IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1558 OF 2018

Maqsood Wassiullah Shaikh & Anr. …. Applicants.
Vs.
The State of Maharashtra ….Respondent.

Mr. Nitin Sejpal, Advocate for the Applicants.
Mr. Amit Palkar, APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.
DATE : 3rd August, 2018.

P.C.:-

1. This is an application under Section 438 of the Criminal Procedure Code for pre-arrest bail in CR No. 317 of 2018 dated 27/6/2018 registered with Parksite Police Station, Mumbai under Sections 406, 420 read with Section 34 of the Indian Penal Code.

2. Heard the learned counsel for the applicants and perused the record of investigation.

3. It is stated that the friend of the informant introduced applicant No.1 Maqsood Shaikh with him. The Applicant No. 1 Maqsood Shaikh was running a hotel business in a shop gala which was taken by him on rental basis. The suit premises was belonging to one Smt. Raziya Khan. The applicant No. 1 thereafter represented the

first informant that, he intend to purchase said shop gala from the landlord for a consideration of Rs.43,00,000/- but is short of money to purchase it. Further representation was made to the first informant that, if he invests Rs.32,00,000/- for purchase of the said shop premises, he will get Rs.10,000/- per month as rent. On 10th October, 2015 applicant No.1 along with the first informant went to the house of Smt. Raziya Khan when her husband Salim Khan was present. The said couple showed the original documents of the said shop/Gala to the first informant. The first informant thereafter transferred Rs.10,00,000/- in the account of Smt. Raziya Khan and subsequently on 13th October, 2015 paid an amount of Rs.11,90,000/- to said Smt. Raziya Khan in presence of applicant No.1. As the said shop/Gala was not transferred in the name of applicant No.1 and the first informant, for sufficiently long period, the informant got suspicion about the same and therefore made enquiry with said Smt. Raziya Khan. At that time, the first informant was informed that, the said shop premises has been transferred in the name of the applicants herein jointly. The first informant made further enquiry with applicant No.1. At that time, applicant No.1 told the first informant that, landlady Smt. Raziya Khan was not willing to transfer the said shop/Gala in the name of the first informant and therefore said shop/Gala has been transferred jointly in the name of the applicants herein. Applicant No.1 thereafter issued 23 cheques of Rs.30,000 each and one cheque of Rs.25,30,000/- in favour of the first informant.

That by September, 2016 some of the cheques were honoured and subsequently from October, 2016 the balance cheques could not be honoured as applicant no.1 had given instructions to the bank to stop the payment. It is, thus, alleged that though applicant no.1 induced the informant to part with Rs.31,90,000/- for purchasing the suit premises in their joint name, the applicants got the shop premises transferred in their own name and have committed the act of cheating to the tune of Rs.28,50,000/- with the first informant. In the premise, the first information report is lodged.

4. Mr. Sejpal, the learned Counsel appearing for the applicants vehemently submitted that, for dishonour of the cheques the first informant has already instituted proceedings under Section 138 of the Negotiable Instruments Act in the Court at Thane. He further submitted that in his reply to the notice issued by the informant, applicant no.1 has denied acceptance of money and has in fact stated that, the entire payment has been returned to the

informant and therefore there is no reason for the informant to have any grievance. He submitted that the proceedings under Section 138 of the Negotiable Instruments Act are in progress. He further submitted that the cheques mentioned in the notice issued by the informant are the same cheques which have been mentioned in the first information report and therefore the present crime as lodged is an after thought. He also submitted that as a matter of fact landlady Smt. Raziya Khan till date has not transferred the said shop premises in the name of the applicants and therefore the contention of the informant to that effect is incorrect. He submitted that nothing is to be recovered from the applicant and therefore custodial interrogation of the applicants is not necessary.

5. A bare perusal of the first information report would indicate that, the same is self-eloquent. The applicants by making various representations to the first informant, induced him to part with at least Rs.21.90 lakhs which has been allegedly paid to the landlady Smt. Raziya Khan. It is to be noted here that due to the inducement made by applicant no.1, the informant was made to pay the said amount in favour of Smt. Raziya Khan. The enquiry made by the informant with landlady Smt. Raziya Khan revealed that she had

transferred the shop premises in the name of the applicants herein. Even as per the version of Smt. Raziya Khan, the said premises has been transferred jointly in the name of applicants herein. Though the applicant No.2 was not instrumental in inducement, as per the first information report and other documents on record, the said premises has been transferred jointly in the name of applicants herein. The applicant no.2 is brother of applicant no.1 and is sharing common intention in the present crime. Applicant no.1 by making said representations, has caused wrongful loss to the first informant for the aforesaid huge amount. The investigation of the present crime is at nascent stage. Unless and until the applicants are thoroughly interrogated by the police, entire truth behind the crime cannot be unearthed.

6. In view of the above, and after taking into consideration serious allegations against the applicants and the gravity of the offence, this Court is of the considered view that, the applicants do not deserve to be protected by pre-arrest bail.

7. Application is accordingly rejected.

(A.S. GADKARI, J.)