

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

ANTICIPATORY BAIL APPLICATION NO. 2411 OF 2021

1. Majibur Kabir Khan
2. Saidulla Majibur Khan &
3. Abdullah Majibur Khan. ..Applicants

v/s.

The State of Maharashtra . ..Respondents

Mr. Rammani Upadhyay for the Applicant.
Mrs. S.S.Kaushik, APP for the State.

**CORAM : ANUJA PRABHUDESSAI,J.
DATED : 11th APRIL, 2022.**

P.C.

1. This is an application under Section 438 Cr.P.C. for pre-arrest bail in C.R.No. 165 of 2019 of registered with L.T.Marg Police Station for offences under Section 406 and 414, 120B r/w. 34 of Indian Penal Code.

2. Heard Mr. Upadhyay, learned Counsel for the Applicants and Mrs. Kaushik, learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

3. The aforesaid crime is registered pursuant to the First Information Report dated 18.05.2019 lodged by one Vishwanath Bhoumik. It was the case of the Complainant that on 1.4.2019, he had handed over some gold to the co-accused Ali Akbar, who is the son of the Applicant No.1 and brother of Applicant Nos.2 and 3. Said Ali Akbar did not return the

gold, which was worth about Rs.31,65,000/-. The mobile phone of the accused Ali Akbar was switched off, and he was not traceable. Hence the FIR came to be registered against him for the offence under Section 406 of IPC. The co-accused Ali Akbar was arrested on 3.8.2021. According to the prosecution, while he was in custody, he had called on 5.8.21 and 8.8.2021 to his father and brother at West Bengal, and disclosed to them that he had concealed the gold ornaments in the bathroom.

4. Learned APP states that the Investigating Officer had gone to West Bengal along with the co-accused for the purpose of recovery of the gold ornaments. However, the Applicants and the other villagers did not allow them to recover the gold. Though it is stated that the co-accused had made a statement that he had concealed the gold ornaments in the bathroom, and had volunteered to show the ornaments, the said statement was not recorded in terms of Section 27 of the Indian Evidence Act and no attempts were made to recover the gold ornaments under Section 27 of the Indian Evidence Act. The Applicants herein were implicated in this crime on 10.08.2021 for assisting the main accused on concealing the stolen property. The offence leveled against these applicants is punishable with imprisonment for three years. The crime is registered against these Applicants about three years from the date of registration of the crime. These Applicants were granted interim bail on 8.3.2020. Though they had reported to the Investigating Officer

on the dates mentioned in the bail order, they were not interrogated. Hence, by order dated 21.03.2022, this Court had again directed the Applicants to report to the Investigating Officer on 24th and 26th March, 2022. It is stated that the Applicants have reported to the Investigating Officer and they have been interrogated.

5. Considering the nature of accusation leveled against these Applicants, in my considered view, this is not a case which would justify custodial interrogation. In the circumstances, the Application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the Applicant in C.R.No. 165 of 2019 of registered with L.T.Marg Police Station, Mumbai, the Applicant be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) each with one or two solvent sureties in the like amount, out of which, one surety shall be a local surety, to the satisfaction of the Investigation Officer.
- (ii) The Applicants shall provide their permanent as well as temporary address, if any, and his contact details to the Investigating Officer.
- (iii) The Applicants shall not change their residential address without prior intimation to the Investigation Officer.
- (iv) The Applicants shall not interfere with the complainant and the other witnesses, or tamper with the evidence in any manner.

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(ANUJA PRABHUDESSAI, J.)