IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.2146 of 2024

Hiteshkumar Pukhraji Jain
Age:44, Occ: Business,
Presently residing: A Mehta
mention, 2nd floor, Room No.41,
Near Bharatmata Cinema,
Dr BA Road, Lalbaug, Mumbai 12.
Address: 28/38 Vithalwadi
2nd floor, Shop No.43, LL Market,
Kalbadevi, Mumbai 400002. … Applicant

Versus

The State of Maharashtra
(Vide its CR No.567 of 2024
Registered at LT Marg Police Station) … Respondent

Mr Sanad Desai i/by Ashok Bagal, for the applicant.
Ms Supriya Kak, APP, for the respondent/ State.
PSI Kalidas Dhaware, LT Marg Police Station, Mumbai, is present.

Coram: R. N. Laddha, J.
Date: 23 September 2024

P.C.:

By this application, the applicant seeks pre-arrest bail in connection with CR No.567 of 2024, registered at LT Marg Police Station, Mumbai, for offences punishable under Sections 409 and 420 of the Indian Penal Code (IPC).

2. The prosecution alleges that the applicant approached the informant, a gold trader, to purchase gold and gold ornaments for resale. On 12 January 2024, the informant entrusted the applicant with 362.210 grams of 18-carat pure gold valued at Rs.18,35,000/- and gold ornaments weighing 286.720 grams, on a 15-day credit line. The applicant acknowledged receipt by signing a transaction memo and providing photocopies of his Aadhar Card and PAN card. When the payment was due on 27 January 2024, the applicant failed to pay and promised to return the gold items within eight days. However, after the extended deadline, the applicant neither paid the money nor returned the gold items, thus misappropriated them. Additionally, the informant discovered that the applicant had similarly cheated another businessman, misappropriating 488.910 grams of gold worth Rs.31,30,000/-. These events led to the filing of the FIR.

3. Mr Sanad Desai, the learned Counsel appearing on behalf of the applicant, contends that the conflict originated from a business transaction between the applicant and the informant. The learned Counsel highlights a significant delay of 158 days in lodging the FIR, and points out that the allegations do not meet the criteria of Sections 409 and 420 of IPC. Mr Desai asserts the applicant's innocence and claims that the applicant has been falsely implicated in the present crime.

4. Conversely, Ms Surpriya Kak, the learned Additional Public Prosecutor representing the respondent/ State, contends that the applicant persuaded the informant to hand over the gold articles and then dishonestly misappropriated them by refusing to pay or return them. Additionally, there was no delay in filing the FIR, as the informant had submitted a written complaint on 12 February 2024, and the FIR was lodged on 5 July 2024. The learned APP states that the applicant only visited the police station superficially and assured the investigating officer that he would visit his office after a week. However, to date, the applicant has not visited the police station or cooperated with the investigation, making his custody necessary.

5. After perusing the records, it is evident that there was an agreement for the sale of gold between the informant and the applicant, with the incident taking place in January 2024. The applicant is accused of misappropriating the gold items that were entrusted to him for sale to other buyers. The allegations in the FIR clearly indicate the applicant's involvement in the crime. At first glance, the applicant appears to have benefited from the transaction. The informant made several demands for the applicant to either pay or return the gold items, but the applicant refused each time. The informant filed a written complaint with the police in February 2024, but the authorities took no cognisance of the complaint until July 2024. The investigation is

still ongoing, and the gold items have not yet been recovered. Moreover, the applicant has not made himself available for the investigation, deeming his custody necessary.

6. In the totality of the circumstances, I am not inclined to accede to the submission on behalf of the applicant that no offence under Sections 409 and 420 of IPC are *prima facie* made out. In case of this nature, the custodial interrogation of the applicant becomes essential to unearth the truth in all its facets. The possibility of there being similarly circumstanced victims is also eminent. The release of the applicant on pre-arrest bail would jeopardise the course of effective investigation. I am, therefore, not inclined to exercise the discretion in favour of the applicant. As a result, the application stands rejected.

7. It is clarified that these *prima facie* observations are confined to determining the applicant's entitlement to pre-arrest bail only.

(R. N. Laddha, J.)