IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2210 OF 2017

Dharmesh Narendra Joshi & anr. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. M.S. Mohite I/b. Mr. Tushar Narayan Sonawane, Advocate for Applicants.

Ms. Veera Shinde, APP for State.

Mr. R.A. Shaikh, PI, EOW, Pune City.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 24, 2018

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State.

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 275/2017 registered at Chaturshrungi Police Station, Pune for offence punishable under section 409, 420,

467, 468 read with section 34 and 120B of the Indian Penal Code and under section 3, 4 of MPID Act, 1999 and section 3, 4, 5 of Prize Chit and Money Circulation (Banning) Act, 1978 and under section 58 of the Reserve Bank of India Act.

3 It is the case of the prosecution that on 23/5/2017 Nitin Shukla Tiwari lodged a report at the police station alleging therein that he and several others have been cheated by Devidas Sajnani. According to the complainant, in the year 2013 the complainant was looking out for option to invest in properties which would give a good assured returns. At that time, they had met Mr. Ramesh Agicha who was working as an agent of Temple Rose Real Estate Pvt. Ltd. and was acquainted with the colleagues of the complainant who were working in National Chemical Laboratory(NCL). There was an offer of investment with buy back plans. Ramesh Agicha contacted the complainant. He had explained the scheme to the proposed investors. Thereafter, the complainant had checked on the website and was assured that she may get good returns. That they agreed to invest in

the said property. The said land was agricultural land. However, the investors were assured that soon they would get it converted into NA land and later on, levelling of the plot would be done, the same would be handed over to each of the investors. The investors were also informed that at any point of time, if they decide to sell the plot, the Temple Rose Real Estate Pvt. Ltd. would purchase the plot for a good consideration. The complainant had purchased two plots and had paid Rs. 20,000/- for each plot. Thereafter, the complainant was directed to deposit 30% of the total amount of the total price of the two lands and the complainant had deposited Rs. 1,07,445/-. She has given details of the plots. The balance amount was paid within a month. In 2015 land was not converted to NA land. She had persuaded Mr. Agicha who had only given an empty assurance. She had realised that she had been cheated since there was no reply to her emails. In the mean time, she came to know that some people including her colleagues in NCL have been allotted land in Chiplun in lieu of the land at Pingori and the said land in Chiplun was NA land. They were insisting upon her to pay the balance money. Thereafter, she was constrained to lodge a report. Thereafter, in the course of investigation, it was revealed that Ramesh Agicha was an agent of the said company. As far as the present applicants are concerned, the learned Counsel Mr. Mohite submits that the applicant No. 1 Dharmesh Joshi is the Chartered Accountant whereas his wife Sharmila Joshi was working as sales executive with Temple Rose Real Estate.

4 The learned Counsel for the applicant submits that in fact, the applicant No. 1 had no concern with Temple Rose Real Estate Pvt.Ltd.. He was also a investor. The applicant No. 2 was working with the said company. That she had also invested almost Rs. 2.5 Crores and her family members had also invested in the said company. It appears from the papers of investigation that the applicants herein had approached Devidas Sajnani to repay that invested amount. He had disclosed to them that he has no money and therefore had executed sale deed in the name of the applicant No. 2 and other investors.

5 It is pertinent to note that the sale deed which is executed in favour of the applicant No. 2 and other investors is in respect of the same plots which was already sold to other investors earlier. Upon perusal of the statement of the investors like one Mr. Chachad who has disclosed to the police that he had also invested in the same buy back scheme. He and his family members had also deposited about Rs. 71 Lakhs. He had invested through Dharmesh Joshi i.e. the present applicant No. 1. They were getting some amount upto September, 2015 as per the buy back scheme but when they stopped getting money, they had approached Dharmesh Narendra Joshi, the applicant No. 1 and had requested them to find out via media in order to get their sum released. At that stage, Sajnani and Dharmesh had discussed amongst themselves and thereafter, informed the investors that they will execute sale deed in respect of Gat No. 810 Mauje Pingori in favour of some of the investors as security and once they repay the amount the land would be resold to Devidas Sajnani. As per the ready reckoner total valuation of the said land is Rs. 5,45,00,000/-. They had paid a stamp duty of Rs. 21,80,000/-.

The said sale deed was executed in favour of the 11 investors. It is pertinent to note that these were the same plots which were sold to the investors by the applicant Nos. 1 and 2 in the capacity of agents. The learned APP submits that in respect of same land Crime No. 11 of 2017 is registered with EOW, Mumbai.

6 The learned Counsel for the applicants submits that the applicants had no knowledge about the registration of the subsequent offence with the EOW. It appears from the papers of investigation that the statement of the applicant No. 2 was recorded at EOW, Mumbai. She had confirmed before the EOW that she was working as investment agent and earn income by way of commission to the tune of Rs. 3,28,414/- and the total investment made through her was Rs. 21,93,19,246/-. On 10/8/2017 the applicant No. 2 had appeared before the EOW and has submitted that she has never worked with Temple Rose Real Estate Pvt. Ltd.. It is pertinent to note that on 10/8/2017 applicant No. 1 has admitted before the EOW that Smt. Sharmila Joshi earned commission in respect of giving business to the company. The EOW had recorded that there are contradictory

statements made by the husband and wife. Before the EOW at Thane she had claimed that she is earning salary of Rs. 1 Lakh, where as she has denied that she had ever worked with Temple Rose Real Estate Pvt. Ltd.. It is pertinent to note that EOW Mumbai has reported that Sharmila Joshi has disclosed the income of Rs. 60,000/- only for the assessment year 2010-2011 to 2015-2016 by way of professional fees.

7 Taking into consideration the contradictory stands of the applicants before the EOW at Pune and EOW at Mumbai, this Court is of the opinion that in the present scam the applicants have played pivotal role. Several investors have been induced to invest in the said scheme and they have been cheated. The witnesses have disclosed that this was a conditional sale deed or rather they were made to understand that it was conditional sale deed. In any case, the said property is also attached by EOW, Mumbai. In the above mentioned facts, the applicants do not deserve the discretionary relief under section 438 of the Code of Criminal Procedure, 1973. The application being sans merits stands rejected.

8 The learned Counsel for the applicants submits that the applicants were protected since 22/12/2017 and therefore, prays that the interim relief be extended for a period of 2 weeks.

9 Taking into consideration the papers of investigation at this stage, this Court is not inclined to grant the oral prayer of the applicant.

10 However, it is made clear that the observations are restricted to the application under section 438 of the Code of Criminal Procedure, 1973 and the same shall not be considered at the time of trial.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)