**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

ANTICIPATORY BAIL APPLICATION NO. 836 OF 2021

1. Abhay Amrutrao Shinde,
Age : 29 years, Occu. Business,
R/o. Plot No. 5, Sr. No. 94/3, 4,
Dadawadi, Jalgaon, Dist. Jalgaon.

2. Akshay Manoj Agrawal,
Age : 27 years, Occu. Business,
R/o. 166, Bhavani Peth,
Near Rajkamal Talkies, Jalgaon,
Dist. Jalgaon.

3. Ashwin Pushkraj Chaudhari,
Age : 31 years, Occu. Business,
R/o. 218, Chaudhariwada, Rampeth,
Jalgaon, Dist. Jalgaon. ...**Applicants**

Versus

The State of Maharashtra ...**Respondent**

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Mr. Satej S. Jadhav, Advocate for the applicants
Mr. S. B. Narwade, APP for respondent / State
Mr. S S. Panale, Advocate to assist PP

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CORAM : V. G. BISHT, J.

DATE OF RESERVING THE ORDER : 06th September, 2021
DATE OF PRONOUNCING THE ORDER : 15th September, 2021

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No. 0306 of 2021, registered with Bhusawal Bazar Peth Police Station, Tq. Bhusawal, District

Jalgaon, for the offences punishable under Sections 420 r/w 34 of the Indian Penal Code.

2. It is the case of the prosecution that the informant along with her sisters and one brother had inherited the mother's property bearing Plot no. 522 & 525 at Bhusawal, Dist. Jalgaon. As there were encumbrances on the said property and it was almost in a dilapidated condition, they all decided to sell the property. The applicants are the Estate agents. The informant accordingly came in contact with the present applicants after a meeting and it was decided that the applicants will remove the encumbrances over the property and also look for a prospective buyer to sell the said property. It is alleged that the applicants from time to time on one pretext or the other in all took Rs. 62.00 lakhs from her, of which Rs. 57,96,000/- was given in cash by informant and her sisters collectively, whereas, an amount of Rs.19,49,000/- was transferred online. The prosecution further alleges that despite getting huge amount, the applicants did not do anything as promised. In this backdrop, FIR came to be registered.

3. Mr. Satej S. Jadhav, learned Counsel for the applicants, submits that the applicants are the mediators and the Estate agents and invited my attention to the part of FIR, wherein in a meeting between the informant and the applicants, certain terms of agreement

were arrived at. Various duties / responsibilities were cast on the applicants. According to learned Counsel, one of the conditions clearly shows that there were encumbrances of Rs. 28.00 lakhs and this being so, the informant and her family members could not have parted, as claimed, a huge amount of Rs. 77.45 lakhs. Moreover, there is no documentary evidence to *prima facie* show that such a huge amount in cash was given to the applicants and even otherwise it would be unpalatable to claim that for encumbrances of Rs. 28.00 lakhs and odd amount one would part with as huge amount as Rs. 77.45 lakhs, as put forth by the informant. This is one very serious infirmity in the prosecution case.

4. The learned Counsel then invited my attention to the valuation of the property and sale deed which ultimately came to be executed on 28.01.2021. According to learned Counsel, none of the vendees complained against the applicants. Moreover, having regard to the nature of alleged offence and the fact that the applicants are in their 20's hailing from good and reputed family, it is not desirable to send them behind the bars. Moreover, there are no criminal antecedents and they are ready to abide by any condition that would be imposed by this Court. In such circumstances, the application be considered favourably, urged learned Counsel.

5. Mr. S. B. Narwade, learned APP, on the other hand, opposed the submissions by contending that even after filing of the FIR, an N.C. at the instance of Vinod Mehta came to be filed against applicant no. 2. Learned APP then invited my attention to the affidavit-in-reply filed by API, Bazarpeth Police Station, Bhusawal and emphasized that there is *prima facie* involvement of the accused in the offence in question. Having regard to the moneys involved in the case, custodial interrogation of the applicants is very much necessary. There being no merit in the application, same is liable to be rejected.

