

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.153 OF 2022

The State of Maharashtra

APPLICANT

VERSUS

Sujit Anil Asne

RESPONDENT

.....

Mr. A. V. Deshmukh, APP for the applicant - State

Ms. Pratiksha Chhaburao Kale, Advocate for the respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th JANUARY, 2023

ORDER :

1. Leave to correct prayer clause. Correction to be carried out forthwith.
2. Prosecution has moved this application under section 439 (2) of the Code of Criminal Procedure seeking cancellation of anticipatory bail granted to the respondent by the Sessions Court in Crime No. 91 of 2022 registered with Shrirampur Taluka Police Station, Shrirampur for offence punishable under sections 380, 457 of the Indian Penal Code.
3. The FIR is lodged by Ramesh Barhate, against four unknown persons alleging that, while he was in the agricultural

field, by breaking his residential house gold ornaments worth Rs.1,72,000/- and cash of Rs.10,000/- was stolen.

4. Respondent filed Criminal Bail Application No. 103 of 2022 seeking anticipatory bail, before the Sessions Court, which was allowed by order dated 5th May, 2022. The prosecution seeks cancellation of anticipatory bail granted to the respondent.

5. Heard learned Additional Public Prosecutor for the applicant State and the learned advocate for the respondent. Perused the investigation papers.

6. In the FIR, the informant has alleged that gold ornaments i.e. gold neckless called Ganthan weighing 4 tolas, gold chain weighing 1.5 tolas, Mangalsutra weighing 1 tola, earrings weighing 2.5 grams and Rs.10,000/- cash was stolen from his house.

7. During the course of investigation, accused Sushil Wakekar was arrested. He disclosed that the offence was committed by him along with the respondent and other accused persons. From him, an amount of Rs.2920/- was recovered. Respondent - accused No.1, Monika - accused No.2, Sushil - accused No.3 and their two unknown colleagues have committed the offence of housebreaking and theft. Though accused No.2 and 3 were

arrested, only an amount of Rs.2920/- is recovered from accused No.3. The stolen gold ornaments and remaining cash is yet to be recovered.

One of the witness has stated that the respondent asked money from him and offered him *Ganthan*, weighing 4 *Tolas*, which is part of the stolen ornaments. The witness refused to give money to the respondent. As per the investigation papers, major role is played by the respondent in the present crime. All these aspects are erroneously ignored by the Sessions Court while granting anticipatory bail to the respondent.

8. While granting anticipatory bail to the respondent, the Sessions Court has observed that the police have already recovered articles and they are in search of other accused, for which custody of the respondent is not necessary, which is contrary to record, it reflects total non application of mind on the part of the Sessions Court. In spite of major role played by the respondent in the crime, the Sessions Court erroneously exercised discretion in favour of the respondent, ignoring the fact that stolen gold ornaments and cash is yet to be recovered and custody of the respondent is necessary for effective investigation. The Sessions Court misdirected itself in granting anticipatory bail to the respondent. Said order is, therefore,

unsustainable.

9. In the result, the application is allowed. The impugned order dated 5th May, 2022 passed by District Judge-1 and Additional Sessions Judge, Shriampur in Criminal Bail Application No. 103 of 2022 is hereby quashed and set aside. Anticipatory bail granted to the respondent is cancelled.

[NITIN B. SURYAWANSHI]
JUDGE

drp/acb153-22.doc