

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

939 ANTICIPATORY BAIL APPLICATION NO.707 OF 2023

Shivaji Rangnath Sonawane .. Applicant

Versus

The State of Maharashtra .. Respondent

...

Advocate for Applicant : Mr. L.K. Pradhan

APP for Respondent – State : Mr. V.S. Badakh

Advocate for Assist to PP - Mr. V.S. Kadam

...

CORAM : R. M. JOSHI, J.

DATE : 11th JULY, 2023

PER COURT :

. Applicant is informant in Crime No.45 of 2023 registered with Kannad Rural Police Station, Tal. Kannad, Dist. Aurangabad for the offence punishable under Section 380 r/w. 34 of the Indian Penal Code. Though he is informant, now he is apprehending arrest in connection with the same crime.

2. Applicant reported to police on 09.03.2023 that in the morning at around 06:00 a.m. priest of Kalimath temple informed him about the act of commission of theft in the temple as the

ornaments of the deity were stolen. He therefore came from Chalisgaon to the temple and found that door of the temple was open and ornaments on deity were found missing. He therefore called CCTV technician - Mithun Rathod and when CCTV footage of the temple was checked, it was found that at around 02:28 a.m. two persons who had covered their faces with masks came inside the temple and committed theft of the ornaments.

3. Learned counsel for applicant states that applicant is innocent and that he is the Chairman of the trust and he has been devotedly working since 1988. It is contended that applicant has also donated his land to the trust. According to learned counsel for applicant, if applicant was the culprit, he would not have lodged the report in respect of the crime in question. It is also pointed out that applicant has already deposited a sum of Rs.35,000/- i.e. value of stolen ornaments in the account of trust. Thus, according to him, it is not a case wherein custodial interrogation of the applicant is necessary and since applicant is ready to abide by any condition imposed, he be enlarged on bail.

4. Learned counsel for applicant also submitted that since applicant hails from Chalisgaon, the villagers and influential persons where the Kalimata temple is situated, are against him and hence the attempt is made by them to ensure that the applicant no more remains as a Chairman of the said trust. The allegation is also made against the Investigating Officer that as applicant did not oblige the request of investigating Officer, he is falsely implicated in this crime.

5. Learned APP opposed application with the submissions that there is sufficient evidence collected during the investigation to indicate the involvement of the applicant in this crime. It is submitted that there are statements of witnesses who had seen applicant along with another unknown person in the vicinity of the temple at odd hours. It is further argued that the CCTV footage has clearly captured both thieves and there is identification of one of them to be applicant by the employees of the temple. It is also pointed out that there is another offence registered against applicant for committing theft and illegal transportation of sandalwood. It is submitted that for the purpose of recovery of ornaments and to ascertain as to who is co-accused, custodial interrogation of the applicant is necessary.

6. Since theft was committed at the place wherein public at large visit everyday, it was possible for anyone to report the incident of theft to the police. Merely because applicant has lodged report in this regard, it cannot be presumed that he never be involved in crime in question. Perusal of the investigation papers show that witnesses have identified one of the persons seen in the CCTV footage to be applicant himself. In order to ascertain as to whether it was possible for witnesses to identify such person, this Court has perused CCTV footage of the incident. The CCTV footage clearly captures both persons. Any acquaintance to them would find no difficulty in identifying them in spite of the fact that their faces were covered with masks. During pandemic of COVID-19, it is well known that persons can be identified even if they wear mask. At this stage, it is not open for the Court to state that the identification of the applicant on the basis of CCTV footage by the witness who regularly work in the temple is not correct. Apart from this, there is a statement of witness who claims to have seen applicant along with unknown person in the vicinity of the temple at odd hours in the same night. Thus, it cannot be said that there is no evidence to connect present applicant with the

crime in question.

7. Even accepting the fact that there are several persons who are interested in removing to applicant from trusteeship of the Kalimath trust, however considering prima facie material evidence on record it cannot be said that this is a case of false implication.

8. Apart from this, there is material on record to show that an offence was registered against present applicant being Crime No.4 of 2004 for commission of theft and unauthorized transportation and the sale of sandalwood. Thus, the applicant has criminal history.

9. Applicant has deposited a sum of Rs.35,000/- in the account of the trust and on the basis of which, now it is contended that his custody is not required. One cannot lose sight of the fact that there is a theft committed of ornaments of deity which is concerned for the sentiments of people having faith in the deity. Admittedly, there is no recovery of ornaments stolen till this date, so also the identification of the co-accused is not established. In such circumstances this Court finds substance in the contention of the

learned APP that this is a fit case for custodial interrogation of applicant. Hence, following order:

ORDER

(i) The application is dismissed.

10. Learned counsel for applicant states that since liberty of applicant is protected the said protection be extended for a period of three weeks.

11. Learned APP opposed the request.

12. Since applicant is protected for last two months, the said protection is extended for a period of three weeks as prayed for.

[R. M. JOSHI]
JUDGE

GGP