

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3565 OF 2023

Jay Manbodh Gupta ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Nitin Sejpal a/w. Ms. Akshata Desai, Ms. Sakshi Jha and Mr. Siddharth G., for the Applicant
Mr. S.H. Yadav, APP, for the Respondent/State.
Mr. Swapnil Mane, PSI, NIR Sagari police station.

CORAM : N. J. JAMADAR, J.
DATE : DECEMBER 20, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.
2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 309 of 2023 registered with NRI Sagari police station for the offences punishable under sections 120-B, 379, 465, 468, 471, 413 and 201 of Indian penal Code, 1860.
3. The first informant who is the Chief Security Officer of L & T Company and incharge of the project site, Airport Reti Bandar, Ulve, Navi Mumbai lodged a report to the effect that on 26th October, 2023 at about 4.30 am unknown persons came to the project site with a truck and 350 aluminum beam of 16 Model worth Rs. 5 lakh were loaded in the said truck and dishonestly moved out of the premises

thereby they committed theft of the said property.

4. During the course of investigation, it transpired that co-accused Mitesh Shetty who was earlier working at the said site with L & T, had tried to bribe the security guard by offering to pay Rs. 10,000/- to allow the vehicle to enter into the premises to lift the material. As the security guard declined, on the night of occurrence, the co-accused Mitesh Shetty came inside the project site wearing costume of L & T company, reflector jacket and helmet. Another co-accused Yogesh Shetty had changed the number plate of the vehicle which was brought in the premises. Thereafter the allegedly stolen articles were loaded in the said vehicles and eventually the stolen property was unloaded at the warehouse of the applicant.

5. During the course of investigation, the statement of the person to whom the applicant had sold the stolen property also came to be recorded. It further transpired that the applicant had made an effort to delete the data in the CCTV installed at his shop. However, the CCTV footage of the adjoining shops revealed that the stolen property was unloaded at the place of the applicant, in the presence of applicant and co-accused Yogesh and Mitesh.

6. Mr. Sejpal, learned counsel for the applicant submitted that in the month of April, 2023 also the first informant had lodged first

information report in respect of a theft of the property from the project site leading to registration of C.R. No. 97 of 2022 against Mitesh Shetty and unknown associates. In connection with the said crime, the applicant was granted pre arrest bail.

7. The applicant had lodged complaint against the police officer of NRI Sagari police station for harassing him in connection with the instant crime. It was submitted that the applicant has no role in the alleged theft. He is implicated on the basis of material which lacks credibility.

8. The learned APP, on the other hand, submitted that there is credible material against the applicant. In fact, the applicant indulged in the offences while he was on bail in C.R. No. 97 of 2022. The disclosure statement made by the co-accused Yogesh Shetty squarely incriminates the applicant and throws light on the criminal conspiracy in pursuance of which the offences were committed. Attention of the Court was also invited to the statement of all witnesses recorded under section 164 of Code of Criminal Procedure who claimed to have purchased the stolen property from the applicant. The said witness also stated that on 20th November, 2023 the brother of the applicant had called him and tried to dissuade him from naming the applicant.

9. Undoubtedly, the crime was initially registered for an offence

punishable under section 379 of the Penal Code against unknown person. However, the facts which have emerged during the course of investigation, prima facie, reveal that there was a larger conspiracy. The learned Additional Session Judge has elaborately adverted to the entire material. A farce of the workers entering the project site wearing costumes of L & T company was made and the property was loaded in a vehicle by replacing its number plate. There is further material to indicate that the stolen property was unloaded at the shop of the applicant. An endeavour was allegedly made to remove the data in the DVR of the CCTV installed at the applicant's shop. However, the footages collected from the CCTVs installed in the adjoining shops revealed that the stolen property was unloaded at the applicant's place, during the presence of the applicant and co-accused. There is further material to indicate that the applicant had sold the stolen property to a person, whose statement has been recorded under section 164 of the Code. Thus, there is strong prima facie material to incriminate the applicant.

10. The disclosure statement made by the co-accused Yogesh also reveals that the applicant was the prime confederate in the alleged conspiracy. At the stage of investigation, the said statement can also be looked into by the investigating officer.

11. I find substance in the submission of learned APP that the

applicant indulged in the instant crime while being on bail in C.R. No. 97 of 2022 and that aggravates the situation.

12. In the totality of the circumstances, I am impelled to hold that the applicant does not deserve the exercise of the discretion. Custodial interrogation is warranted as the theft prima facie seems to have been committed in pursuance of a well planned criminal conspiracy.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)