IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2195 OF 2021

1. Shikha Sharma
2. Sumit Khanna ...Applicants

versus

The State of Maharashtra ...Respondents

WITH
INTERIM APPLICATION NO.2230 OF 2021

Kamal Arjan Mirchandani
Through her Constituted Attorney
Satish Nagesh Zore …Intervenor

IN THE MATTER BETWEEN :-

1. Shikha Sharma
2. Sumit Khanna ...Applicants

versus

The State of Maharashtra ...Respondents

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Mr. Vaibhav Krishna with Mr. Tahir Maurya with B. R. Maurya with B. D. Singh, Advocates, for applicants.

Mr. R.M. Pethe, APP, for State.

Dr. Sujay Kantawala, Advocate, with Mr. Sajal Yadav, Mr. Shadabh Saxena, Mr. Harsh ghangurde, Mr. Raj Raut, Mr. Sujit Sahoo, Mr. Aditya Talpade i/by Mr. Mitul Shah, Advocates, for intervenor.

Mr. Yogesh Pawar, PSI, Santacruz Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 15th SEPTEMBER, 2021.

PER COURT:

1. The applicants are apprehending arrest in C.R. No.365 of 2020 registered Santacruz Police Station, Mumbai for offence punishable under Sections 406 & 420 of Indian Penal Code (for short “IPC”). The First Information Report (for short ‘FIR’) was registered on 24th November, 2020.

2. The case of the prosecution is as follows :-

i) The complainant is a lady aged about 75 years. Kanta Mirchandani and Kanchan Indrani are daughters of complainant. She is the owner of Flat No.10 and 14 situated at Sangita Apartment, Juhu Koliwada.

ii) Accused No.1 (applicant No.1) met complainant and developed acquaintance. In March-2018, the applicant No.1 disclosed that she needs both the flats of the complainant on rent. She also informed the complainant about the project named Himalayan Habitat at Kuloo. The complainant was told that she can sell one flat and buy two houses at Kuloo and earn better rent.

iii) Accused No.2 (applicant No.2) is proprietor of Unimexx Builders & Developers and Himalayan Habitat Project. The applicant No.1 connected complainant to applicant No.2 for having discussion on the said project.

Applicant No.2 met the complainant and told her that she can sell one flat and buy two houses in his project at Kuloo. Applicant No.2 also told the complainant that his friend's daughter would buy flat No.14 for Rs.1,90,00,000/-. He prepared documents. She was told to reduce the consideration amount to Rs.1,30,00,000/- to avoid duty and that the furniture of Rs.60 Lakhs would be provided.

iv) On 17th April, 2018, applicant No.1 contacted complainant for registration of document. Complainant forwarded cheque of Rs.6 Lakhs towards project at Kuloo. The payment was made by cheque.

v) On 18th April, 2018 they went to office of Sub Registrar, Andheri for registration of document. Registration was done. Documents were not given to complainant. On 29th November, 2018, complainant went to Kuloo with her daughter. They visited office of project. Agreement was not given to her. Amount was taken for GST. Flat No.14 was sold. Accused No.2 sold flat to Karan Gujjar and Janhvi Gujjar for Rs.1,74,15,000/-. Flat No.10 was given to daughter of applicant No. 1 on rent. The rent was not paid. The possession of the premises was not given. Hence, the FIR was lodged.

3. The applicants preferred an application for anticipatory bail before the Court of Sessions. By order dated 20th August, 2021, the application was rejected. While rejecting the said application it was observed that the informant did not receive any sale consideration nor flats at Himalayan Habitat. It is not disputed that the flats at Kuloo were not given to informant. The agreement was shown to have been executed on 18th April, 2018 wherein the sale consideration of Flat No.14 is Rs.1,30,00,000/-. On page No.4 Para 1 of the agreement there is recital about such consideration and also recital about the manner in which it will be paid. However, sub-para A and B are left blank, there is nothing written in it as to when and how said amount will be paid to the informant. On page 10 written receipt is reflected wherein it appears that the amount of Rs.1,30,00,000/- was shown to have been paid to informant on 14th April, 2018. The receipt is signed by two witnesses. If the consideration was paid on 14th April, 2018 to the complainant, the question arises as to how in para Nos. 7, 8 & 10 of the agreement there is recital that, " on receipt of the payment by the transferer of the full and final consideration for the said flat within the stipulated period as aforesaid". As this recital appears in para Nos.7, 8 & 10 of the agreement dated 14th April, 2018 and the fact that the details of how the payment was to be made is not

given in para-1 of the agreement, it clearly goes to show that on the day when the agreement was executed, no consideration was parted to the complainant. The sale deed is dated 29th June, 2018. There is receipt showing that entire sale consideration of Rs.1,30,00,000/- has been paid to the complainant and her daughter. It bears the signature but the receipt does not bear any date as to when the amount was transferred or paid to the complainant. On page No.5 of the Sale Deed there is recital about making the payment of entire sale consideration, on the day when the agreement for sale was executed i.e. 18th April, 2018. The receipts filed on record along with Sale Deed at Page No.11 and the receipt on record along with agreement for sale are two different receipts prepared at two different times bearing signatures of different witnesses, speaks a lot about its genuineness. The applicant has also filed on record copy of receipt alleged to have been signed by the informant receiving Rs.1,30,00,000/- in cash. Thus, there are three receipts on record which are different from each other. The receipts along with agreement and sale does not mention that the amount is paid in cash. Witnesses to receipts of agreement and Sale Deed are different. There is no signature of witness No.2 on the third receipt which is filed along with compilation of documents. The documents produced on record mention that the application was made before the Society for getting NOC. The fact remains that the documents on record indicate that something is different, reflecting fraud. Investigation is required to be conducted by custodial interrogation.

