IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1522 OF 2019

Smital Suresh Uttekar] … Applicant

Versus

The State of Maharashtra] … Respondent

Mr. A.P. Mundargi, Senior Advocate i/b Mr. Jayant Bardeskar, Advocate for the Applicant.
Mr. S.S. Pednekar, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 12th JULY, 2019.

P. C. :-

1. The applicant is seeking anticipatory bail in connection with C.R.No.528/2019 registered with Chaturshrungi Police Station, District Pune u/sec. 406, 420, 465, 467, 468, 471 r/w 34 of I.P.C.

2. The offence is registered at the behest of first informant Deepak Londhe. He has stated in his FIR on 07/06/2019 that he wanted to purchase a plot and through some acquaintance he came in contact with one Uttung Patil. It was represented to him by the said Uttung Patil that, the plot belonged to one Poonam Ketkar and that he had Power of Attorney executed in his favour by the owner Poonam Ketkar.

The first informant agreed to purchase that plot bearing Survey No.31/2B/27 at Baner, Pune admeasuring 3,000 sq. ft. The agreed price was Rs.1 Crores 10 Lakhs. The first informant entered into an agreement for sale with the said Uttung Patil as the Power of Attorney holder of the owner Poonam Ketkar. The first informant paid Rs.18 Lakhs through cheque. Thereafter, the first informant on inquiry came to know that the photograph of Poonam Ketkar shown on their agreement was not of the real owner. He came to know that he was cheated on the basis of forged identity card and other documents. Based on these allegations the FIR is lodged.

3. The main accused Uttung Patil was arrested on 09/06/2019. It is the case of the prosecuting agency that Poonam Ketkar whose photograph was on that agreement was a fictitious person and the real person named Jyoti Nanda had impersonated the property owner Poonam Ketkar. Therefore, Jyoti Nanda was arrested. During investigation the police recorded statement of Uttung Patil wherein he has named the present applicant as the brain behind the entire fraud. Therefore, the police seek the arrest of present applicant and the applicant is apprehending his arrest.

4. Heard Mr. A.P. Mundargi, Senior Counsel for the Applicant and Mr. S.S. Pednekar, APP for the State/Respondent.

5. Mr. Mundargi, Ld. Senior Counsel for the applicant submitted that the present applicant himself is a victim of the fraud committed by Uttung Patil and others. He invited my attention to the Memorandum of Understanding entered into between Uttung Patil and the present applicant. The Memorandum of Understanding was executed on 19/12/2018 wherein the same Survey No. 31/2B/27 for the same area was mentioned. The price fixed under that Memorandum of Understanding was Rs.63 Lakhs. At the time of execution of that Memorandum of Understanding Rs.10 Lakhs were paid by the present applicant. Mr. Mundargi invited my attention to the bank statement of the applicant which shows that, in all, the applicant had paid Rs.17,50,000/-. He submitted that, thereafter Uttung Patil could not complete the transaction as obviously he had no connection with the property. Thereafter, the applicant demanded his money back which was transferred to his account by the accused Uttung Patil and he received back Rs.12 Lakhs in the month of January 2019. The applicant is said to be roped in the present case only because this

amount was transferred by the main accused Uttung Patil in the account of the present applicant. Mr. Mundargi submitted that the present applicant is working with Tata Communication on a good post and he has not indulged in any transaction in respect of any land

6. Ld. APP submitted that since there is direct connection of Uttung Patil and the present applicant as can be seen from the transaction and transfer of Rs.12 Lakhs in the account of present applicant, at this stage, there is scope to believe that the present applicant is also a party to the fraud played on the first informant.

7. I have considered the submissions advanced by both the parties. From the allegations in the FIR as well as from the investigation carried out so far it is more than apparent that the accused Uttung Patil had played an active role in this offence. The first informant is cheated by Uttung Patil on the basis of forged Power of Attorney as well as by relying on a forged identity card. Even the purported owner was an imposter. Thus, there is no doubt that Uttung Patil has committed this offence. It is also important to see that the present applicant himself had entered into similar transaction on 12/12/2018

and on that occasion, the price was fixed at Rs.63 Lakhs. The bank statement shows that he had paid Rs.17,50,000/- to Uttung Patil. On demand of the present applicant, he was paid back Rs.12 Lakhs by the main accused Uttung Patil. At this stage, the transaction of the applicant with the main accused Uttung Patil appears to be similar to that of the first informant with Uttung Patil. Thus, there is considerable force in the submission of the Ld. Senior Counsel for the applicant that even the present applicant was cheated by the main accused Uttung Patil. The applicant's money was returned only after the main accused received money from the first informant Deepak Londhe. Even thereafter, the applicant has not received his balance amount of Rs.5,50,000/-. Thus, he himself appears to be a victim.

8. Considering the stage at which this case stands, there is sufficient scope to believe that even the present applicant is cheated by the main accused Uttung Patil and at this stage, he is merely shifting the blame on the present applicant. Therefore, if the person like present applicant is arrested on such allegations, he will suffer irreparable loss which cannot be compensated. Therefore, though he can be directed to join the investigation, his custodial interrogation is

not necessary. Hence, the following order.

ORDER

1. In the event of his arrest in connection with C.R.No.528/2019 registered with Chaturshrungi Police Station, District Pune, the Applicant be released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

2. The applicant shall attend the concerned police station from 22/07/2019 to 25/07/2019 between 3.00 p.m. to 5.00 p.m.

3. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)