

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 407 OF 2025

Vijeta Ravi Maheshkar

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Ganesh Gupta a/w Mr. Sahil Ghorpade, Mr. Surya Gupta, Mr. Madan Khansole & Ms. Priyanka Rathod i/by G.G. Legal Associates, Advocates for Applicant
- Mr. Hitendra J. Dedhia, APP for Respondent - State
- Mr. Inamdar, PSI, Kalachowki Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 30, 2025

P. C.:

1. Heard Mr. Gupta, learned Advocate for Applicant and Mr. Dedhia, APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "**BNSS**") in connection with C.R. No. 115/2024 registered with Kalachowki Police Station, Mumbai for the offences punishable under Sections 457, 380 & 413 of the Indian Penal Code, 1860 (for short, "**IPC**").

3. First informant filed the FIR on 09.05.2024. The case of prosecution is that when first informant had gone to his village on 06.05.2024 along with his family, he had kept cash amount of Rs.

1,75,000/- along with gold ornaments of his mother, wife and daughter in a steel cupboard on the mezzanine floor of his rented premises. The case of prosecution is that on 09.05.2024 at about 4.33 p.m., informant received a call from his neighbour who informed him that his house had been broken into and there was a possibility of theft. First informant returned and found that cash amount along with gold ornaments were missing from the cupboard. He checked the CCTV footage and identified accused No. 1 i.e. Krushna Ravi Maheshkar having entered his house and filed the complaint. Applicant is mother of said Krushna Ravi Maheshkar. *Prima facie* there is no direct evidence or any incriminating material to show nexus of Applicant to the crime in question. Case of prosecution against Applicant is that in the confessional statement accused No. 1 - Krushna Maheshkar has stated that he handed over the gold ornaments to the Applicant i.e. his mother. Investigation is completed. It is seen that *prima facie* accused No. 1 - Krushna Maheshkar has been spotted in the CCTV footage having carried out theft in the premises of first informant. His statement was recorded on 13.05.2024. He has stated in his statement that he handed over the gold ornaments to his mother after committing the crime. His mother is the Applicant before me. He has also stated in his statement that he kept the stolen gold ornaments with one of his relative named Sumita

Maheshkar. Prosecution has recorded the statement of the said Sumita Maheshkar which is appended at page No. 35 of the Application. In that statement, she has stated that Krushna (accused No. 1) along with his mother met her on 11.05.2024 in front of Laxmi Building, Byculla and both of them requested her that she should keep the gold ornaments which were in their possession and handed over gold ornaments to her. In that statement, the said witness Sumita has stated that Krushna was a habitual offender and he used to keep stolen property with his mother i.e. Applicant. This is the material with the prosecution against Applicant. The said ornaments have been retrieved and recovered from the said witness Sumita Maheshkar by the prosecution.

4. It is *prima facie* seen that accused No. 1 Krushna Maheshkar is enlarged on bail by learned trial Court despite he having 20 criminal antecedents of identical nature to his discredit. Save and except confessional statement of accused No. 1 - Krushna and witness statement of Sumita Maheshkar, there is nothing placed on record by prosecution *prima facie* showing complicity and nexus of Applicant in present crime. Admittedly, it is seen that crime / offence was carried out by accused No. 1 and present Applicant was nowhere in the picture. Her indictment is solely based on the confessional statement and witness statement and there is nothing incriminating which has

been placed on record to corroborate the said accusation of prosecution.

5. It is borne out from the record that there was a previous enmity between the said witness Sumati Maheshkar and present Applicant who are close relatives. The said witness Sumati Maheshkar has not been arraigned as accused despite she having kept the stolen ornaments with her until they were retrieved and recovered from her custody and possession. It is *prima facie* seen that present Applicant had previously lodged FIR against sister of the said witness Sumati Maheshkar at Agripada Police Station in which present Applicant is a witness and therefore it is argued by Mr. Gupta that it cannot be ruled out that the said witness Sumati Maheshkar has implicated present Applicant in the crime because of grudge against her. It is seen that if admittedly the said witness Sumati Maheshkar was in possession of the stolen gold ornaments, then her role in the present crime also becomes complicit, however she has not even been arraigned as accused.

6. Mr. Gupta has placed reliance of the decision of the Orissa High Court in the case of *Kotta Gopinarayan Choudhary v. State of Orissa*¹ with respect to application of provisions of Sections 411 and 413 of IPC, *inter alia*, pertaining to dishonestly having received the stolen

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property and habitually dealing in stolen property. He would submit that none of the ingredients of the provisions of Section 411 are attracted against the Applicant in dishonestly having received the stolen property since admittedly according to prosecution case, the crime in question has been carried out by accused No. 1 - Krushna and recovery of the property has been made from the prosecution witness Sumati Maheshkar and therefore neither provisions of Section 411 nor 413 are directed against Applicant. Even otherwise on parity with principal accused Krushna who committed the crime and has been enlarged on bail and considering role attributed to present Applicant as alleged by prosecution which is far lesser in comparison with role of principal accused Krushna, I am inclined to release the Applicant on bail. In that view of the matter, further custody of Applicant in jail is not required. She can cooperate with investigation as and when called for.

7. In view of my above *prima facie* observations and findings and more specifically on the ground of parity since principal accused No. 1 who carried out the crime has been enlarged on bail by Trial Court, accused No. 2 i.e. present Applicant can be released on bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs. 15,000/- for her release immediately and file undertaking that she will provide one or two sureties in the like amount of Rs. 15,000/- within a period of four weeks after her release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before her actual release from jail, Applicant shall furnish her address where she proposes to reside after her release from jail to the concerned Police Station and also to the trial Court;
- (iv) After her release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark her presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if she does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

8. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

9. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]