IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2209 OF 2021

1. Pravin Gohil
2. Khushbu Gohil .... Applicants

Versus
The State of Maharashtra .... Respondent

Mr. Nishit Tanna & Ms. Mayuree Pethkar, for the applicants.
Mr. S.R. Agarkar, APP for the State/Respondent.

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd SEPTEMBER, 2021.

P.C.:-

1. This is an application for anticipatory bail in C.R. No. 940 of 2021, registered with Borivali Police Station for offences punishable under Sections 420, 460 read with Section 34 of the Indian Penal Code (for short 'I.P.C.').

2. The First Information Report (in short 'F.I.R.') was registered on 5th August 2021. The complainant has alleged that she was acquainted with one Bhushan Patil. He was working with travel agency of applicant No. 2. Bhushan Patil introduced the complainant to applicant No. 2. The complainant was in search of house. Bhushan

Patil told her that the applicant No. 2 intends to sell her house because she has obtained loan for the house. The complainant and Bhushan Patil went to see the house. The applicant No. 1 told the complainant that they have obtained loan on the house. They intend to sell the flat. The consideration for the flat was fixed at Rs. 35 lakhs. The documents of the flat were not shown to the complainant under the pretext that the same are in custody of the bank. The applicant No. 1 then told the complainant to obtain loan of Rs. 25 lakhs and deposit amount of Rs. 10 lakh will be deposited by applicants in the bank and obtain documents relating to flat. The complainant from time to time handed over the amount to the applicants through Bhushan Patil in installments. The dates on which the amount was parted to the accused is reflected in the F.I.R. The amount was given by cheque and cash. Total amount parted by the complainant was Rs. 10 lakhs. The agreement was not executed. However, further formalities were not completed and the complainant thereafter learnt that the flat did not belong to the applicants. The applicants were staying there on leave and licence basis. The complainant insisted for return of the amount. To resolve the dispute the complainant told applicant No. 2 to execute agreement stating that she was in receipt of Rs. 10 lakhs towards purchase of flat and that she was handed over the cheque for amount of Rs. 10 lakhs. Both the parties then approached advocate for execution of such document. The applicant No. 2 insisted that the transaction was executed through Bhushan Patil and that she would not execute any documents in the name of the complainant but the agreement would be executed with Bhushan Patil. With that understanding the agreement was prepared and notarised. It was between Bhushan Patil and applicant No. 2. Cheque of Rs. 10 lakhs was handed over to Bhushan Patil. In the said agreement it was stated that the applicant No. 2 had borrowed loan from Bhushan Patil and the amount would be returned in three months. Thereafter, the complainant was abused by the accused. Cheque issued by accused No. 2 was deposited in the bank and it was dishonoured. The applicants had issued threats to the complainant.

3. The applicants had preferred an application before the Court of Sessions for anticipatory bail which has been rejected by order dated 2nd September 2021.

4. Learned Counsel for the applicant submitted that the applicants are falsely implicated. The applicant No. 1 is a senior citizen. Applicant No. 2 is married lady having baby. The offence under Section 406 and 420 are not made out. The allegations in the FIR are vague. There is no proof of payment. Custodial interrogation of the applicants is not necessary. The agreement was executed with Bhushan

Patil and not with the complainant. There is no transaction with the complainant. The complainant kept silent for a long time. The F.I.R. was lodged belatedly. The transaction made by the complainant was in cash. The cross N.C. was made from the applicants' side. The dispute is of civil nature.

5. Learned APP submitted that the complainant was deceives in clandestine manner by applicants. There is evidence to show that the accused had accepted amount from the complainant. The statement of Bhushan Patil was recorded during the course of the investigation which indicate involvement of the applicants. He has stated that amount is received by accused. WhatsApp chats exchanged between the applicant No. 2 and Bhushan Patil indicate that the applicant No. 2 had admitted that the amount is received from the complainant and she was supposed to return the same. The claim of the applicants is false. The amount of Rs. 10 lakhs has to be recovered from the applicants. False representation was made to the complainant that the applicants are owners of the flat and the documents relating to the flat were not shown to her under the pretext that the documents are lying with the bank. The agreement was executed with Bhushan Patil at the instance of applicant No. 2. Custodial interrogation of the applicants is necessary.

6. I have perused the F.I.R., order passed by the Sessions Court, documents annexed to this application and the investigation papers produced by the Investigating Officer.

7. The material on record indicate that the statement of Bhushan Patil was recorded who has stated in clear terms that the amount was accepted by the accused. The cheque issued by the applicants in favour of Bhushan Patil was dishonoured. WhatsApp chats produced by officer which is part of the investigation indicate that the applicant No. 2 had accepted the amount. There is nothing to disbelieve the WhatsApp messages collected by the Investigating Officer during investigation. Specific overtact has been attributed to the accused. It is pertinent to note that although it is case of the complainant that the amount was received towards sale of the premises. The said premises does not belong to the applicants. The applicant no. 2 refused to execute any agreement with the complainant and the same was executed with Bhushan Patil which indicate the dishonest intention of the accused to deceive complainant by avoiding to return the amount. Submissions of learned Counsel for the applicant that Sections 406 and 420 of the I.P.C. are not attracted cannot be accepted. Applicant No. 2 has played specific role. She has accepted amount from the complainant. Agreement with Bhushan Patil was executed.

Considering the aforesaid factual aspects, the applicant No. 2 is not entitled for any relief under Section 438 of the Code of Criminal Procedure. However, considering role, protection can be granted to applicant No. 1.

8. Hence, I pass the following order:

ORDER

(i) Anticipatory Bail Application No. 2209 of 2021 is partly allowed.

(ii) In the event of arrest of the applicant No. 1 Pravin Gohil, in connection with in C.R. No. 940 of 2021 registered with Borivali Police Station, he shall be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(iii) The applicant No. 1 shall report to the Investigating Officer on 28th , 29th and 30th September 2021 between 11.00 a.m. to 1.00 p.m.

(iv) The application of applicant No. 2 is rejected.

(v) Anticipatory Bail Application stands disposed of accordingly.

At this stage, learned Counsel for the applicant submitted that interim protection granted to the applicant No. 2 may be continued for four weeks. The applicant No. 2 intends to challenge this order before the Apex Court. Learned APP opposed this submission. Interim protection is extended for two weeks from date of uploading of this order.

(PRAKASH D. NAIK, J.)