

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3280 OF 2021

Swapnil Chandrakant Gawde. ... Petitioner.
V/s.
The State of Maharashtra and another. ... Respondents.

Ms.Janaki R. Krishnan for the Petitioner.
Mrs.S.D.Shinde, APP for the Respondent- State.
Mr.S.P.Chaudhary for Respondent No.2.

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KASHINATH
NANOSKAR

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CORAM : **NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATE : **10 August 2022.**

P.C. :

Heard the learned counsel for the parties.

2. Pursuant to the FIR lodged by Respondent-Complainant the investigation is complete, charge-sheet is filed and charge is framed by the learned Metropolitan Magistrate, Bandra, Mumbai by order dated 20 December 2021. According to the learned counsel for the Petitioner, even after the charge is framed the power of this Court to quash the proceedings in its extraordinary jurisdiction under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 is not taken

away. Learned counsel, therefore, proceeded to address on merits of the matter.

3. The Respondent- Complainant filed an FIR stating that the Petitioner was sharing a residential flat along with the Complainant and his wife. He also had a duplicate key of the locker of the cupboard where the Complainant 's wife used to keep the gold ornaments and documents. It is stated in the FIR that when the Complainant went for office work to Nagpur, the gold ornaments were missing. That on the allegation that the Petitioner had stolen the same, an FIR was lodged. In the charge-sheet, statements of the witnesses have been recorded.

4. The learned counsel for the Petitioner submitted that though it is correct that the Petitioner had shared the flat with the Complainant and his wife, there is nothing more than suspicion in this case and the statement of the wife of the Complainant is also germane to be considered. The learned counsel for the Petitioner further contended that the gold ornaments, as per the statement of the Complainant's wife, were kept in plastic box. The learned counsel for the Respondent- Complainant submitted that the ornaments were recovered as the father of the Petitioner brought them to the police station. The statement of the father of the Petitioner is recorded and also the Panchanama is on record.

5. Since extra ordinary jurisdiction of this Court is invoked which has to be exercised in exceptional circumstances, we cannot overlook the fact that the statement is given by the father of the Petitioner and that the Petitioner told him that he had taken away the ornaments from the Complainant and since it was a stolen property, the father of the Petitioner brought it to the police station. The production panchanama is also on record which shows that the ornaments were brought by the father of the Petitioner Mr.Chandrakant Gawde. That being the position, this cannot be considered as a case of mere suspicion. Charge has already been framed and it is appropriate that the trial should proceed. No case is made out to quash the proceedings.

6. Writ petition is accordingly rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)