6. A simple reading of the FIR would show that prior to the transaction in question, a meeting took place between the applicants on one side and the informant's and her family members on the other and various terms came to be reduced into writing. Of which, it appears that there were encumbrances on property of one Kapurchand Kotecha Co-operative Credit Society and Kala Hanuman Credit Society to the tune of Rs. 28.00 lakhs and the responsibility was cast on the applicants to make property free from these encumbrances. There were other conditions also viz. recording of the legal heirs of late mother in the property record of Government and Semi-government offices, mutation of the land in their possession and as also open space in their names, settlement with the tenants and

also bringing of LR's of late Ashok Bamb, brother of informant, to the compromise table. As already noted, the main responsibility of the removal of encumbrances of the property was of Rs. 28.00 lakhs, which is apparent from the FIR. This being so, I do not find, *prima facie,* merit in the submission that the informant and her family members paid in all Rs. 77.45 lakhs to the applicants to do all those duties.

7. Even the affidavit filed by the concerned API along with chart prepared in the tabular form shows that various amounts were given by the informant and others to the applicants. Table at Exh. 'R-1' shows that online payment was in the sum of Rs. 19.54 lakhs while offline Rs. 60,49,600/-. Thus, the total fraud amount was Rs. 62.036 lakhs. This total amount is in contradiction with the amount alleged in the FIR, which is around Rs. 77.45 lakhs. Even assuming it to be so, the fact remains that as far as the cash amount allegedly given to the applicants is concerned, there is no record to that effect.

8. Coming to the equally important aspect is that ultimately the sale deed of the property in question came to be executed on 28.01.2021, the informant and her family members sold their share to the extent of 90% in the said property to Avinash Baviskar and Vishal Surendra Pawar for a consideration of Rs. 38.00 lakhs. If the whole

sale deed is read carefully, it would show that on the date of execution of sale deed, there were no encumbrances on the said property and the title was clear. The vendors also gave an undertaking that if any dispute arises in respect of the said property they would be solely responsible. The averments so made in the said agreement clearly show that on the date of execution of sale deed there were no encumbrances or charges on the said property. It was the duty of the applicants to see that the encumbrances / charges are removed from the property before it is sold to the buyer. This clearly demonstrates that the applicants had performed their duties in accordance with the agreement arrived at between the parties. Even the said buyer vide lette dt. 05.07.2021 after execution of the sale deed addressed a letter to Superintendent of Police, Jalgaon and informed that the informant namely, Hemlata Bamb had filed a false FIR in respect of the property in question against the present applicants. According to them, the applicants had done fair transaction and did not commit any irregularity.

9. Thus, having regard to the totality of the facts and circumstances, I do not find merit in the submission of learned APP that the present case necessarily and imperatively needs custodial interrogation of the applicants.

10. As far as filing of the NC's are concerned, on going through the record, it is seen that the first N.C. was filed on 06.02.2021 against Abhay Shinde (Applicant no.1) and others but the said N.C. is prior to the filing of FIR in question. The second N.C. dated 07.07.2021 was filed against Akshay Manoj Agrawal (Applicant no.2) wherein it is alleged that as the complainant was witness in the transaction of Hemlata Bamb i.e. informant, the said applicant threatened with death. It is pertinent to note that this N.C. also came to be filed before the Court passed an interim order of protection on 02.08.2021. Thus, I do not find any substance in the submissions of learned APP. Even otherwise, these are N.Cs. which can be looked into at the later stage of the trial.

11. For the aforesaid reasons, I am inclined to extend the benefit of pre-arrest bail in favour of applicants. Hence, the following order.

ORDER

i] In the event of arrest of applicants herein, namely, Abhay Amrutrao Shinde, Akshay Manoj Agrawal, Ashwin Pushkraj Chaudhari in connection with Crime No. 0306 of 2021, registered with Bhusawal Bazar Peth Police Station, Tq. Bhusawal, District Jalgaon, for the offences punishable under Sections 420 r/w 34 of the Indian Penal Code, the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs.30,000/- [Rs. Thirty Thousand] each, with one or two solvent sureties in the like amount.

ii] The applicants shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.

iii] The applicants shall not tamper with the prosecution evidence in any manner.

12. The application stands disposed of in aforesaid terms.

[V. G. BISHT]
JUDGE