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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1510 OF 2017

1] Smt. Urmila Mahendra Shinde
2] Santosh Ashok Kamble … Applicants

V/s.

The State of Maharashtra & Anr. … Respondents

Mr. Rahul S. Kadam for Applicants.
Mr. Ajay Patil, APP for State.
Mr. Ravindra S. Pachundkar a/w Rohit Deshpande for Intervener/Original-Compalinant.

CORAM : A.S.GADKARI, J.
DATE : 6th DECEMBER 2017

P.C.:

1] This an application under Section 438 of Cr. P.C for pre-arrest bail in CR No.161 of 2016 dated 26.4.2016 registered with Dattawadi Police Station, Pune under Section 420 r/w 34 of the Indian Penal Code.

2] Heard the learned Counsel for the applicants, the learned Counsel for the Intervener/Original Complainant and the learned APP for the State. Perused the record.

3] The first information report is lodged by Smt. Alka P. Deshmukh, aged about 62 years. It is stated that, in the year 2014, she retired from her employment. That prior to retirement, she had decided to settle in her future life near her dear-ones and relatives and therefore she requested her brother namely Vilas Deshpande to see a flat/residential premises in good locality at Pune. The applicant No.2/Santosh Kamble was having acquaintance with the brother of the first informant Vilas Deshpande on 15.12.2013 informed him that his aunt namely Smt. Urmila Shinde i.e. applicant No.1 owns a flat bearing Flat No.203 situated at Building No.H-15, MHADA Colony, Parvati, Pune and the same is for sale. The first informant thereafter inspected the said flat. Both the applicants thereafter represented to the first informant that the said flat is free from all encumbrances. It is decided between the parties that the said flat will be sold for a consideration of Rs.24.00 lakhs. That on 18.1.2014 an agreement for sale was executed before the Advocate/Notary Smt. Asha Mahajan. The applicants thereafter represented the first informant that it may take about 6 months period to get the said flat transferred in her name from the MHADA Authority and induced her to part with a payment of Rs.23,50,000/- (Twenty Three Lakhs Fifty Thousand) towards consideration. It is stated that, on 29.1.2014 a Memorandum-Of-Understanding was executed between the parties. The said Memorandum-Of-Understanding was also notorised before the Advocate/Notary Smt. Asha Mahajan. That the actual possession of the said flat was handed over to the first informant. The first informant thereafter on several occasions requested the applicants to transfer the said flat in her name by way of sale deed. However, both the applicants dodged her and gave evasive replies.

It is further stated that, in February 2016 the Police Officer attached to Lashkar Police Station, Pune called the first informant for the purpose of enquiry with respect to the complaint lodged by Janhit Nagari Credit Society. At that time it was revealed to the first informant that, the said flat which was sold by the applicant No.1 to her was already mortgaged her while accepting a loan of Rs.6,25,000/- by a registered Deed of Mortgage bearing No.4023/2004 and the applicant No.2/Santosh Kamble was a guarantor to the said loan transaction. It was informed to the first informant that, the said Credit Society is in the process of attaching the said flat/property in recovery proceedings adopted by it. The first informant therefore realised that the applicants with a view to cause wrongful loss to her made false representation and thereafter induced her to part with the huge amount of Rs.23,50,000/- under the guise of selling the said flat. In the premise the first information is lodged.

4] A bear perusal of the first information report would apparently makes it clear that, though the applicants had already mortgaged the said flat in question with Janhit Co-Operative Credit Society by executing the registered mortgage deed in the year 2004, with a view to cause wrongful loss to the first informant made false representations to her and thereafter sold the said flat to her by accepting huge amount of Rs.23,50,000/-. The record clearly indicates that, before selling the said flat to the first informant, the applicant No.1 though had mortgaged it with the said Credit Society and the applicant No.2 was guarantor to it, did not take prior permission from the said Credit Society

The record indicates that, with due deliberation and with clear intention to commit the act of cheating the applicants have made false representation to the first informant and have accepted the aforesaid huge amount from her. The applicants have induced the gullible first informant to shell out the said huge amount towards consideration of the flat after causing wrongful loss to her and appropriated the said huge amount for their personal use. The amount involved in the present crime is yet to be recovered from the applicants. The record clearly indicates the complicity of the applicants in the present crime.

5] Considering the modus operandi adopted by the applicants, serious allegations against them and the gravity of the offence coupled with the fact that the persons who helped the applicants in preparing the said documents are yet to be traced out, the custodial interrogation of the applicants is imperative.

6] In view thereof, this Court is of the view that the applicants do not deserve to be protected by pre-arrest bail.

Application is accordingly rejected.

(A.S.GADKARI, J.)