IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1611 OF 2019

1. Gaurav Deepak Chabaria
2. Rashid Khudad Khan .... Applicants

Versus

The State of Maharashtra .... Respondent

WITH
CRIMINAL APPLICATION NO. 1089 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO. 1611 OF 2019

Prasann Surendra Pamecha .... Intervenor

In the matter between

1. Gaurav Deepak Chabaria
2. Rashid Khudad Khan .... Applicants

Versus

The State of Maharashtra .... Respondent

Mr. Anmol Bartaria for the applicant No. 1.
Mr. Abhijeet Rane for the applicant No. 2.
Mr. Piyush R. Toshnival for Intervenor in APPP 1089/2019.
Smt. Anamika Malhotra, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.
DATE : 29^{th} JULY, 2021

P.C. :

1. The applicants are seeking anticipatory bail in connection with C.R.No. 223 of 2019 registered at L.T. Marg Police Station, Mumbai, on 06/05/2019, under sections 341, 427,448,420, 211 read with Section 34 of the Indian Penal Code and under Section 380 of the Indian Penal Code.

2. Heard Mr. Anmol Bartaria, learned Counsel for the applicant No. 1, Mr. Abhijeet Rane, learned Counsel for the applicant No. 2, Mr. Piyush R. Toshnival, learned Counsel for the Intervenor and Smt. Anamika Malhotra, learned APP for the State.

3. The FIR is lodged by one Prasanna Pamecha on 06/05/2019. He has stated that he was in the business of selling electric appliances and articles. He wanted to start his business by taking a shop at Lohar Chawl with his friend Gautam Kothari. They met one Shahid who was an Estate Agent. He showed them shop no. 19 admeasuring 200 sq ft. The informant was told that the shop was owned by the applicant No. 1. The informant and

his partner met the applicant No.1. The applicant No.1 told the informant that shop itself was taken by the applicant No. 1 on rent and he again could not give the shop on rent. Instead, he suggested to the informant and his partner that they should put the name of the applicant No. 1 as one of the partners. It was suggested that the informant could have 40% share, Gautam Kothari could have 50% share and the applicant no. 1 could have 10% share. The agreement was entered into. It was decided that the informant and his partner was to pay Rs. 1,08,00,000/- as deposit to the applicant No. 1. The documents were executed in February 2019. The informant, Gautam Kothari and the applicant No. 1 put their signatures on these documents. The applicant No. 2 put his signature as a witness on these documents. The informant and Gautam Kothari transferred Rs. 82,50,000/- through RTGS in the bank account of applicant No. 1. Above that, they paid Rs. 2 lakhs in cash to the applicant No. 1. The applicant No. 1 gave possession of that shop to the informant. The informant thereafter started renovation work in the shop.

4. On 12/03/2019, the applicant No. 1 told the informant that he had changed his mind and he wanted to run the shop himself. The informant told him that he should repay the amount given to him and also the amount of Rs. 7 lakhs which was spent by the information in renovating that shop. The applicant No. 1 transferred Rs. 3 lakhs in the account of Gautam Kothari. Thereafter he did not make any payment. He did not return the informant's and his partner's amount. On 30/03/2019, both the applicants put their own locks forcibly on the shop. The applicants made some complaint to the police and therefore the informant was called to the police station. The informant realised that he and his partners were cheated to the amount of Rs. 84,50,000/- and therefore this FIR is lodged.

5. Learned Counsel for the applicant No. 1 submitted that there is a suit pending between the original landlord and the applicant No. 1. The informant is also a party to that suit. He submitted that therefore it is a civil dispute about possession of that particular shop. This is not a subject matter of criminal

complaint.

6. Learned Counsel for the applicant No. 2 submitted that the applicant No. 2 had merely put his signature on the documents executed by the applicant No. 1 and the informant. He does not have any other role to play. The allegations that he helped the applicant No. 1 in putting separate locks; are quite old and after two years, applicant No. 2's custodial interrogation is not necessary.

7. Learned APP as well as learned Counsel for the intervenor pointed out that the applicant No. 1 had given undertaking to this Court to make full payment of the amount of the subject matter of this case. However, that undertaking was breached and therefore leniency should not be shown to the applicants. Learned APP produced investigation papers before me.

8. I have considered these submissions. At the outset, it has to be noted that the applicants were protected vide order

dated 06/08/2019. This interim order was based on the affidavit cum undertaking given by the applicant No. 1. He had undertaken to deposit sum of Rs. 81,50,000/- in five instalments of Rs. 16,30,000/- each to be paid on 20th August, 9th September, 30th September, 20th October and 9th November 2019. The undertaking was accepted. It was specifically observed that without going into merits, only having regard to the affidavit cum undertaking filed by the applicants, the applicants were granted interim protection. This order was passed by this Court (Coram: Revati Mohite Dere, J.) on 06/08/2019. Thereafter the applicant No. 1 deposited Rs. 16,30,000/- which was noted in the order dated 28/08/2019. Order dated 11/10/2019, records that the applicants had brought pay order of Rs. 08,15,000/- which was deposited in the registry of this Court. Apparently that amount was deposited on 14/10/2019. Thereafter no amount was deposited by the applicants and the matter was pending with continuation of interim order. The applicant No. 1 has taken advantage of the interim relief since 2019 without showing any respect or regard to the directions issued by this Court. Therefore for breach of undertaking and for enjoying interim relief on false representation itself, the application for the applicant No. 1 is liable to be dismissed and I am dismissing it accordingly.

9. Apart from this breach of Court order, on merits also I am satisfied that the offence is made out against applicant No. 1 in the FIR. The applicant No. 1 fraudulently on false representation cheated the informant and his partner. The investigation papers show that there were statements of the workers who had carried out renovation work in that particular shop. They support the case of the first informant. They also speak about the incident when locks were put forcibly on that particular shop by the applicants. Therefore, on merits also the applicant No. 1 does not deserve protection of anticipatory bail. The pendency of this application is mainly because of the applicants' false representation made before this Court. Therefore no leniency can be shown to the applicant No. 1. His custodial interrogation is also necessary for investigation.

10. As far as the applicant No. 1 is concerned, his role is minor. He was a witness to the MOU entered into by the party. He was not a beneficiary of the investment made by the informant and his partner. The allegations that he had put separate locks on the shop forcibly, pertain to the year 2019. Therefore after more than two years his custodial interrogation only on these allegations will not serve any purpose. The applicant No. 2 can be protected by an order of anticipatory bail.

11. Hence, the following order :

ORDER

(i) The application for applicant No. 1 Gaurav Deepak Chabaria is rejected.

(ii) In the event of his arrest in connection with C.R.No. 223 of 2019 registered at L.T. Marg Police Station, Mumbai, the Applicant No. 2 Rashid Khudad Khan, is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

(iii) The Applicant shall attend the concerned Police Station as and when called and shall co-operate with the investigation.

(iv) The application stands disposed of accordingly.

(v) With disposal of anticipatory bail application, Criminal Application No. 1089 of 2019 is also disposed of.

(SARANG V. KOTWAL, J.)