

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

Anticipatory Bail Application No.2075 of 2024

Krishnakumar Kashiram Yadav

Aged :38 years Occ: __

R/a chawl No.2, Room No.6,

Balyari Gaon, near Water Tank,

Titwala (East) Kalyan

... Applicant.

Vs.

The State of Maharashtra

(through Sr. Inspector of Police

Waliv police station, Palghar)

... Respondent.

Mr Akhlak Khan a/w Aman Kothari for the applicant.

Mr Swapnil Pednekar APP for Respondent/ State.

PSI Kirankumar Thombare Waliv police station is present.

Coram : R.N.Laddha, J.

Date : 13 August 2024.

P.C. :

Heard learned Counsel for the parties.

2. The applicant, who is apprehending arrest in CR No.225 of 2024, registered at Waliv Police Station, Mira-Bhayander, Vasai-Virar, for the offences punishable under Sections 392 read with 34 of the Indian Penal Code has filed

this application seeking bail in anticipation of arrest.

3. It is the case of prosecution that on 9 April 2024, the informant riding a scooty near Varun Industries received a phone call. While attending the call, the co-accused riding a black Pulsar motorcycle approached from the behind. The pillion rider, Sandip Chavan, snatched a golden chain from the informant's neck and fled. The chain was then handed over to the applicant who sold it. The proceeds were shared with the co-accused who snatched the chain.

4. Mr Akhlak Khan, the learned Counsel appearing on behalf of the applicant, submits that the allegations in the FIR do not substantiate the charge of robbery under Section 392 IPC against the applicant. He submits that the essential elements of robbery, as defined in Section 390 IPC, are absent. The allegations in the FIR are implausible and lack concrete evidence linking the applicant to the crime, except for a vague claim that the applicant sold the stolen good.

5. On the other hand, Mr Swapnil Pednekar, the learned Additional Public Prosecutor representing the respondent/ State, asserts that there is sufficient material to support the allegations against the applicant, including knowingly

receiving and selling the stolen chain and sharing the proceeds with the co-accused. The co-accused have criminal antecedents and that the applicant, despite being granted interim protection, failed to cooperate with the investigation. The investigation is at a nascent stage and the custodial interrogation of the applicant is necessary.

6. It is a settled position in law that the power to grant anticipatory bail is extraordinary. While it has been acknowledged in many instances that regular bail is considered a general rule, the same analogy cannot be applied to anticipatory bail. The decision to grant anticipatory bail must be exercised with careful and prudent discretion by the Court, considering each case's specific circumstances. A straight jacket formula cannot be applied. While exercising this power, the Court must exercise caution, as granting protection in serious cases could potentially lead to a miscarriage of justice or hinder the investigation by allowing tampering or destruction of evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in *Shrikant Upadhyay & Ors. v. State of Bihar & Anr.*¹

1 2024 SCC OnLine SC 282.

7. After reviewing the records, it appears that the investigation is still in its preliminary phase. Prima facie, there is material available on record suggesting that co-accused Ashok received the chain from Sandeep, who had snatched it and then handed it over to the applicant for sale. The applicant sold the chain and retained a portion of the proceeds from the sale. The property is yet to be recovered. Given the severity of the offence, a detailed investigation is necessary. Since the investigation is at a nascent stage, the custodial interrogation of the applicant would be necessary.

8. In view of the above, the application stands rejected.

[R. N. Laddha,J.]