Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 339 OF 2016

Anwar Hussein Shamshuddin ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. Samir A. Vaidya, Advocate for the applicant.
Mrs. P.P. Shinde, APP for the State.
Ms. Anita Agarwal a/w. Mr. Ajay Daravde, Advocate for the complainant.
Mr. Rajendra Zele, P.I., Nehrunagar Police Station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th April, 2016.**

P.C.:

This Application is moved for pre-arrest bail, as the applicant/accused is facing charges under sections 406, 420 r/w. 34 of the Indian Penal Code in C.R. No. 281 of 2015 registered with Nehrunagar Police Station, Mumbai. The offence is registered at the instance of Sanjay Babu Kamble on 19th October, 2015.

2. It is the case of the prosecution that the complainant wanted to buy the land for his business. Through common friend Mr. Dilip Shah he came in contact with accused no. 1 Sameer Shaikh. In April, 2015, he showed him 15 acres agricultural land and told him that the price of the land is Rs.8,25,00,000/-. Accused no. 1 Sameer Shaikh demanded Rs.2 crores from the complainant as advance. However, the complainant did not have that much amount with him and so he told accused no. 1 that he would

make part payment and remaining amount will be given after getting the documents of the said land and registration of the agreement, which was agreed by accused no. 1. The complainant was suspicious about the credential of Sameer Shaikh, however, Dilip Shah assured him about the honesty of Sameer Shaikh. So, the complainant has transferred thrice by RTGS the amount of Rs.50,00,000/- each and then Rs.44,00,000/-. Thus, the complainant paid Rs.1,94,00,000/- by RTGS to accused no. 1 Sameer Shaikh. Accused no. 1 was supposed to handover the documents of the land and receipts against the money received, however, he did not contact the complainant and thereafter he became unapproachable. He closed his office. On 15th July, 2015 the complainant tried to contact Sameer Shaikh but he was not found, so the complainant went to Union Bank of India at Powai Branch where in the account of Sameer Shaikh Rs.1,94,00,000/- was deposited through RTGS. It was found that out of the said amount, the accused no.1 siphoned the amount in the accounts of various persons and applicant/accused is one of them who has received Rs.17,50,000/- in his account. Thereafter, the information was given to the police and offence was registered.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused has not received any money directly from the complainant. He received the money from Sameer Shaikh with whom he is

having independent transaction of the amount. He further submitted that the entire amount is withdrawn by the applicant/accused, as the police has acted as recovery agent. He further submitted that the Division Bench of this Court in Writ Petition No. 424 of 2016 filed by Alina Sameer Shaikh & Sameer Shaikh by an order dated 10th February, 2016 has directed to police not to take coercive action against Sameer Shaikh. The learned counsel submitted that as principal accused is protected, the applicant/accused is also to be protected. The applicant/accused has also filed Writ Petition before the Division Bench.

4. Learned APP submitted that the amount of Rs.17,50,000/- which was transferred from the account of accused no. 1 in the account of applicant/accused, the said amount is withdrawn immediately and is transferred. The police have frozen the bank account of applicant/accused, however, only an amount of Rs.18,000/- is found in the account. Learned APP submitted that the police requires the custody of applicant/accused to find out the transaction between the applicant/accused and principal accused Sameer Shaikh in respect of amount of Rs.17,50,000/-.

5. Perused the FIR and the order passed by the Division Bench. It shows that the complainant has paid an amount of 1,94,00,000/- to purchase a property from principal accused Sameer Shaikh. Immediately

on the next day he was supposed to handover the documents to the complainant, however, the documents were not handed over. It appears from the FIR that the complainant contacted the applicant/accused and told about the transaction, at that time, applicant/accused assured him and represented that he is a Manager of the proprietary firm Unicorn World Trade. The amount of Rs.17,50,000/- is transferred in the account of applicant/accused from the account of principal accused Sameer Shaikh. As per the case of the prosecution, though the applicant/accused attended the police station on number of days, no explanation has come from him in respect of his transaction with Sameer Shaikh of Rs.17,50,000/-. Under such circumstances, the custodial interrogation of the applicant/accused is required as it is case under section 420 of the Indian Penal Code. Hence the Application for anticipatory bail is rejected.

(MRIDULA BHATKAR, J.)