IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.116 OF 2021

Prabhakar Umesh Shetti .... Applicant
versus
State of Maharashtra .... Respondent

WITH
INTERIM APPLICATION NO.1292 OF 2020
IN
ANTICIPATORY BAIL APPLICATION NO.116 OF 2021

Rakesh Rohira .... Intervenor

IN THE MATTER BETWEEN :

Prabhakar Umesh Shetti .... Applicant
versus
State of Maharashtra .... Respondent

…....

- Mr.A.M. Saraogi, Advocate for Applicant.
- Mr.H.J. Dedhia, APP for the State/Respondent.
- Mr.Lokesh D. Zade, Advocate for Intervenor.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th JULY, 2021
(Through video conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.366/2015 registered with Dahisar Police Station,

Mumbai, on 08/08/2015, under sections 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code.

2. The FIR is lodged on 08/08/2015 by one Rakesh Lilaram Rohira. He has stated that in the year 2014 he was told by his friend Dilip Durgule that, the present Applicant was in need of money and that, he had a flat at Adinath Tower Borivali (W). He wanted to sale that flat immediately. The informant went there. He saw the flat and he decided to purchase it for Rs.50 lakhs. On 26/05/2014 an agreement for sale was registered in respect of flat. At that time, the Applicant and his brother Umesh Shettigar were present. The informant has mentioned in his FIR that, he had paid Rs.40,00,000/- to the first informant in this transaction. When he went to take possession of that flat the Applicant requested him to give that flat on rent for a period of 4 to 5 months because of his necessity. The informant accepted that proposal. After 5 months, the informant approached the Applicant for possession. At his request, the time was extended by 2 to 3 months. Even after that

period, possession was not given and the agreed rent was also not paid to the informant. The informant approached the society for transferring the flat in his name. When he submitted the documents provided by the Applicant to him, the society infomed him that the share certificate and NOC of the society were forged documents and that since past 10 years, maintenance charges for the flat were not paid. The Applicant did not give any satisfactory answers. The informant has stated in his FIR that he had paid Rs.50,00,000/- to the Applicant, but the Applicant has not given the flat and has not returned the money.

3. Heard Mr.A.M. Saraogi, learned counsel for the Applicant, Mr.Zade, learned counsel for the Intervener and Mr.H.J. Dedhia, learned APP for the State.

4. Learned counsel for the Applicant submitted that the Applicant had entered into an Memoradum of Understanding with the informant. It was decided that the Applicant would pay Rs.75,00,000/- in full and final settlement of this transaction.

However, according to Mr.Saraogi, the informant has not fulfilled his part of obligation in execution of cancellation deed and other relevant documents. Mr.Saraogi submitted that the Applicant has till today paid or deposited Rs.30,20,000/- in total and hence the balance amount as per the MOU has remained at Rs.44,80,000/-. Mr.Saraogi submitted that since the informant has not fulfilled his part of obligation, the Applicant has not paid balance amount. He submitted that no fault can be found with the Applicant as he has sufficiently established his bonafides. He further submitted that the Applicant is willing to deposit the balance amount of Rs.44,80,000/- in this Court. He submitted that the informant had approached competent authorities for possession of the flat.

5. Learned counsel for the Intervenor/First Informant strongly opposed this application. He submitted that settlement is not possible and the Applicant is only seeking time unnecessarily.

6. Learned APP also strongly opposed this application. He submitted that it is a serious case where not only the informant is cheated, but two banks are also cheated. He has relied on the investigation carried out in this connection.

7. I have considered these submissions. The manner in which the offence is committed, is quite serious. It is not only about the informant who is cheated, but two banks are also cheated, with whom the forged documents were deposited in connection with the same flats.

8. The FIR itself shows that the informant was made to part with his money way back in the year 2015. Serious aspect of this matter is about share certificate and NOC purportedly given by the society. Those documents were given to the informant by the Applicant. The FIR itself mentions that those documents were forged documents. Signatures and stamps on those documents were forged. Therefore this offence assumes seriousness.

9. Apart from that, the learned APP has produced statements of two important witnesses. One of them was Chief Manager of Goregaon Branch of Central Bank of India, has stated in his statement dated 07/10/2015 that, in the year 2012, the Applicant and his brothers had applied for personal loan. By way of security they had offered the same flat No.1402 at Adinath Tower. They had produced share certificate and NOC. They had asked for loan of Rs.50,00,000/-. Based on that security, loan was actually sanctioned and since installments were not paid, the bank entered into correspondence with the society. At that time, the bank was informed that the share certificate and NOC produced by the purported flat owners were forged. The said statement shows that the Applicant had thus cheated this witnesses bank in the same manner.

10. The other important witness was Deputy Manager of State Bank of India in Bandra Kurla Complex. He has stated that in February 2012, they had received an application for home loan from them in respect of same flat No.1402, Adinath Tower.

There again loan was asked for Rs.50,00,000/-. There again share certificate and NOC were submitted. Again in that case, installments were not paid. On enquiry it was found that the share certificate and NOC were forged documents.

11. Thus, in respect of the same flat, different persons repeatedly are cheated based on forged share certificate and NOC. The offence obviously is more serious which requires proper investigation. The Applicant has been stalling his arrest under one pretext or the other. In this view of the matter, his arrest is necessity for proper investigation. No case for anticipatory bail is made out. The application is rejected.

12. In view of rejection of the Anticipatory Bail Application, Interim Application is also disposed of.

(SARANG V. KOTWAL, J.)