

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1747 OF 2022

Shaikh Rajek s/o Shaikh Azim

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. D. R. Deshmukh, Advocate for the applicant.

Mr. V. S. Badakh, APP for the State.

Mr. A. R. Borulkar, Advocate for informant.

CORAM : R. M. JOSHI, J.

DATE : 27th JUNE, 2023.

PER COURT :

1. Applicant apprehends arrest in connection with Crime No. 0434/2022 registered with Satara Police Station, Tq. & Dist. Aurangabad for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

2. Rafiq Khan, who is in the business of tours and travels has reported to the police that he provides tour services through his company for the Muslims intending to visit Umra. Applicant, who is working in the police department and his wife did booking with him. On 29th October, 2022, they along with others left for Umra. The

tourists were to return back to Mumbai from Umra on 13th November, 2022. On 12th November, 2022, informant told his team leader Mujahid to purchase a gold chain and to obtain receipt thereof. He instructed Mujahid to handover the said chain to Khaliloddin Kazi Sultanoddin. On 14th November, 2022, 17 tourists came back to Aurangabad. When he made a phone call to Khaliloddin asking for the chain he assured him to give it back. Since it was not given to him for two days thereafter, he went to his house and demanded the chain. At that time, Khaliloddin told him that on 14th November, 2022, at 9.30 am, when they landed at Mumbai Airport, present applicant told him that there is no bill with the chain and therefore, the Custom Officers will not allow it to be cleared and therefore, he asked him to give the chain to him contending that since he is a police personnel, nobody will question about it to him. It was assured that the chain would be returned to Khaliloddin afterwards. It is alleged by the informant that Khaliloddin and he went to the applicant seeking return of the chain and at that time, he denied to have taken any chain from Khaliloddin and infact told them that the Custom Officer at Mumbai Airport has taken the chain from Khaliloddin.

3. Learned counsel for the applicant states that there is inordinate delay in lodging First Information Report and the possibility of false implication cannot be ruled out. It is contended that since the applicant has made grievance in respect of not providing proper services in the tour, informant with the help of Khaliloddin has lodged this First Information Report. It is also stated that the contention of the informant is not acceptable because he had instructed Mujahid to purchase a chin and to obtain bill. If bill was there then there was no reason for Khaliloddin for being scared of the Custom Officer.

4. Learned APP as well as learned counsel for the informant vehemently opposed the said contention by stating that the statements of witnesses clearly show that the informant had instructed Mujahid to purchase a chain and it was purchased accordingly by him. Further, as per instructions given to him, the chain was handed over to Khaliloddin for bring it from Umra to Aurangabad. Statements of Khaliloddin and Mujahid are referred to in order to contend that there is evidence to show that Khaliloddin was given chain and it was in turn given by him to applicant.

According to them, for the purpose of recovery of the said chain, custodial interrogation of the applicant is necessary.

5. Perusal of First Information Report as well as statements recorded by the Investigating Officer till date, indicate that it is the contention of Khaliloddin that on 14th November, 2022 at around 9.30 am, at Mumbai Airport, applicant asked him to hand over chain by assuring him to return the same. According to the statement of Khaliloddin, after the said chain was obtained from him by the applicant, he had put the said chain in the neck of his wife. In view of this allegation, the prosecution was called upon to ascertain as to whether CCTV footage of airport indicates occurrence of such incident. Learned APP on instructions from the Investigating Officer informs the Court that the applicant and Khaliloddin were found together along with other tourists gone to Umri. It is further stated that there is no CCTV footage which would indicate that the chain was received by the applicant from Khaliloddin and he had put it into the neck of his wife.

6. Learned APP states that applicant is a police personnel and therefore, he must have cleverly avoided this to be recorded in

CCTV footage. One can understand that obtainment of chain from Khaliloddin could be avoided from the CCTV footage. However, it is practically impossible when the said chain was put into the neck of the wife, the same could be missed from CCTV footage.

7. Apart from this, statement of Mujahid shows that on 14th November, 2022 itself after coming out of the airport, he enquired with Khaliloddin about the chain and at that time he informed him that the chain is given to present applicant. If it is so, then it does not stand to any reason as to why the informant did not call upon the applicant to return the chain and instead he went to Khaliloddin for seeking the chain back. All these facts coupled with delay caused in lodging of First Information Report creates serious doubt about the contention of the first informant. In such circumstances, applicant's liberty deserves to be protected. Applicant to remain present before Investigating Officer as and when called and for purpose of recovery if any, he be deemed to be in custody of police. Hence, order :-

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest of applicant in connection with Crime No. 0434/2022, registered with Satara

Police Station, Tq. & Dist. Satara, for the offences punishable under Sections 406 and 420 of the Indian Penal Code, he be released on bail on furnishing PR Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) with one solvent surety in the like amount.

(iii) He shall attend the concerned police station and and when called by the Investigating Officer, till filing of the charge-sheet.

(iv) He shall not contact the witnesses directly or indirectly.

(v) He shall not interfere with the evidence in any manner whatsoever.

(vi) He is further directed to cooperate the investigating agency for further investigation.

(R. M. JOSHI)
Judge

dyb