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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3578 OF 2024

**Aafreen Mehmood Shaikh
@ Aafreen Samir Khan**

..... Applicant

VERSUS

State of Maharashtra

..... Respondent

Mr. Shadab Khopekar for the Applicant.

Mr. Anand S. Shalgaonkar, A.P.P. for the State.

Mr. Pravin Yadav, PSI, MIDC Police Station present.

CORAM : RAJESH S. PATIL, J.

DATE : 18th FEBRUARY, 2025

P.C. :-

This application is filed for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with FIR No. 0744 dated 14th November, 2024 registered with MIDC Police Station, Brihanmumbai Shahr for the offence punishable under Sections 316(4) and 318(4) of the Bharatiya Nyaya Sanhita, 2023.

2. By an order dated 3rd January, 2025, the present applicant/lady who is accused no.2 was granted protection. For ease of reference, the said order is referred hereinbelow :-

1. *Heard Mr. Khopekar, learned Advocate for Applicant; Ms.Bajoria, learned APP for Respondent – the State of Maharashtra and Mr. Netto, learned Advocate for Intervenor.*

2. *Application is filed by Accused No.2 who is the wife of Accused No.1. There are in all five Accused. Accused Nos.3 and 4 are the brother and sister-in-law of Accused No.1. Accused No.5 is the mother of Accused No.1. Allegation is made by the Complainant which is very popular Company dealing in gold and diamonds called Malabar Gold and Diamonds Limited. Complaint is filed on 14.11.2024 which states that during the daily audit it was noticed that one 8 gram 24 carat gold coin valued at Rs.59,753/- was missing. Audit of the stock was undertaken and it was realised that Accused No.1 whose name is Samir Yusuf Khan was working since the year 2015 and at the time of incident he was the head / General Manager, Sales of the Company in its E-Commerce Department of the Sales.*

3. *Prosecution case is that Accused No.1 had the power to refund the value of the gold coins which were returned back to the Company which were purchased through its E-Commerce website. The Company undertook a detailed stock audit and realised that in the previous four years, value of gold coins worth more than Rs.30,00,000/- as stated in the Remand report has been tampered with by Accused No.1. According to Complainant the value is Rs.50,00,000/-. In effect, the case is that the other four Accused have in conspiracy and collusion with Accused No.1 purchased gold coins from the Company's website in their names and they used to claim refund without returning back the said gold coins in collusion with Applicant's assistance since he was the incharge of its E-Commerce website and had power to give the refund. In so far present Applicant before me is concerned, who is wife of Accused No.1, she is involved in transaction of two such gold coins.*

4. *Mr. Khopekar would submit that Applicant before the*

Court is a housewife and she is having a nine month old girl child. The child's birth certificate is appended to the Application. He would submit that if the First Information Report is perused and further Remand report is seen by the Court, it would be evident that there is no role attributable to Applicant before me. Needless to state that he would concede that she was instrumental in purchasing two gold coins and in all probability may have received the refund to that extent but she will cooperate with the Investigating Agency and be honest in her co-operation and submissions to them if granted Anticipatory Bail. He would urge the Court that in view of the Applicant requiring to provide care and support for her nine month old girl child and in the fact that other family members i.e. Accused Nos.3 to 5 have also not presented themselves before the prosecuting Agency, this Court be pleased to consider the present Application on humanitarian grounds in view of the grounds expressed in the Application.

5. *I have heard Mr. Khopekar, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent – the State of Maharashtra. The probability of involvement of the other three Accused namely Accused Nos.3 to 5 undoubtedly cannot be ruled out considering that they have not even presented themselves and as informed by prosecution, they are absconding. The Applicant because of requiring to provide care and support for her nine month old girl child has come before the Court by way of present Application. I am inclined to therefore accept the submissions made by Mr. Khopekar without dismissing any of the submissions made by Mr. Netto for Complainant as also by Ms. Bajoria. I am informed by Ms. Bajoria that investigation is still under progress and there is likelihood that there may be other persons involved who have claimed such refunds through Accused No.1 also that investigation can undoubtedly go on.*

6. *In the present case, when the Application is seen and as stated in the ground (e) of the Application that Applicant is having a nine month old girl child and she has to provide care for her, however as stated in the Index of the Application at serial No.5 at Exhibit-C 'Copy of Notice under Section 35(3) of BNSS and Birth Certificate of Minor Child' is annexed at page No.22. Mr. Khopekar has argued that Birth Certificate is annexed*

to the Application, however when page No.22 is seen Birth Certificate is not annexed. It was the duty of Mr.Khopekar to point it out when the matter was heard. This Court reposes trust in the Advocates when they make such statements across the bar. I have repeatedly scanned through the entire Application several times to see if the Birth Certificate is annexed hereto. Save and except reflecting that Birth Certificate of minor child is at page No.22 in the Index of the Anticipatory Bail Application, copy of the same is infact not annexed.

