

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

ANTICIPATORY BAIL APPLICATION NO. 1359 OF 2024

1. Mrs. Prafulla Dinesh Kotak,	
2. Dinesh Ratansibhai Kotak	..Applicants
Versus	
The State of Maharashtra	..Respondent

Mr. Pradyumna Waghmare a/w. Mahesh Gupta for Applicants.
Ms. Poonam P. Bhosale, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 10 MAY 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.73 of 2021 registered at Borivali Police Station, Mumbai, on 31.01.2021, under sections 441, 378, 323, 504 and 506 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Pradyumna Waghmare, learned counsel for the applicants and Ms. Poonam Bhosale, learned APP for the State.

3. The F.I.R. is a result of an order passed by the learned Magistrate U/s.156(3) of the Cr.p.c. The case of the complainant-first informant is that the accused are the owners of Flat No.A/12,

Mahavir Dham, Saibaba Nagar, Borivali (W). The informant was given those premises on leave and license basis between the period 01.04.2017 till 31.03.2020 for 36 months. The informant paid Rs.50000/- as interest free refundable security deposit. The agreement was entered into in the name of the applicant No.1, but the transaction was carried out at the instance of the applicant No.2; who was the husband of the applicant No.1. The complaint thereafter mentions that, in June 2019 there was heavy leakage in the flat. The informant repaired it by spending Rs.20000/-. It was promised by the applicants that the said amount would be returned. In March 2020, the informant told the applicants that he did not wish to continue with the license agreement. He demanded back his security deposit. The allegations pertain to not returning of that security deposit. It is alleged that the applicants unilaterally adjusted the rent for the months of April to June 2020. There was dispute regarding the same. The allegations are that the informant had kept his goods worth Rs.15 lakhs and also cash amount of Rs.75000/-. The goods were in the nature of computers, lockers, original bills, agreements etc. It is alleged that, those articles were

stolen by the applicants. The complainant came to know about it on 19.09.2020. He approached the Borivali police station, but his F.I.R. was not lodged; instead, an N.C. was lodged. Thereafter the informant approached the Magistrate's Court and got an order U/s.156(3) of the Cr.p.c. which has resulted in lodging of the F.I.R.

4. Learned counsel for the applicant submitted that the informant has also filed S.C. Suit No.1916 of 2021 at Bombay City Civil Court, Dindoshi, claiming damages and return of that amount. The applicant No.1 had lodged her own N.C. on 20.09.2020 and 06.10.2020 mentioning that the informant was threatening and abusing them and that he was not taking away his goods. He submitted that the N.C. lodged by the informant against the applicants does not make any reference to the said goods worth Rs.15 lakhs and the amount of Rs.75000/-.

5. Learned APP produced the investigation papers before the Court. She submitted that, there is statement of one Karan Verma who had recorded the incident in July 2020 when the applicant No.2 was seen taking away some articles from the said

premises.

6. I have considered these submissions. Karan Verma's statement shows that on 13.07.2020 he had video recorded the incident when the applicant No.2 was taking away one iron stand from that particular room. That video shooting is not about the computers and other articles mentioned in the F.I.R. The N.C. lodged by the complainant bears his signature. It was lodged on 21.09.2020. The only allegations in that N.C. are that on 19.09.2020 when he had gone to that premises the applicant No.2 had beaten him and the applicant No.1 had abused him and threatened him. There is absolutely no mention about cash of Rs.75000/- and goods worth Rs.15 lakhs having been stolen by the applicants. This N.C. was lodged on 21.09.2020. It bears signature of the complainant. A copy of that N.C. is taken on record and marked 'X' for identification. Apart from that, there is a civil suit pending between the parties referred to herein above. It is clear that there was dispute about the leave and license agreement, security deposit and the alleged dues of rent. In this background, there is a reasonable possibility that the applicants are innocent.

The Applicant No.1 is a senior citizen lady and the applicant No.2 is a senior citizen. The investigation can go on without their custodial interrogation.

7. Hence, the following order :

ORDER

- i) In the event of their arrest in connection with C.R.No.73 of 2021 registered at Borivali Police Station, Mumbai, the applicants are directed to be released on bail on their executing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- ii) The Applicants shall cooperate with the investigation.
- iii) The Application is disposed of.

(SARANG V. KOTWAL, J.)