IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1377 of 2014

Aihaana Achariya Sharma .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.V.G.Pradhan, Sr. Advocate i/b Mr.Ramprasad Vishwanath Gupta, Advocate for the applicant.

Mr.B.B.Tiwari i/b BBT Legal for the original complainant.

Mr.S.K.Shinde, Public Prosecutor with Mrs.P.P.Shinde, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 12th JANUARY 2015.

P.C. :

1 Heard Mr.V.G.Pradhan, learned Senior Advocate for the applicant. Heard Mr.S.K. Shinde, learned Public Prosecutor for the State. Heard Mr.B.B.Tiwari, learned counsel for the First Informant who was permitted to intervene in the matter and oppose the application.

2 The applicant is sought to be arrested in C.R.No.123/13 registered at Amboli Police Station, Mumbai. The said crime report is in respect of offences punishable under sections 406 IPC, 420 IPC, 465, 467 and 468 of the IPC. The

applicant had applied for Anticipatory Bail, but her application was rejected by the Court of Sessions by an order dated 17th January 2014. The applicant then approached this Court for Anticipatory Bail, but that application – being ABA No.127/14 – was also rejected by this Court by an order dated 5th May 2014 (Coram Mrs.Mridula Bhatkar, J). It appears that the applicant somehow was not arrested even after the rejection of the Anticipatory Bail Application, and therefore, got an opportunity to move another application for Anticipatory Bail. This application – being Anticipatory Bail Application No.688/14 – was also rejected by this Court by an order dated 28th June 2014 (Coram Mrs.Mridula Bhatkar, J). This Court, while rejecting the said application observed that there had been no change in the circumstances since the rejection of the applicant's previous application for Anticipatory Bail.

3 It is under these circumstances that the applicant has moved this Court once again by the present application, which is styled as an application for surrendering herself before the Court and for bail.

4 Since the applicant had not been arrested and since she wanted to surrender herself before this Court and seek bail under the provisions of section 439 of the Code of Criminal Procedure, the maintainability of the application as has been made, was doubted. Whether the applicant could surrender before this court, or whether she was necessarily required to surrender herself before the Magistrate, needed consideration. The learned counsel for the applicant, in that regard, relied on a

decision of the Supreme Court of India in the case of **Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 Supreme Court, 1745.** After considering the observations made by Their Lordships of the Supreme Court of India in the said decision, it appears permissible for a person who is yet to be arrested, to surrender before a Court – even this Court – and seek bail on the basis that the surrender by such person before the Court, amounts to his being in custody. Since it could not be pointed out that the application as has been filed is not maintainable, I have considered the same on merits.

5 The First Information Report has been lodged by one Smt.Ann Langa. The case as made out in the FIR is, briefly, that the First Informant owned some land and house property, a cottage where she had been residing with her two daughters. That the applicant was, for some period, staying as a Paying Guest in the house of the First Informant. That, some time in the year 2007, the applicant got married to one Amit Kulkarni – a co-accused in this case who is absconding – whereafter the applicant left the cottage of the First Informant, and went to reside with her husband. She, however, maintained her contacts and good relations with the First Informant and her friends i.e. the other paying guests who had continued to stay in the First Informant's cottage. That, the applicant used to visit the First Informant's cottage occasionally to meet the First Informant and her friends. That, the First Informant and her daughters were contemplating repairs to their cottage. That, the applicant told the First Informant that her husband knew much about construction work, redevelopment etc, The husband of the First Informant - Amit

Kulkarni - then told the First Informant that instead of wasting money on the repairs of the old cottage, it would be advisable to undertake a redevelopment project. Amit Kulkarni also represented to the First Informant that he would be able to secure all the NOCs from different bodies, Tribunals and would also obtain TDR for the redevelopment. He also gave the estimate of the expenses involved towards such redevelopment. That, as the First Informant had faith and trust in the applicant, she decided to get the work of redevelopment done from Amit Kulkarni, the husband of the applicant.

The FIR then gives the details of various amounts paid by the First Informant and her daughter Smt.Prerna to the said Amit Kulkarni, the applicant and to one Smt.Usha Kulkarni – mother of Amit Kulkarni to meet the expenses that would be required to be incurred for the redevelopment.

6 According to the version in the FIR, the husband of the applicant actually tendered and got sanctioned a plan for the construction of a building consisting of ground plus one floor, but falsely represented to the First Informant that a plan in respect of a building having ground plus six floors, had already been got sanctioned by him from the Municipal Corporation. When this was verified by First Informant's daughter by visiting the office of the municipal corporation, it was revealed that no such plan had been sanctioned. That, when the First Informant and her daughter made inquiries with the said Amit Kulkarni in that regard, he gave evasive replies. The amounts paid to him, his mother and the applicant have been misappropriated.

7 It is on these allegations that the applicant and the other accused are alleged to have committed the offences of criminal breach of trust, cheating, forgery, forgery for the purpose of cheating, etc.

8 A bare reading of the FIR shows that it is **not** the case of the First Informant that the applicant had made any representation to her. It is **not** the case of the First Informant that it was the applicant who was supposed to get the redevelopment work done. It is clear that the applicant came in picture only because Amit Kulkarni is her husband.

