

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 609 OF 2023

Mahesh Mathuradas Malpani ...Applicant

Versus

The State of Maharashtra & Anr ...Respondents

Mr. Mr. S. S. Dargad, Advocate for the Applicant.

Mrs. R. P. Gour, APP for Respondent – State.

Mr. S. S. Jangada, Advocate for informant to Assist APP

CORAM : R.M. JOSHI, J.

RESERVED ON : JULY 05, 2023

PRONOUNCED ON : JULY 11, 2023

ORDER

1. Applicant apprehends arrest in connection with Crime No. 109 of 2023 registered with New Mondha Police Station, Dist. Parbhani for the offences punishable under Sections 420, 406, 408 of Indian Penal Code.

2. The first informant is the branch manager of M/s. P. N. Gadgil Jewellers, Parbhani who reported to the police that Vijay Thorat, who was Branch Manager in the said establishment, was not in contact from 20.03.2023 and that a gold of 5918.6 gms was found missing from the showroom. It is alleged that the said

Vijay was having complete access to the locker room as well as main door of the showroom. On the basis of these allegations, offence came to be registered.

3. Present Applicant apprehends arrest in connection with said crime as it was revealed in the investigation that prime accused has handed over the portion of the said stolen gold to him.

4. Learned Counsel for the Applicant states that there is absolutely no evidence on record to connect him with the crime in question. It is alleged that the Applicant was called on six occasions and pursuant to the interim order granted in his favour, he appeared before the investigating officer. Charge-sheet is filed on 29.05.2023, however, the Applicant was called before the investigating officer on 21.06.2023 and he was harassed and physically assaulted. In this regard, reference is made to the application made by the wife of the Applicant, affidavit and injury certificate. Thus, it is his contention that Applicant is sought to be falsely implicated in the crime. It is argued that except for the alleged statement of the co-accused there is no evidence on record and the said statement

cannot be read in evidence against him.

5. Learned APP opposed the application by submitting that the evidentiary value of the statement of co-accused can be considered at the time of trial. She pointed out that on the basis of the same statement made by prime accused, there is recovery done at the instance of another co-accused. It is submitted that the present Applicant and prime accused were in touch with each other for substantial period, which shows that there is no substance in his contention that only because he purchased one nose ring from co-accused that contact is seen. It is submitted that the complaint made by the Applicant is nothing but pressurizing tactics against the investigating officer to prevent him from interrogation.

6. In order to ascertain whether there is *prima facie* material to indicate the possible involvement of the Applicant in crime, the investigation carried out till date needs to be considered. As rightly pointed out by learned APP that on the basis of statement made by prime accused there is recovery of stolen gold ornaments from another co-accused. This makes case of

the investigating officer probable that on the basis of said clue further investigation needs to be conducted. It is pertinent to note that here is not the case wherein Applicant is completely alien to the prime co-accused. The submissions made on behalf of the Counsel for the Applicant that Applicant had contact with this co-accused only for the reason he had purchased one nose ring, is *prima facie* is not believable, in view of the fact that there are CDRs which indicate that for more than six months period both were in constant touch with each other. At this stage, Even excluding statement of co-accused there is sufficient material to show nexus/connection between Applicant and prime co-accused in relation to the crime in question. In such circumstances, it would be unfair to the investigating agency if custodial interrogation of the Applicant is not allowed to be done.

7. The Applicant, however, has made allegation against the investigating officer of physical assault against him. This Court, therefore, had called upon the S. P., Parbhani to make an inquiry into the said allegation and submit report. Report submitted by S.P.

Parbhani indicates that there is no substance in the allegation made by the Applicant against the investigating officer. Hence, at this stage, this Court does not accept the contention of the Applicant to be true, however, in order to make sure that no prejudice is caused to the Applicant in any manner whatsoever, the Superintendent of Police, Parbhanni to assign further investigation to another investigating officer. The said direction shall not be construed as adverse against present Investigating Officer.

8. In view of above, application stands dismissed. Pending application is also disposed of.

LATER ON:

1. After pronouncement of the order, learned Counsel for the Applicant seeks continuation of interim relief.

2. Learned APP opposed the said request.

3. Since there is interim relief in favour of the Applicants, the same is continued for a period of four weeks.

(R.M. JOSHI, J.)