

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

**INTERIM APPLICATION NO. 4075 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 2216 OF 2021**

VINOD DIXIT RAMJILAL SHARMA Applicant.
VERSUS
NIKITA JAGDISHCHANDRA RAWAL @
YAMINI RAWAL & ANR.Respondents.

**WITH
INTERIM APPLICATION NO.2750 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2216 OF 2021**

NIKITA JAGDISHCHANDRA RAWAL @
YAMINI RAWAL & ANR.Applicants.
VERSUS
VINOD DIXIT RAMJILAL SHARMA AND
ANR.Respondents.

Mr. R. V. Gupta and Mr. Rohit Vaishya, Advocate for the applicant
in IA No. 4075 of 2022.

Mr. Akilesh Chaubey a/w Mr. Akshary Shetty i/b AVC & Associates
in IA No.2750 of 2023 for applicants and respondent in IA No. 4075
of 2022.

Mr. S. V. Gavand, Addl. Public Prosecutor for the State.

CORAM: PRAKASH D NAIK, J

**DATED: 13th September 2023
(THROUGH V.C.)**

ORAL ORDER:-

1. Interim application no. 4075/2022 is preferred by original complainant for cancellation of anticipatory bail granted to

respondent no. 1 vide order dated 14.9.2021.

2. First information report was lodged on 31.12.2020 with Santacruz police station vide crime no.397 of 2020 for offence under Sections 406, 420 IPC. It was alleged that complainant got acquainted with the accused and acquaintance developed into friendship. On 28.12.2020 accused came to airport at Mumbai to pick up the complainant and both of them went to the hotel. Accused stayed with the complainant for three hours and left hotel. Complainant handed over his bag for safe custody to the accused which contained five articles such as gold ring, ladies purse, Samsung mobile phones and ear buds. Total value of articles was Rs.3,30,000/-. Accused carried bag to her residence. On 29.12.2020 complainant and accused went to another hotel. Accused brought the bag of the complainant and returned the same to him. The accused had brought gold ring for presenting it to the complainant. Since the gold ring could not be adjusted into finger of the complainant, for the purpose of measurement accused took diamond ring of the complainant which he was wearing in his finger. Gold ring was studded with diamonds and it was worth Rs.3,50,000/-. Accused then left the company of the complainant. Thereafter, the complainant checked the bag and noticed that articles belonging to him were missing from the bag. Complainant gave a call to the accused. She assured that she would bring the articles with her.

Thereafter the accused was not responding to his phone calls. FIR was registered on 31.12.2020.

3. Accused/Respondent no.1 preferred application for anticipatory bail viz ABA No.2216 of 2021 before this Court. The said application was allowed vide order dated 14.9.2021. In the said order it was recorded that advocate for respondent no.1, on instructions, submitted that articles mentioned in the FIR were gifted to her viz. Gold ring, ladies purse, samsung company cell phones, ear buds and diamond ring. It was further submitted that respondent no.1 is willing to co-operate with the investigation and return the articles to the Investigating Officer. In view of the factual aspects, application for anticipatory bail was allowed with a condition that respondent no.1 shall comply with the statement that the articles mentioned in the FIR would be handed over to Investigating Officer.

4. Pursuant to the order dated 14.9.2021 police recorded panchanama of handing over articles by the respondent no.1/accused on 22.9.2021. Said panchanama indicates that gold ring studded with diamond, ladies purse, three cell phones of Samsung company were handed over to the police.

5. Complainant preferred an application for return of articles before the Metropolitan Magistrate, 71st Court, Bandra, Mumbai. Learned Magistrate by order dated 22.8.2022 allowed the application and directed that articles viz. gold ring with diamond, ladies purse,

three mobile phones seized in crime no. 397/2020 by Santacruz Police Station be returned to the complainant on furnishing indemnity bond of Rs.7,00,000/-.

6. The accused has preferred interim application no.2750 of 2023 for modification of order dated 14.9.2021 to the extent of statement made on the return of the articles.

