

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION No. 1974 OF 2016

- | | | |
|----|---------------------------------|-----------------|
| 1. | Sangeeta Yashwant Chavan | |
| 2. | Nikhil Yashwant Chavan | ... Applicants |
| | Vs. | |
| | The State of Maharashtra & Anr. | ... Respondents |

a/w.

ANTICIPATORY BAIL APPLICATION No. 2050 OF 2016

- | | | |
|----|--------------------------|----------------|
| 1. | Danish Iqbal Karbhari | |
| 2. | Affan Iqbal Karbhari | ... Applicants |
| | Vs. | |
| | The State of Maharashtra | ... Respondent |

WITH

CRIMINAL APPLICATION No. 984 OF 2016

IN

ANTICIPATORY BAIL APPLICATION No. 2050 OF 2016

- | | |
|---------------------------------|----------------|
| Sangeeta Yashwant Chavan & Anr. | ... Intervener |
| in the matter between | |
| Danish Iqbal Karbhari & Anr. | ... Applicants |
| Vs. | |
| The State of Maharashtra | ... Respondent |

Mr. Nilesh Tribhuvann, Advocate for the Applicants in ABA/1974/2016.
Mr. B.P. Pandey i/b. Mr. Vivek B. Pandey, Advocate for the applicants in ABA/2050/2016.
Mr. Prashant Jadhav, APP for the respondent/State in ABA/1974/2016.
Mr. Deepak Thakery, APP for the respondent/State in ABA/2050/2016.
Mr. M.G. Kale, P.S.I., Pimpri Police Station, Pune.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 8th February, 2017.

P.C.:

As the issues involved in these two Anticipatory Bail Applications

are similar, they are heard together and disposed of by a common order.

2. The applicants/accused are prosecuted for the offences punishable under sections 420, 406, 467, 468, 471 r/w. 34 of the Indian Penal Code in C.R. No. 604 of 2016 registered with Pimpri Police Station.

3. It is the case of the complainant Omprakash Majilal Jaiswal, who is working in India Bulls Housing Finance Ltd. that on 13th January, 2016 applicant/accused Danish Karbhari and Affan Karbhari approached the company for loan of Rs.1 crore, as they wanted to buy row house No. 13, Wing C, Prime Villa, Survey No. 53/7, Undri, Taluka Haveli, District Pune. They annexed the original document of the said row house for loan. They also annexed the documents of their business and they are the owners of a land of 300 acres at District Nivale, Tal. Shriwardhan, District Raigarh. India Bulls accepted the proposal and approved loan of Rs.95 lakhs. It was requested by the applicants/accused Karbhari brothers that cheque of loan amount is to be given in the name of Nikhil Yashwant Chavan, other applicant/accused. Thus, on 26th May, 2016 cheque of Rs.94,45,571/- was taken out in the name of Nikhil Chavan of HDFC Bank. The said cheque was credited in that account. As per the loan agreement, Karbhari brothers were supposed to pay E.M.I. of Rs.1,03,013/- p.m. They paid installments till August and thereafter they did not pay the amount. So the

Recovery Officers of the company went to their office, however, they were non-cooperative and stopped paying installments. The Recovery officers visited to the row house which was mortgaged with their company but the house was locked. So they contacted Nikhil Chavan and Sangeeta Chavan, who informed that the said property was not sold to anybody. Thereafter the officers of India Bulls took search of the property and they found that the said house was earlier sold by the applicants/accused Nikhil Chavan and Sangeeta Chavan on 19th May, 2016 to one Bhairavnath Salunkhe, resident of Dhaikar Colony, Mundhwa Road, Pune and thereafter again they have registered one Deed of Assignment with Bhairavnath Salunkhe on 29th June, 2016. Thereafter the said property was mortgaged with Bank of India, F.C. Road Branch, Pune and loan was obtained for Rs.84 lakhs. Thus, the company found that they were deceived by four persons and so the offence was registered against the present applicants/accused. Hence, these Applications for Anticipatory Bail.

4. The learned counsel for the applicants/accused Nikhil Chavan and Sangeeta Chavan has submitted that the applicants/accused are innocent. They are the owners of the property and have not sold this property to either Karbhari brothers or Bhairavnath Salunkhe but they have sold the property to one Manoj Gaikwad on 31st May, 2016 for Rs.1 crore and

Manoj Gaikwad has made payment of Rs.1 crore by cheque to Nikhil Chavan and Sangeeta Chavan. The possession of the said row house is handed over to Manoj Gaikwad. The learned counsel further submitted that the applicants/accused in fact are deceived by way of these two transactions, which took place with Bhairavnath Salunkhe, Danish Karbhari and Affan Karbhari. Therefore, both the applicants/accused, i.e., Nikhil Chavan and Sangeeta Chavan have approached Judicial Magistrate First Class Court Cantonment and filed private complaint bearing No. 956 of 2016 before J.M.F.C. against 11 persons, i.e., Bhairavnath, Danish Karbhari, Affan Karbhari and all the persons who identified the vendors and purchasers. The learned counsel further submitted that the learned Magistrate by order dated 18th November, 2016 has given direction under section 156(3) of Cr. P.C. to Kondhwa Police Station to investigate the matter and pursuant to which, the police are investigating the matter. The learned counsel further submitted that applicants/accused have attended the police station on all the dates as directed by this Court and also have given information to Pimpri Police Station, however, the police do not want to investigate from that direction. It is further submitted that the applicants/accused alongwith Manoj Gaikwad have given application to P.I. Pimpri Police Station, Pune on 5th November, 2016 about the entire fraud. The learned counsel further submitted that the applicants/accused are innocent and in fact they are sufferers.