9 Though this is clear from the FIR, and though this is reflected even in the order passed by the Court of Sessions while rejecting the applicant's application for Anticipatory Bail, an attempt has now been made to show that the applicant was also involved in the alleged misrepresentation and cheating. A claim is made that the applicant was also a party to the inducement that was offered to the First Informant. However, this vague claim made in the course of oral submissions is without any support from the FIR, or any other material that has been collected in the course of investigation.

10 It may be observed in this context, that while going through the papers of investigation, a letter written by Smt.Prerna, daughter of the First Informant, delivered to the Amboli Police Station on 30th April 2013 i.e. a few days before the registration of the FIR, is noticed in the papers. In this letter, there is no

allegation at all against the applicant. The allegation is only against the said Amit Kulkarni who has been mentioned as the husband of 'our family friend Aihaana Acharya'. There is a categorical assertion in this statement that the said Amit Kulkarni had been taking money from the First Informant and her daughter from time to time during the period from July 2009 to January 2013. Thus, the claim that the applicant also made some false representations to the First Informant or that she, at any time, suggested that she would carry out the redevelopment work, cannot be accepted.

11 It is clear that the applicant is sought to be involved in the matter only on the basis that some of the amounts which were paid by the First Informant were credited in the bank account of the applicant. Though there is some dispute about the exact amounts that were credited in the bank account of the applicant, the fact that applicant's account was indeed credited by the First Informant and her daughter from time to time by advancing huge sums of money, cannot be disputed. Thus, it is on the basis that a part of the amount dishonestly obtained by the applicant's husband on the strength of false representations allegedly made by him to the First Informant, and her daughters, has gone to the applicant, that the involvement of the applicant is being alleged.

12 However, the applicant has been explaining about the receipt of these amounts right since the beginning. According to her, the deposit of the amounts in question in her account was only an arrangement arrived at as per the understanding between the First and her husband. What she categorically states is that

none of these amounts have been actually withdrawn by her, or transferred by her to anyone. According to her, whatever amounts were withdrawn by cheques, were withdrawn by Smt.Prerana, daughter of the First Informant. She has categorically stated that the cheques in question by which the withdrawals were effected have been written by Smt.Prerna; and only the signatures of the applicant had been taken on the cheques which were, at the time of signing, blank. She has denied having withdrawn any money by ATM, and according to her, the ATM card was not with her at all.

13 Now, in spite of such categorical assertion, the Investigating Officer has not attempted to obtain the cheques in question by which the withdrawals have been effected. He has not attempted to verify whether the contention as put forth boldly by the applicant, is true or not. It is submitted before this Court that the applicant had not remained present for investigation/ interrogation, but the record itself shows this contention to be untenable. The applicant has been remaining present before the Court on all dates of hearing, and on a number of occasions, the Court had specifically questioned whether the Investigating Officer wanted to interrogate her, and whether any direction requiring the applicant to attend the police station was needed. Even otherwise, the applicant appears to have attended the police station on a number of occasions. Lastly, it may be observed that for verifying the correctness of the applicant's claim that the cheques by which withdrawals were effected from her account, were not written by her, interrogation of the applicant was not at all necessary.

14 It cannot be overlooked that the husband of the applicant is said to be absconding. It also appears that there exists a *prima facie* case against him. In the light of the fact that in the initial communication addressed to the Inspector of Police, Amboli Police Station, there is not a whisper against the applicant, the possibility that an attempt is now being made to build a case against the applicant only to overcome the difficulties caused by the unavailability of her husband, cannot be overlooked.

15 Since the case against the applicant is based only on the fact that some amounts which were meant to be paid to the husband of the applicant by the First Informant were credited in the account of the applicant, and since the positive version of the applicant as to what had happened to the amounts so deposited has not been verified inspite of getting sufficient time and opportunity to do so, I am inclined to accept the surrender of the applicant, and release her on bail. In any case, the applicant's detention in custody is not essential from the point of view of investigation. Appropriate conditions can be imposed upon the applicant to ensure that the applicant remains available to the Investigating Agency for investigation/interrogation.

16 In the circumstances, the applicant's prayer for surrender is accepted. The applicant is taken in custody, and her custody is handed over to the Investigating Officer S.A.Khanwilkar, who is present in the Court hall.

17 The applicant is ordered to be released on bail in the sum of Rs.50,00/- with one surety in like amount or two sureties in the sum of Rs.25,000/- each, on the following conditions :-

(i) The applicant shall report to the police station on every Monday and Thursday, between 11.00 am to 1.00 pm, until further orders of the concerned Magistrate.

(ii) The applicant shall furnish in writing, the address where she presently resides, to the Investigating officer.

(iii) The applicant shall not change this address without giving a previous notice and without notifying her new address to the Investigating Officer, in writing.

(iv) The applicant shall surrender her passport to the Investigating Officer.

(v) The applicant shall not leave the local limits of Brihan Mumbai, except with the previous permission of the Investigating Officer or the concerned Magistrate.

18 At this stage, on the oral request of the learned counsel for the applicant, it is directed that the applicant may deposit cash of Rs.1,00,000/- (Rupees One lakh) in lieu of surety as a temporary measure for a period of two weeks, within which period the applicant is expected to furnish sufficient and solvent surety/sureties in accordance with this order.

19 Application is allowed in the aforesaid terms.

20 All concerned to act on an authenticated copy of this order.

(ABHAY M.THIPSAY, J)