7. *At page No.22, copy of 'BNSS Notice' dated 15.11.2024 is annexed. That notice calls upon the Applicant to remain present for investigation before the Investigating Authority. It also states that if the Applicant has any difficulty, she can inform the same to the concerned Authority on his phone number as stated in the said notice. Mr. Khopekar specifically informed me while arguing that Birth Certificate is annexed to the Application I believed him. In the present case it is seen that the entire family of the original Accused and Applicant before me are involved.*

8. *Ms. Bajoria has already argued that Accused Nos.3 to 5 who are family members are absconding which is recorded hereinabove. Hence, this Court will have to be extremely cautious before granting Anticipatory Bail to the present Applicant. The above fact of Birth Certificate not being annexed to the Application came to my knowledge only at the time of passing this order when I looked for the same in the Application. Conduct of the Advocate for Applicant is deprecated by the Court. He may be right that Applicant is having a girl child who is nine month old but when this matter was argued before me, I specifically asked him and he informed me that Birth Certificate is annexed to the Application.*

9. *The Birth Certificate was the only means of knowing and proving whether the Applicant has a nine month old girl child. Since it is found not to be annexed, this Court has no means to confirm the above fact. In view of the above, Applicant is directed to place Birth Certificate of the nine month old girl child on record in support of her case for consideration on the next date. No coercive steps in the meanwhile be taken against the Applicant due to her nine month old girl child. In the present crime apart from the main Accused who is the husband of the*

Applicant, his brother – Wasim Khan, brother's wife – Alfiya Khan, his mother – Shehnaz Khan, his sister – Saba Khan and his relatives namely Sakina; Hussain; Muskan; Mumtaz; Atif; Sarah; Rubina; Nisha; and Sahara Shabbir are all involved who have placed order for gold coins purchased from the Company. In that case investigation is in progress.

10. It is further seen that gold coins have been sold by either main Accused or any of the Accused named above who did not return them to various jewellers out of whom four such jewellers known to them are Mr. Mayank Ashok Bohra; Mr. Kirit Trivedi; Mr. Sheshan Rupesh Patwari and Mr. Ashokumar Amrutlal Jain and investigation is in progress in that regard also. In view of the above, and because involvement of all the family members of Accused No.1 who are related to Applicant also, if Anticipatory Bail is granted to the present Applicant then other family members will also seek parity, all of whom who are Accused and at present absconding as on date. Hence, Investigating Officer shall confirm the fact that Applicant has a nine month old girl child to whom she is required to provide care and support by deputing a lady Police Officer who can ascertain and confirm the above fact and file report so that this Court can consider Applicant's case further.

11. Stand over to 17th January, 2025.

3. The learned A.P.P. submits that the present applicant has co-operated and has attended the police station and her statement has been recorded and the documents which the Investigating Officer sought for was handed over by the present applicant.

4. The learned A.P.P. submits that the applicant is lady whose child is of one year old and her husband, the accused no.1 is

already in custody. As of now, her custody would not be required.

5. In such a situation, a case is made out to allow this anticipatory bail application. Hence, the following order :-

ORDER

(a) **The anticipatory bail application is allowed.**

(b) In the event of arrest in connection with FIR No. 0744 dated 14th November, 2024 registered with MIDC Police Station, Brihanmumbai Shahar for the offence punishable under Sections 316(4) and 318(4) of the Bharatiya Nyaya Sanhita, 2023, the applicant shall be released on bail, on furnishing P.R. bonds 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, as and when called.

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

(e) The applicant shall furnish details of his residential addresses, contact numbers and e-mail addresses to the Investigating Officer.

6. The anticipatory bail application is disposed of.

[RAJESH S. PATIL, J.]