Nalawade

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1269 OF 2017
Kalpana Kirit Shah vs. State of Maharashtra
WITH
ANTICIPATORY BAIL APPLICATION NO.1372 OF 2017
Dharmesh Kirit Shah vs. State of Maharashtra
WITH
CRIMINAL APPLICATION NO. 737 OF 2017
Ashok S.Mundra vs. Kalpana Kirit Shah and anr.
AND
CRIMINAL APPLICATION NO. 738 OF 2017
Ashok S.Mundra vs. Dharmesh Kirit Shah and anr.

Office Notes, Office Memorandam of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. M.K.Kocharekar fr the Applicant.
Mr.S.S. Hulke, APP. for the State.
Mr. Amit Mundhe for the Intervener.

CORAM : A.S.GADKARI, J.
DATE : 15th June, 2018

P.C.

1. By an Order dated 20.7.2017 the applicant in ABANO.1269/2017 was granted interim relief and was directed to report to the Investigation Officer on stipulated dates for investigation. By Order dated 2.8.2017 the applicant in ABA No.1372/2017 was directed to report to

the Investigation Officer on stipulated dates for investigation.

2. Heard Shri. Kocharekar, the learned counsel for the applicant Shri. Mundra, the learned Advocate for the Intervener and the learned APP. Perused the record.

3. The first information report is lodged by Shri. Ashok Munada stating that he is in business of providing finance to the needy persons. He was knowing Mr. Kirit Shah since the year 2012. Through Advocate Shri. Nagada, Shri. Kirit Shah(co-accused) approached him for finance for his business of construction. Therefore, the first informant advanced Rs.10.00 Crores to Mr. Kirit Shah. Co-accused Mr. Kirit Shah promised to return the said amount with interest and towards its security he has executed mortgage deed in respect of the suit property lying and situated at Village Borivali. As the said co-accused Mr. Kirit Shah could not comply with the assurance given by him, on 15.10.2013, Mr. Kirit Shah further executed a sale deed thereby transferring balance 610.70 sq. yards of land and 503.79 sq. mtrs. of unused FSI in favour of the first informant. It

was further revealed to the first informant that, without having proper authority, the said Mr. Kirit Shah sold the flats constructed by him, which were already mortgaged with the applicant to certain persons and has defalcated an amount of Rs.10.00 Crores. In the premise, the first information report is lodged.

4. A bare perusal of the FIR indicates that, there are no allegations of any overt act against the applicants.

The learned APP. on instructions submitted that the applicant Dharmesh Kirit Shah submitted bogus tax payment receipt of Mumbai Municipal Corporation to the informant thereby pretending that the tax pertaining to the suit property has been paid to the concerned authority. It is further submitted that, an amount of Rs.5.00 Crores has been transferred by the said co-accused Mr. Kirit Shah from his account to the account of applicant Smt. Kalpana Shah. The principal accused Mr. Kirit Shah has been arrested by the police and he is in Jail custody. The police have also freezed his bank account and certain amount is lying therein.

5. Prima facie, it appears that principal accused Mt. Kirit Shah in normal course of business and circumstances has transferred the said amount in the account of the applicant Smt. Kalpana Shah who is his wife. The applicant Smt. Kalpana Shah was unaware of the fact that said amount was proceeds of some crime and she being wife has received the said amount. It appears that the applicants are being impleaded in the present crime only because they are wife and son respectively of the principal accused Mr. Kirit Shah.

6. The record indicates that the applicants were directed to attend the Investigating Officer and to join the process of investigation and the applicants have attended the Investigation officer on stipulated dates and have co-operated in the process of investigation. In view thereof, the applicants are entitled to be protected by pre-arrest bail.

Hence, the following order.

a) The interim relief granted by Orders dated 20.7.2017 in ABA NO.1269/2017 and Order 2.8.2017 in ABA

No.1372/2017 are hereby confirmed. However, the condition to attend the Investigation Officer is waived.

b) Applications are accordingly allowed.

c) In view of the above, the Criminal application Nos. 737/2017 and 738/2017 do not survive and are accordingly disposed off.

(A.S.GADKARI, J.)