

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1612 OF 2023

Rubinabi w/o Latif Pathan & another

Applicants

Versus

The State of Maharashtra

Respondent

Mr. J. S. Jain, Advocate holding for Mr. Sayyed Tauseef Yaseen,
Advocate for the applicants.

Mr. G. O. Wattamwar, APP for the State.

Mr. S. R. Zambre, Advocate for the informant.

WITH
CRIMINAL APPLICATION NO. 3751 OF 2023

CORAM : R. M. JOSHI, J.

DATE : 6th NOVEMBER, 2023.

PER COURT :

1. Learned counsel Mr. Zambre states that he has instructions to appear on behalf of the informant.

2. Having regard to the nature of offence, he is permitted to represent informant and assist learned APP. Criminal Application No. 3751/2023 stands disposed of.

3. Applicants apprehend arrest in connection with Crime No. 0328/2023 registered with Ambajogai City Police Station, Dist. Beed, for the offence punishable under Section 380 read with Section 34 of Indian Penal Code.

4. First informant claims that her husband who was in police department died during Covid period and that she received amount of Rs. 5,00,000/-. Prior to one month of lodging of report, informant received phone call from unknown lady. She sought permission to see informant. Thereafter she came in a four wheeler. The person who had been with her did not alight from the vehicle. She alone had been in the house, had tea and left. Thereafter again on 24th August, 2023, the same lady came to the house. Informant called the person accompanying her inside the house. They had tea and thereafter they left the house. It is the contention of informant that the hall in which both of them were sitting, there is an iron cupboard in which she had kept cash of Rs.5,00,000/- and the said cupboard was not locked. It is claimed by her that the said lady was talking to her in the kitchen and thereafter having tea they left home. On the same day, she received phone call of Amol who is her nephew. He enquired with her about persons who had visited her house.

Later on, the said lady again called her informing that Amol had asked them to send a proposal of his marriage with the informant. Informant therefore called Amol who apologised her for the same. On 29th August, 2023, her two brothers came and one of them asked for Rs.2,00,000/-. When she searched for the money in the cupboard, she did not find the money. It is therefore alleged that the lady and the person accompanying her were responsible for the said theft.

5. Learned counsel for the applicants submits that there is nothing to indicate that the applicants were having knowledge about any cash being held by the informant. It is submitted that at the most, they can be said to had been to the informant by taking proposal of Amol. The said fact according to him gets confirmed from the phone call of Amol to the informant. It is thus submitted that in the absence of any evidence to connect them with the crime, it is a fit case for grant of anticipatory bail.

6. Learned counsel for informant submits that co-accused Amol had knowledge about the informant having cash of Rs. 5,00,000/- with her and hence he had sent applicants to her house.

It is submitted that except for the applicants, no one had entered the house of the informant from 24th August, 2023 till 29th August, 2023.

7. Learned APP also opposed the application by contending that the statement of informant clearly shows that the theft could have been committed only by applicants and no one else. According to him, for the recovery of money, custodial interrogation of the applicants is necessary.

8. From perusal of First Information Report as well as from the statements recorded during the course of investigation, it does not appear that the applicants had knowledge about the informant having cash of Rs. 5,00,000/- with her and the same being kept in her house. Though it is sought to be argued by learned counsel for the informant that the said knowledge was with Amol who had shared the same with applicants however, neither in the First Information Report nor in the statement recorded, such fact appears. It is pertinent to note that the incident has allegedly occurred on 24th August, 2023 and knowledge about the alleged theft has occurred on 29th August, 2023. The Investigating Officer has failed to carry out investigation to find out as to whether anyone else during this period

had entered the house. Investigation papers show that CCTV footage of 24th August, 2023, only is collected. It is not sufficient for the prosecution to rely upon CCTV footage of 24th August, 2023 because there is no dispute made by the applicants about said visit to the house of the informant in the light of the fact that they had been to the house of informant with a message from Amol which is corroborated from the First Information Report itself, which indicates that later on Amol had apologised for the same. All these facts create serious doubt about knowledge of applicants of any cash being kept by the informant in the cupboard. Merely on the basis of unfounded apprehension, their liberty cannot be denied. Hence, application is allowed in terms of the interim order. Applicants are directed to appear before the Investigating Officer once in a week. For the purpose of recovery, if any, they shall be deemed to be in the custody of police.

(R. M. JOSHI)
Judge

dyb