

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

965 ANTICIPATORY BAIL APPLICATION NO.723 OF 2023

1. Asrar Salim Shaikh
2. Sharukh Shah Farooq Fakir .. Applicants

Versus

The State of Maharashtra .. Respondent

...
Advocate for Applicants : Ms. Sabahat T. Kazi
APP for Respondent / State : Mrs. G.L. Deshpande
...

**CORAM : R. M. JOSHI, J.
DATE : OCTOBER 10, 2023**

PER COURT :

. At the outset, learned counsel for the applicants seeks leave to amend prayer clause to add the date and number of charge-sheet.

2. Leave granted.

3. Applicants apprehend arrest in connection with Crime No.45 of 2022 registered with Dondaicha Police Station, Dist. Dhule for the offences punishable under Sections 379, 380, 395, 120-B, 412, 413, 201 of the Indian Penal Code.

4. Informant Prashant Walmik Patil, Head Master of S.V.S.I.T.C., Dondaicha reported to the police about the incident noticed by him in the morning of 02.02.2022. It is reported that a created hole was found in the wall and 12 electric motors were not found at their place. Further it was found that in all 26 articles were stolen by unknown persons.

5. Learned counsel for the applicants submits that after the completion of investigation charge-sheet has been filed and in the entire investigation, no evidence is found to connect the applicants with the crime in question. It is further submitted that after seven months of the occurrence of the incident, supplementary statement of the informant was recorded wherein for the first time he has claimed that he had seen applicants and co-accused committing theft of those articles. It is further submitted that the said statement made at belated stage is not reliable. Thus, according to learned counsel for the applicants, this is a fit case for grant of anticipatory bail.

6. Learned APP opposed the application by contending that merely because statement has been recorded after seven months, the same cannot be completely discarded particularly in view of the fact

that the accused persons had threatened the informant not to lodge any complaint against them. It is submitted that the said statement gets support from the recovery done at the instance of the co-accused. Thus, according to her, applicants are not entitled for interim protection.

7. The alleged incident has occurred on 03.02.2022 and the offence was registered initially against unknown persons. It does not stand to any justification as to why for a long period of seven months the informant has failed to intimate to the police about the involvement of the present applicants in the present crime when he really seen them committing theft. Apart from this, the recovery of one electric motor at the instance of co-accused also would not be sufficient to connect the applicants with this crime. As far as the identification parade if any to be conducted by the investigating agency is concerned, the same cannot be a ground for rejection of anticipatory bail. It may be open for the investigating agency to conduct the identification parade, if any, in order to identify the present applicants to be the persons who have allegedly committed theft of the articles from the institution.

8. Having regard to these facts, the following order is passed.

ORDER

(i) Application is allowed in terms of the interim order dated 27.06.2023 except condition no.2 which is modified as under:

(a) Applicants are directed to remain present before the Investigating Officer on four occasions as and when called by the Investigating Officer and for the purpose of recovery, if any, they shall be deemed to be in custody of police.

**[R. M. JOSHI]
JUDGE**

GGP