5. The learned counsel for applicants/accused Danish and Affan Karbhari has submitted that these applicants/accused have entered into bonafide transaction with Nikhil Chavan and Sangeeta Chavan, however, Nikhil Chavan and Sangeeta Chavan have cheated them, as they have already sold that row house to Bhairavnath Salunkhe and also to Manoj Gaikwad. The learned counsel submitted that these two applicants/accused are in fact sufferers because they have obtained loan by mortgaging the said property from India Bulls Finance Co. Ltd. and the applicants/accused have paid two EMIs of the loan amount, however, they stopped paying EMI because Nikhil Chavan and Sangeeta Chavan have deceived them. The learned counsel further submitted that cheque of Rs.94,45,571/- was issued in the name of Nikhil Chavan as directed by them. The said amount was not paid to Karbhari's brothers.

6. Learned APP opposed both the Anticipatory Bail Applications. He submitted that it is well planned fraud. The police wants to investigate the entire fraud and so they require custody of these applicants/accused to find out the roots. Learned APP submitted that the police have recorded the statements of many witnesses till today. The police found that cheque of Rs.94,45,571/- issued by Indian Bulls Finance Co. Ltd. was deposited in the account of one Nikhil Chavan in Pune Urban Cooperative Bank. After investigation, it was found that the account was opened by Macchindra

Pawar in the name of Nikhil Chavan. The cell phone which was used by Macchindra Pawar stands in the name of Manoj Gaikwad. Learned APP submitted that when police enquired about Manoj Gaikwad, he was not traced at his residence and Pimpri Police could not find him. Learned APP submitted that Manoj Gaikwad was not produced before them though the applicants/accused Nikhil and Sangeeta Chavan were on interim pre-arrest bail and have been interrogated by the police. It is further submitted that after recording the statements of bank officials of Pune Urban Cooperative Bank, they found that amount of Rs.40 lakhs were transferred to Cosmos Group holding account in Citibank Vashi opened by Darius Cyrus Watchmaker of Pune and whose statement has been recorded by the police. Learned APP submitted that this statement goes against applicants/accused Danish Karbhari and Affan Karbhari. The statement shows involvement of some other persons and the police wants to investigate on those lines. It is further submitted that out of Rs.40 lakhs, Rs.15 lakhs from Cosmos Group, Citibank was transferred in the name of Danish Karbhari.

7. Heard the submissions of learned counsel of the applicants/accused and the learned APP. After considering the submissions of learned APP and learned counsel for the applicants/accused, it appears that there are counter allegations made by the applicants/accused against each other,

i.e., Nikhil Chavan and Sangeeta Chavan on one hand and Danish Karbhari and Affan Karbhari on the other hand have made allegations against each other. However, there are certain clues as submitted by learned APP disclosing that all these applicants/accused are hand-in-glove and the water is much deeper than what is seen above. *Prima facie* it shows that SIM Card of Macchindra Pawar, who opened the account in April 2016 at Pune Urban Cooperative Bank, stands in the name of Manoj Gaikwad and subsequently on 31st May, 2016 the said row house was sold by Nikhil Chavan and Sangeeta Chavan to Manoj Gaikwad for Rs. 1 crore. It is submitted that the said row house was purchased by Nikhil and Sangeeta Chavan for Rs. 1 crore earlier and they sold this property for Rs. 1 crore to Danish Karbhari, Affan Karbhari, Bhairavnath and Manoj Gaikwad. Moreover, it appears that applicant/accused Nikhil has taken stand that original documents of said row house were lost by him on 6th March, 2016 and he had purchased this row house in September, 2015. I am of the view that the custody of all the applicants/accused is essential to find out how the bank accounts were opened in the name of different persons. Fake sale deed and deed of assignment were registered and loans are obtained from the bank or Finance Company. The conspiracy appearing to be more persuasive and deep. Hence, Anticipatory Bail Applications are dismissed. Criminal Application No. 984 of 2016 is accordingly disposed of.

8. The learned counsel for the applicants/accused Nikhil Chavan and Sangeeta Chavan has submitted that interim anticipatory bail granted by this Court earlier be continued for four weeks, as they want to challenge this order before the Hon'ble Supreme Court. Considering the nature of the offence, I reject this prayer.

(MRIDULA BHATKAR, J.)