IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2000 OF 2017

Vijay Khanderao Sanap. ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr. A.P. Mundargi, Sr. Counsel I/b. Mr. Vinayak Patil, advocate for applicant.

Ms. Veera Shinde, APP for State.

Mr. Sunilkumar B. Pujari, Police Inspector, EOW, Nashik.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 8, 2018.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP.

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 119 of 2017 registered at Sarkarwada Police Station for offence punishable under section 420, 465, 468, 471, 472 read with section 34 of the Indian Penal Code.

3 This Court vide order dated 17/11/2017 had granted interim protection in favour of the applicant and the same was extended from time to time.

4 It is the case of the prosecution that the applicant herein had purchased 2 flats in Mayuresh Sankul from Pavan Tuteja. He had taken loan from State Bank India. That in the interregnum, he had sold the flat to one Mr. Gupta for consideration of Rs. 10 Lakhs. Mr. Gupta had failed to pay the remainder and therefore, the agreement was cancelled. It is alleged that after entering into the agreement, Mr. Gupta had created a bogus account and taken loan on the said flat from State Bank of India. After cancelling the agreement with Mr. Gupta, the applicant had sold the said flat to one Kavita Pagar by a registered sale deed. In the mean while, Crime No. 82 of 2015 was registered at Sarkarwada Police Station and it had transpired that the vendors and vendees of the said two flats had applied for loan and had cheated the banks. There were multiple transactions with different banks such as State Bank of India, I.C.I.C.I. Bank, Dena Bank and Jankalyan Bank. It is alleged that the applicant had sold the flat to Kavita Pagar for a consideration of Rs. 51 Lakhs. Three demand drafts were mentioned in the registered sale deed. It had then transpired that the applicant had encashed the said demand draft, despite the fact that he had received the consideration of about 27 Lakhs by way of RTGS from Kavita Pagar. Agreement dated 19/8/2014 was registered. The applicant had filed an application seeking pre-arrest bail. At that juncture, prosecution had filed an affidavit thereby contending that the said demand draft were encashed by the present applicant in Jankalyan Bank by creating bogus saving account. Upon perusal of the affidavit, the applicant had filed FIR at Nashik Police Station on 26/7/2018 alleging therein that it was orally agreed between Kavita Pagar and the applicant that she would pay the amount by RTGS and that he should return the demand draft. That the applicant had physically returned the demand draft. Thereafter, Kanta Pagare had opened an account in Jankalyan Bank by filing bogus bank card, affixing bogus

photographs of her husband and the demand draft was encashed from that account.

5 Learned Senior Counsel submits that in any case, it was the applicant who was to encash the said demand draft, he would not have created a sham account. In the course of argument, learned APP has verified the account opening form affixed with the photographs and it is clear that the photograph which is annexed is not that of the applicant. Learned Senior Counsel for the applicant upon instructions submits that Kavita Pagar is not shown as an accused in this case. The co-accused Santosh Chavan, Sunil Kumar More, Dinesh Nikam and others have been enlarged on bail.

6 Upon perusal of the police report, it prima facie appears that the multiple transactions were created right form the source i.e. from the builder himself and these flats were purchased for the purpose of investment and the banks have been cheated by filing applications for loan on the same flats. In view of the facts mentioned hereinabove, the applicant who was granted interim relief in the month of November, 2017 deserves confirmation of the said order on the same terms and conditions.

7 The observations are prima facie in nature and restricted to the application under section 438 of the Code of Criminal procedure, 1973 and the same shall not be considered for discharge application, quashing of FIR or at the time of trial.

8 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) In the event of arrest in Crime No. 119 of 2018 registered with Sarkarwada Police station, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or more solvent sureties in like amount.

(iii) The applicant shall not tamper with the evidence.

9 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]