7. Learned counsel for the applicant in Interim Application No. 4075 of 2022 preferred by the original complainant seeking cancellation of anticipatory bail has submitted that respondent/ accused had committed breach of the condition stipulated in order dated 14.9.2021. Complainant had moved an application for return of property which was allowed by the learned Magistrate. Complainant then approached Santacruz police station and the articles were returned to him after execution of bond. After collecting the articles complainant found that accused had deliberately broken mobile phones and has not deposited gold ring worth Rs.45,000/-. Complainant suspected genuineness of the diamond on the gold ring returned by the accused. It was found that the diamond studded on the ring returned by the accused were not original but the same was American diamond. Value of ring with diamond was Rs.3,50,000/- and the American diamond found with ring returned by the accused were valued at Rs.30,000/-. Thus the accused had misappropriated the property worth Rs.6,81,000/- Police have obtained valuation

report of diamond found on the ring returned by the accused which is part of the chargesheet. Thus accused has violated condition stipulated in order granting anticipatory bail and not complied with the statement made to this Court that all the articles would be returned to the Investigating Officer. Application for modification of the order dated 14.9.2021 was filed belatedly after the applicant has preferred application for cancellation of anticipatory bail. The contention of the accused that she has not given instructions to her advocate who represented her to make the statement is after thought. Hence, anticipatory bail granted to respondent no.1/accused may be cancelled.

8. Learned counsel for the respondent submitted that application has been preferred to cause harassment to the respondent no.1/accused. Respondent no.1 has filed complaints against the applicant/complainant including complaint for defamation. Articles which were in possession of respondent no.1/accused were handed over to the Investigation Officer. The gold ring is not in possession of the accused. Gold ring containing diamond was returned to the Investigating Officer. Panchanama with regard to return of articles was recorded on 22.9.2021. On the same day accused had written letter to Senior Inspector of Police that accused is submitting all the gifted items received from the complainant as per order of High Court dated 14.9.2021 such as diamond gold ring, ladies purse, five

cell phones and ear buds. Accused wrote letter to the Senior Inspector of Police on 11.5.2022 stating that she is in receipt of letter dated 13.4.2022 and that she has returned the articles received from the complainant as per order of High Court dated 14.9.2021. As per the statement she has returned everything. Accused has annexed the affidavit to interim application no.2750 of 2023 stating that she do not have gold ring in her custody as alleged by the complainant and all the items gifted to her are returned to respondent no.1. It is further submitted that the accused has preferred application for modification of the order dated 14.9.2021. Accused was not present in the Court on 14.9.2021. There was some misunderstanding while making a statement before this Court in Anticipatory Bail Application No.2216 of 2021. Statement was made stating that accused is willing to return two rings however, statement was made erroneously without malafide intention as the accused was not present before the Court. There was miscommunication between the accused and the advocate.

9. The case of the prosecution is that the accused and complainant were closely acquainted with each other. Pursuant to their differences complaints were filed against each other. Respondent no.1 in this application has lodged FIR against the complainant for offence under Section 376 IPC on 31.3.2020. Respondent has also filed complaint of defamation against the

complainant in the present case. FIR in this case was lodged on 31.12.2020. Investigation is complete and chargesheet has been filed. Investigating Agency has obtained the report about the articles from competent testing centre. Pursuant to the order granting anticipatory bail the accused has returned the articles and the panchanama in that regard has been recorded on 22.9.2021.

10. Dispute is with regard to one gold ring which is allegedly referred to in the FIR and not returned by the accused. Other controversy is with regard to diamond studded on the ring returned by the accused. FIR makes reference to the ring allegedly handed over to the accused studded with six diamond. According to the complainant, the gold ring was containing pure diamond and while returning the accused has handed over the gold ring with American diamond. There is debate about genuineness of the diamond. The contention of the accused is that gold ring was not with her. It is true that application for modification of the order was preferred belatedly after the complainant has filed application for cancellation of bail. Modification as sought belatedly cannot be granted. FIR does not describe as to which diamonds were studded on the gold ring lying in the bag of the complainant. Considering the factual aspect of this matter and since the chargesheet has been filed anticipatory bail need not be cancelled by subjecting the respondent to custody.

11. In the event if it is established during the trial that accused has

not handed over articles returned to her, trial Court would be at liberty to draw an adverse inference against the accused. However, at this stage anticipatory bail to the respondent no.1 is not be required to be cancelled.

O R D E R

- (i) Interim Applications No.4075 of 2022 and 2750 of 2023 are rejected.
- (ii) Both applications are disposed of.

PRAKASH D. NAIK, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
Date: 2023.09.15 16:42:10 +05'30'