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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 86 OF 2019

Pallavi Rinal Naik ... **Applicant**
Vs
The State of Maharashtra ... **Respondent**

Mr.Umesh Desai for Applicant.
Mr.S.S. Hulke, APP for State.
Mr.Ramesh More, PI, Byculla Police Station.

CORAM : A.S.GADKARI, J.
DATE : 12th March 2019.

P.C.:

1] This is an application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in connection with C.R. No. 316 of 2018 dated 28/11/2018 registered with Byculla Police Station, Mumbai for the offence punishable under Section 420 read with 34 of the Indian Penal Code.

2] Heard learned counsel for the applicant at length and learned APP for the respondent-State. Perused the record of investigation.

3] The FIR is lodged by Mrs.Vandana Waghmare.

It is the case of the prosecution that in the year 2016 the first informant was in search of a residential premises in and around the vicinity of Byculla and during the said search she also informed the said necessity to Mr.Rinal Naik i.e. the husband of the applicant. Mr.Rinal Naik told the informant that for the purpose of his business he is intending to sale his residential premises situated at Byculla for a total consideration of Rs.55 lakhs and out of it Rs.30 lakhs will have to be paid in cash. The informant thereafter withdrew an amount of Rs.30 lakhs from her account with Prasad Cooperative Credit Society, Kurla, Mumbai on 25/10/2016 and in presence of three witnesses, namely, Prakash Anna Sawant, Nandkumar Vitthal Gavane and Smt.Vaishali Karanje handed over the said cash to the applicant and her husband Rinal Naik at their residence. It is the further prosecution case that, despite making payment of Rs.30 lakhs in cash, the applicant and her husband dodged to transfer the property in favour of the informant by executing the necessary documents and also did not handover possession of it to them. In the premise, the first information report is lodged.

4] The learned counsel for the applicant submitted that as a matter of fact there was no transaction at all inter-se between the first informant on one side and the applicant and her husband on the other side. That the applicant did not accept any amount from the informant. It is submitted that, the son of the informant and the husband of the applicant are in the business of 'import export' and there are inter-se certain monetary transactions between them. It is submitted that it is impossible for a person to get Rs.30 lakhs in cash from a credit society and therefore, the contention of the prosecution that the said amount paid in cash can not be believed. It is further submitted that, the husband of the applicant was arrested by the police and now has been released on regular bail and therefore also the custodial interrogation of the applicant is not necessary. He submitted that the applicant has attended the Investigating Officer on certain occasions under the directions of this Court and according to him, nothing further is to be investigated in the present crime. He, therefore, prayed that the applicant may be protected by pre-arrest bail by allowing the application.

5] I have personally perused the record of investigation. The Investigating Officer has recorded statement of witnesses, namely, Prakash Anna Sawant, Nandkumar Vitthal Gavane and Smt.Vaishali Karanje. The said three witnesses have unequivocally stated that on a particular date in their presence the informant handed over Rs.30 lakh in cash to the applicant and her husband at their residence. The record of investigation further indicates that there are corresponding entries of withdrawal of account by the informant from her account with the said Prasad Co-operative Credit Society, Kurla, Mumbai.

Prima-facie there is sufficient material to show the complicity of the applicant in the present crime. The amount alleged to have been defalcated in the crime is yet to be recovered.

6] A useful reference at this stage can be made to the decision of the Hon'ble Supreme Court in the case of *State Rep. by The C.B.I. Vs. Anil Sharma reported in (1997) 7 SCC 187,* wherein the Hon'ble Supreme Court has held that, the custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

In view of the ratio laid down by the Hon'ble Supreme Court, the contention of the learned counsel for the applicant that the applicant had attended the Investigating Officer on some occasions earlier is of no avail to him.

7] As noted earlier, the amount defalcated by the applicant along with co-accused is yet to be recovered by the police. The record further indicates that though the husband of the applicant was arrested by the police, his arrest could not give fruitful leads in the process of investigation and the alleged amount could not be recovered till date.

8] In view of the above and after taking into consideration the gravity of the offence and serious allegations against the applicant, this Court is of the view that the applicant does not deserve to be protected by pre-arrest bail.

Application is, accordingly, rejected.

(A.S.GADKARI, J.)