

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1652 OF 2015

Sayed Karim Shah and Another ... Applicants

vs.

The State of Maharashtra ... Respondent

Mr. Priyatosh Tiwari i/b. Mr. Ashok Saraogi, for the Applicants.

Mrs. S.S. Kaushik, APP for Respondent – State.

Ms. Trupti Shetty, for the complainant.

Mr. N.R. Mahadik (API), Rabodi police station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **29th MARCH, 2016**

P.C.:

. The application is moved for pre arrest bail as the applicants/accused are facing charges for the offences punishable under Sections 420 and 406 read with 34 of the Indian Penal Code in C.R. No. I-318 of 2015 registered with Rabodi police station, Thane. The offence is registered at the instance of one Mouzam Ahmad on 5th October, 2015.

2. It is the case of the complainant he had purchased a flat for Rs. 31,50,000/- from one Ganesh Patil through one Vijay Ghosar.

However, it was purchased on 22nd May, 2011 in the name of Sakib @ Ashraf who is the co-accused in the present crime. In July, 2015 as the complainant was in need of money, he sold the said flat to one person for Rs. 44 lacs. However, the amount of sale was deposited in the account of Sakib @ Ashraf. Out of the said amount, the accused Sakib gave only Rs. 11 lacs to the complainant. However, Rs. 26 were transferred in the account of applicant/accused No. 2 Imran by R.T.G.S. It is the case of the complainant that out of the said transferred amount, Rs. 17 lacs were taken by accused Sakib and accused No. 2 Imran withdrew the remaining amount. It is the case of prosecution that police have collected the statement of bank account of accused No. 2 Imran and it shows that in the month of August, 2015 the amount of Rs. 26 lacs were transferred from the account of applicant/accused No. 1 in account of applicant/accused No. 2 Imran. Thus, the applicant/accused No. 1 helped applicant/accused No. 2 and the amount was withdrawn at the instance of applicant/accused No. 1.

3. The learned counsel for the applicants/accused submitted that the applicants/accused are not involved in this crime. The

applicant/accused No. 1 is the maternal uncle of wife of the complainant. He has helped the complainant earlier for purchasing the flat from the previous owner. It is further submitted that after getting interim protection from this Court, he has attended police station and cooperated the investigating agency. He further submitted that applicant No. 2 has received the amount as there was some other transactions between applicant No. 2 Imran and Sakib @ Ashraf.

4. The learned prosecutor as well as learned counsel for the complainant oppose the anticipatory bail application. The learned counsel for the complainant submits that applicant No. 2 has received the amount of Rs. 26 lacs immediately by R.T.G.S after the amount of Rs. 31 lacs was deposited in the account of Sakib. She further submitted that the account was opened for this purpose only and the entire amount was withdrawn by the accused. The statement of one independent witness is recorded and he has stated that some amount was transferred and withdrawn at the instance of applicant No. 1 Sayed. The learned counsel for the complainant has submitted that it is a conspiracy by all the persons and hence the anticipatory bail to be rejected.

5. Perused the first information report, bank statements and statements of relevant witnesses. From the entries in the bank statements and movement of the money in the account of accused Sakib and applicant/accused No. 2 Imran, it appears that applicant No. 2 Imran *prima facie* is involved in this offence of cheating. His custody is required. So far as the case of applicant No. 1 Sayed is concerned, there is a statement of witness that some amount was transacted as he requested. Considering the role attributed to applicant No. 1 Sayed, his custodial interrogation is not required. In view of the above, I pass the following order:

- a) The anticipatory bail application is partly allowed.
- b) The interim protection granted by an order dated 22nd January, 2016 is hereby confirmed on the same terms and conditions in respect of applicant/ accused No. 1 Sayed.
- c) The applicant No. 1 shall not tamper with the evidence;
- d) The applicant/accused No. 1 shall cooperate with the Investigating Officer and shall attend the concerned police station twice in a week on every Thursday and Saturday between 5.00 pm to 7.00 pm till 30th April, 2016 or till filing of charge-sheet, whichever is earlier.

e) The anticipatory bail application stands rejected in respect of applicant/accused No. 2 Imran.

6. The anticipatory bail application stands disposed of on the above terms.

(MRS.MRIDULA BHATKAR, J.)