/2021, registered

with Malad Police Station, Mumbai, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.

- (ii) The Applicants shall attend the concerned Police Station as and when called, except from 25/02/2022 to 01/03/2022 and shall cooperate with the investigation.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)