

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2166 OF 2023

Mr. Abdul Halim Khan

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Amit Munde for the Applicant.

Ms. A.A. Takalkar, APP for the State.

Mr. A.U. Makandar, PSI, L.T. Marg Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 03rd AUGUST, 2023.

P. C. :-

. The Applicant apprehends his arrest in C.R.No.296/2023 registered with L.T. Marg Police Station, Mumbai for offences punishable under sections 409, 420 of the Indian Penal Code.

2. Heard learned counsel for the Applicant and learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Aakash Rajesh Chavan, the proprietor of Mahalaxmi Jewelers. The Applicant herein is an artisan and gold jewelry manufacturer. The facts

narrated in the FIR prima facie reveal that there existed business transaction between the Applicant and the first informant since long, wherein the first informant would handover pure gold bars and the Applicant would make gold ornaments. The first informant was to pay to the Applicant labour charges through RTGS. The first informant has alleged that in the course of such business transaction, on 06/02/2023, he handed over to the Applicant gold of 934.780 grams including 74.780 grams of alloy under Voucher No.L01-30. It is stated that the Applicant neither made the gold ornaments nor returned the gold bar. The first informant therefore lodged the FIR, pursuant to which the aforestated crime came to be registered.

4. The FIR viz-a-viz the receipt, which has been signed by the Applicant, prima facie reveals that the Applicant had received gold bar from the first informant. The material on record indicates that the Applicant had neither made gold ornaments nor returned the gold bar. Learned APP has brought to my notice that several other crimes are registered against the Applicant by other gold smiths for similar offence. She has placed before me a letter dated 13/03/2023 wherein the Applicant has admitted having received gold bar from the first informant and he had expressed his willingness to give cheque of

Rs.50,000/- towards value of 760 grams of gold. The said letter prima facie substantiates the contention of the first informant that the Applicant had received gold bar for the purpose of making gold ornaments and that he had failed to return the same.

5. Learned counsel for the Applicant has relied upon the decision of the Hon'ble Supreme Court in ***Sunita Devi and another v/s. State of Haryana (2023) 1 SCC 178***, to contend that the offence relating to cheating would not justify custodial interrogation. He has also relied upon the decision of ***Bimla Tiwari v/s. State of Bihar and others 2023 SCC Online SC 51*** wherein it is observed that there is no justification to decline the concession of pre-arrest bail.

6. There cannot be a straight jacket formula for grant or refusal of bail. As it has been held in ***Siddharam Satlingappa Mhetre v/s. State of Maharashtra and ors. AIR 2011 SC 312***, in consonance with the legislative intention, the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. The jurisdiction under section 438 of Cr.PC. has to be exercised within the parameters enumerated by the Apex Court in several cases.

7. In the instant case, the material on record prima facie reveals that

that in the course of the business relation, the first informant had entrusted to the Applicant gold bar for making gold ornaments. The Applicant neither made the ornaments nor returned the gold bar but misappropriated the same. It is also to be noted that this is not an isolated case. It is stated that 04 other crimes are registered against the Applicant by other gold smiths for committing similar offences.

8. Considering the above facts and circumstances, in my considered view, this is not a case to exercise discretion under section 438 of Cr.P.C. Hence, the Application is dismissed.

**PREETI
HEERO
JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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