

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.642 OF 2022

Rasiklal Bhuralal Salla .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Shambhu Jha with Mr.Sandeep Dubey and Ms.Pratiksha Chaubey for the Applicant.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

PSI Shri Suryakant Pawar attached to Kandivali Police Station, present.

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CORAM: BHARATI DANGRE, J.
DATED : 10th MARCH, 2022

P.C:-

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant is apprehending his arrest in C.R.No.13 of 2017 registered with Kandivali Police Station on 11/01/2016. As far as the said C.R. is concerned, it came to be registered on the complaint of one Rakesh Patel and it arraigned only one person as an accused i.e. Ganesh Badal Mana. The complainant alleged that some gold was made over to the

accused for the purpose of preparation of ornaments and since, the ornaments were not prepared and the gold was misappropriated, crime invoking Sections 406, 420 of the IPC was registered against the accused. On completion of the investigation, charge-sheet is also filed against him.

2. On 18/01/2022, a notice came to be issued to the applicant under Section 41(A) of the Criminal Procedure Code in the very said C.R., intimating him that when the accused Ganesh Badal Mana was arrested and interrogated about the property which was alleged to have been handed over by the complainant to him, he had indicated that the property is with the present applicant and, therefore, he was directed to remain present before the concerned officer. Accordingly, the applicant presented himself before the officer on 19/01/2022 and even his statement came to be recorded.

3. When the learned APP is asked as to on what basis, the applicant is arraigned as an accused, she states that the arrested accused-Ganesh Badal Mana gave a statement under Section 27 of the Evidence Act and that is how the applicant is implicated. When asked, whether the said statement led to recovery of gold or any other recovery, her answer is in the negative. She states that under the statement, the arrested accused led to a shop, which belongs to the present applicant and since the shop was found to be closed, no recovery could be effected.

Learned counsel for the applicant states that since the applicant was abroad for one year, the shop remained closed.

4. As far as Section 27 of the Evidence Act is concerned, the Section permits an information given by the accused to be admissible in evidence, provided so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, is required to be proved. The provision in Section 27, as it stands, is to render the evidence leading to discovery of any fact admissible, when the accused makes a statement while he is in custody of the police.

The statement of the accused, particularly, when, it did not lead to recovery of gold, but only the shop is pointed out, *prima facie*, is not admissible. In any case, the contention of the applicant is that he had been to USA for treatment of his wife and he has produced the documents to that effect on the record. The custodial interrogation of the applicant is not necessary, since he had already got his statement recorded by remaining present before the Investigating Officer, on receipt of the notice under Section 41(A) of the Cr.P.C. Hence, the following order.

: **ORDER** :

- (a) The application is allowed.
- (b) In the event of arrest in C.R.No.13 of 2017 registered with Kandivali Police Station, applicant-Rasiklal Bhuralal Salla shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

(c) The applicant shall report to the concerned police on two consecutive Mondays between 10 a.m. to 2.00 p.m. and, thereafter, as and when directed.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

(SMT. BHARATI DANGRE, J.)