

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2685 OF 2024

Vaibhav Adinath Kadam

...Applicant

Versus

State Of Maharashtra

...Respondent

Mr. Manoj Mohite, Senior Advocate i/b. Adv. Suvarna Yadav, Advocate
for the Applicant.

Mr. Nitin Patil, APP for the State.

Mr. Rakesh Bhatkar, Advocate for Respondent No.2.

Mr. R. K. Shaikh, API Pydhonie Police Station present.

CORAM : RAJESH S. PATIL, J.

DATED : 18 FEBRUARY 2025

P.C.:

1. The present Application is filed by the Applicants under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [corresponding Section 438 of Cr.P.C], for anticipatory bail in connection with C.R. No. 0639 of 2024, dated 26 July 2024, registered with Pydhonie Police Station, District Brihanmumbai, under Sections 409, 420 read with Section 34 of the Indian Penal Code.

2. It is the prosecution's case that the complainant, Nilkanto Roy, filed the present F.I.R. on 26 July 2024. The complainant alleges that he is engaged in the business of gold ornaments, and Accused No. 1, Vaibhav Kadam, is also involved in the business of gold jewelry. Accused No. 2, Ansul Islam Shaikh, is the manager of Accused No. 1, Vaibhav Kadam. It is further alleged in the F.I.R., as well as in the statement attached to it, that the complainant was to provide gold ornaments to the Applicant/Accused, and in return, the Accused was to hand over gold biscuits to the complainant. However, gold weighing approximately 430.00 grams, with a market value of around Rs. 26,00,000/-, was not delivered by the Applicant/Accused to the complainant.

3. The Anticipatory Bail Application filed by the present Applicant/Accused No.1 was rejected by the Sessions Court on the ground that there was certain cheques exchanged between the Complainant and the Accused No.1/Applicant, by which it can be derived that certain amount was payable by the Applicant. So also on the ground that the Applicant has changed his business address and his residential address, and further that the Applicant is not responding to notice issued under Section 41A fo the Cr.PC.

4. On behalf of the Applicant, it has been submitted that both the parties are engaged in the business of gold ornaments. The allegations made in the complaint are unsubstantiated, as there is no documentary evidence provided by the Informant to prove that the Applicant was required to return 430.00 grams of gold, valued at Rs. 26,00,000/-, to the Complainant. There are no antecedents of the Applicant. At page 48 of the present Application, a list is provided indicating that gold weighing approximately 2 Kg has been returned to the Complainant. At page 44 and 45, evidence of an online payment of Rs.14,73,750/- made to the Complainant is shown. The Applicant is ready to cooperate with the Investigating Officer. Therefore, the custody of the present Applicant is not necessary. The Applicant is also willing to provide his address to the Investigating Officer.

5. Mr. Rakesh Bhatkar, the learned Advocate for Respondent No.2 submits that cheques were handed over by the Applicant as security, which itself shows that the amount was payable by the Applicant to the Complainant. He further submits that a witness statement attached to the present F.I.R. by the police reveals that the Applicant has engaged in similar transactions with another

individual as well. Therefore, the custody of the Applicant is necessary, as he has not provided his address to the Investigating Officer.

6. The learned APP submits that the Applicant is not cooperating with the police. His address appears to be frequently changing, as he previously conducted his business in Pydhonie but has now shifted to Kalamboli. As a result, it has become difficult to record Applicant's statement. Hence, the custody of the Applicant is necessary.

7. I have have heard the learned Advocate for the parties, according to me, this is a purely civil transaction between the parties. Since, there is no documents on record to substantiate that an amount of 430.00 grams of gold, valued at Rs.26,00,000/-, was payable or handed over by the Applicant to the Complainant. Though cheques were handed over by the Applicant to the Complainant, these cheques were blank and provided only as security. Since cheques are blank and have not been presented to the bank, they cannot be construed as an admission of any liability on the part of the Applicant towards the Complainant. Additionally, there are no antecedents against the present

Applicant.

8. I specifically inquired with the APP, as well as Mr. Bhatkar, the learned Advocate for Respondent No.2, regarding the reference to Whats app chats mentioned by the Sessions Court in its order 31 August 2024 mentioned (paragraph No.6) as a basis for rejecting the Anticipatory Bail Application of the present Applicant. However, neither APP, on instructions of the officer present in the Court, nor Mr. Bhatkar, on instruction of the complainant present in the Court, could produce any WhatsApp messages from which it could be concluded that an amount of Rs. 26,00,000/- is payable by the Applicant to the Informant.

9. In such a situation, according to me, a case is made out for granting Anticipatory Bail Application.

ORDER

(a) **The Anticipatory Bail Application is allowed.**

(b) In the event of arrest of the Applicant C.R. No. 0639 of 2024, dated 26 July 2024, registered with Pydhonie Police Station, District Brihanmumbai, under Sections 409, 420 read with Section 34 of the Indian Penal Code, the Applicant shall be released on bail furnishing P.R. bond to the extent of Rs.30,000/-

with one or more sureties of the like amount.

(c) The Applicant shall co-operate with the investigation and attend the investigating officer of the concerned police station on 25 February 2025 between 11.00 a.m to 1.00 p.m., as and when called.

(d) The Applicant shall not directly or indirectly make any inducement, threat or promise to victim and to any person acquainted with facts of case so as to dissuade him/her from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(e) The Applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(f) The Applicant and his surety shall provide their respective mobile numbers, e-mail address and documents pertaining to the place of residence.

10. In view of the above, **the present Anticipatory Bail Application is disposed of.**

(RAJESH S. PATIL, J.)