4. Learned Advocate for the applicant submitted that the property was transferred in accordance with Section 54 of the Transfer of Property Act. Complainant had signed letter to Society to transfer shares. She signed Sale deed. She executed agreement to sale. The offence under Section 406 and 420 of IPC is not made out. Document is duly registered with Sub-registrar. Remedy for the complainant is to ensure civil proceedings. Document was registered after verification. There is no bar for making payment in cash. Notice under Section 41A of Cr.P.C. was issued by the Police which has been replied in detail by the applicants. Custodial interrogation of the applicants is not necessary. The transaction relates to barter arrangement. The role attributed to applicant No.1 is only introduction. She need not be subjected custodial interrogation. There has been delay in lodging FIR. The matter relates to documents. The offence under Sections 406 & 420 of IPC is not made out. The documents were duly registered with Registrar of assurance. The complainant should resort to civil

remedy.

5. Learned APP submitted that both the applicants are involved in deceiving the complainant. They have acted in connivance with each other. Applicant No.1 has played vital role. She cannot be absolved by stating that her role is only of introduction as contended by her before this Court. Her role was much beyond the introduction. There was dishonest intention right from inception. The conduct of the applicant No.1 would shows that she was acting in connivance with applicant No.2. Thorough investigation is required to be conducted. The learned Sessions Judge has rightly considered the fraudulent acts of the accused. There is no proof of paying consideration to the complainant. She is being deprived of the flat premises. Neither consideration was paid to her towards sale of flat nor the premises at Kuloo were provided to her. Both the accused had taken undue advantage of the age of the complainant. The claim of the accused about the payment of consideration is based on three different receipts. This is a serious offence, for which custodial interrogation of the applicants is necessary. Learned APP further pointed out the investigation papers. He relied upon the statements of witnesses recorded during the course of investigation which according to him

shows the involvement of the applicants and the clandestine manner in which they have deceived the senior citizen.

6. Learned Advocate for the complainant submitted that the accused have played fraud on the complainant. She has been deprived of her valuable property. She was misleading in the transaction. The promise of providing the premises at Kuloo was not fulfilled. Consideration towards sale of flat was not parted. He pointed out the discrepancies in the contents of agreement for sale, Sale Deed and the receipts in respect to purported payment of consideration. Applicant No.2 is having criminal antecedents. The applicant No.1 had induced the complainant to enter into Leave and License agreement with her daughter but did not pay rent. Applicant No.1 has participated in transactions. She had introduced applicant No.2 and represented that applicant No.2 has project at Kuloo. The agreement was terminated but daughter of applicant No.1 did not handover the possession of premises. It was only after the complainant initiated eviction proceedings before the competent authority, the premises were vacated. Arrears of the rent were not paid.

7. I have perused the documents. From the FIR, documents on record and investigation papers, the fraud played

upon the complainant is writ large. The learned Sessions Judge has dealt with the acts of the accused in detail while rejecting the application for anticipatory bail. Prima facie the applicant No.1 had approached the complainant with malafide intention. She developed acquaintance with complainant and tried to get closer to her emotionally. The complainant was aged lady. False representations were made by the applicant Nos. 1 & 2. The complainant was made to believe that she can sell flat No. 14 and buy two houses at Kuloo in the project of applicant No.2. The documents were prepared. The flat was purportedly sold to the accused and thereafter to another person by accused No.2. The applicants/accused has not established that they have paid consideration to the complainant. It is the claim of the applicants that the consideration of Rs.1,30,00,000/- was parted to the complainant. However, the averments in the agreement for sale, Sale Deed and the receipts clauses suffers from discrepancies which are dealt with by the learned Sessions Judge while rejecting the application. There are three receipts on record. One of the receipts mentioned that consideration was paid by cash. The receipts clause in the agreement and sale and the third receipts speaks volumes of doubt about its genuineness. The applicant No.1 has active participation with applicant No.2 in all the transactions. Both applicants have acted in connivance with each other. The statements recorded during investigation shows the complicity of the applicants. Since, this is the stage of investigation, it would not be appropriate to express views in detail on statements recorded during investigation. Investigation reveal that the complainant was deceived. Neither consideration was paid to her nor the flats were provided in the project at Kuloo. The other flat was given on Leave and License basis to the daughters of applicant No.1. The complainant had alleged that the rent towards the said premises was not paid to her and with great difficulty she got the possession after initiating eviction proceedings. In these circumstances, no case for grant of anticipatory bail is made out.

8. Hence, I pass the following order:

ORDER

i) Anticipatory Bail Application No. 2195 of 2021 is rejected;

ii) Interim Application No. 2230 of 2021 is disposed of.

(PRAKASH D. NAIK, J.)