

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

ANTICIPATORY BAIL APPLICATION NO.121 OF 2024

Ramesh Harilal Dave ..Applicant
Versus
State of Maharashtra .. Respondent

Ms. Kajal Sarvaiya i/by Asif Patel, Advocate for the
Applicant.

Mr. P.P. Jadhav, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 4th JULY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.1307 of 2023 dated 16th October 2023, registered with Borivali Police Station, Mumbai, under Section 379 of Indian Penal Code.

2. The FIR is lodged by one Atulya Menon. According to her she was traveling in a local train on 10th October 2023 at around 1:45 p.m. She had kept her laptop bag on the rack. Then she got down from the local. She forgot to take it back. The bag was left in the same

compartment. She tried to look for that laptop, but it was not found and therefore she lodged the complaint of theft.

3. The case of the Investigating Agency is that they examined the CCTV footage and it was found that the Applicant had got down from that local train carrying two bags, and the investigating agency suspects that in one of the bags the same laptop was kept. Therefore, they want to arrest the Applicant. On the first occasion, the Applicant was protected by an ad-interim order dated 17th January 2024 with directions to attend the Police Station on particular dates as and when called. Even thereafter, similar order was passed on 14th June 2024 whereby he was directed to attend the Police Station on three days and thereafter as and when called.

4. Learned counsel for the Applicant submits that he had not taken the laptop. He has no antecedents. The investigating agency is investigating only on the basis of vague suspicion.

5. Learned APP on instructions submitted that on all these dates the Applicant had attended the Police Station, but he had not co-operated with the investigation and had not produced the laptop.

6. I have considered these submissions. The allegations against the Applicant are quite vague. The CCTV footage which shows that the Applicant had got down with two bags is vaguely suspicious. In spite of that, the Applicant was directed to attend the concerned Police Station at least on five particular dates and besides that as and when called. The Applicant had attended the concerned Police Station on all five dates. He was not called to the Police Station on any other dates. In spite of such attendance, the investigating agency could not make any further progress in connecting the evidence with the missing of the laptop. It is futile to permit the investigating agency to have the custody of the Applicant because his stand has been consistent that he has not taken the laptop.

7. In any case, the Applicant does not have any antecedents. There cannot be any pre-planning in the present offence. It was by coincidence, that the laptop was forgotten by the first informant. Therefore, the case does not travel beyond the vague suspicions against the present Applicant. Even otherwise the offence may not fall under the definition of 'theft' as per section 378 of I.P.C. At the highest it can be offence u/s 403 of I.P.C. with reference to the illustration given under that section. It is a bailable offence.

8. In this background, the custody of the Applicant is not justified. He can be protected under section 438 of Cr.P.C. All these observations are made for the purposes of deciding this application only.

9. Hence, the following order:-

ORDER

(i) In the event of his arrest in connection with C.R.No.1307/2023 registered with Borivali Police Station, Mumbai, the Applicant is directed to be released on bail on his executing PR bond in the sum of Rs.30,000/- (Rupees

thirty Thousand Only) with one or two sureties in the like amount.

(ii) The Applicant shall attend the concerned Police Station as and when called and shall cooperate with the investigation.

(iii) The Application is, therefore, disposed of.

(SARANG V. KOTWAL, J.)