

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 423 OF 2018

Sunanda Sadanand Yerunkar ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

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Ms. Kalyani S. Virkar i/by Mr. Samarth S. Karmarkar, Advocate for the Applicant.

Mr. Y. Y. Dabake, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th AUGUST, 2021.

PER COURT:

1. This is an application for cancellation of anticipatory bail granted by learned Additional Sessions Judge, Dindoshi, Goregaon, Mumbai vide order dated 12th September, 2017 in C.R. No. 266 of 2017 registered with Samata Nagar Police Station, Mumbai for offences under Sections 406 & 420 of Indian Penal Code (for short “IPC”)

2. The applicant is the original complainant, who had lodged the First Information Report (for short ‘FIR’) on 19th June, 2017 with Samata Nagar Police Station, Mumbai. In nutshell it is alleged that room belonging to complainant was occupied by

Surekha Bhivaji Sutar. She was not vacating it. The complainant approached respondent No.2 for vacating the premises. The respondent No.2/accused told them to sell the room to him and he would get it vacated and hand over possession to them. The complainant believed him and sold the room to accused for Rs.10,00,000/-. The accused prepared documents such as Power of Attorney, affidavit and agreement. He obtained signatures of complainant and her son. False documents were prepared stating that they were paid Rs.6,00,000/- in cash and Rs.4,00,000/- by cheque. Payment was made to them. The accused thereafter sold the premises to another person for Rs.12,95,000/-. Accused was supposed to part the amount to complainant after selling the room hence, they agreed for sale. They had also signed as witnesses in documents executed with purchaser. The complainant gave no objection certificate. Amount was not given to her.

3. Learned Additional Sessions Judge, Dindoshi, Goregaon, Mumbai allowed the application for anticipatory bail preferred by respondent No.2 vide order dated 12th September, 2017.

4. Learned Advocate for the applicant/complainant submitted that the order passed by the Learned Additional Sessions

Judge, Dindoshi, is required to be set aside. The application preferred by respondent No.2 ought not to have been allowed. The custodial interrogation of the accused was necessary. The accused had not made any payment to the applicant/complainant. There is no proof of such payment. While, the investigation was pending and the statements of witnesses were due to be recorded, the application for anticipatory bail was allowed. Three other cases were registered against the accused/respondent No.2.

5. Learned APP on instructions submitted that the investigation was completed. Charge-sheet is filed before the concerned Court and the proceedings are pending in the said Court.

6. I have perused the FIR and the impugned order dated 12th September, 2017 passed by learned additional sessions Judge, Dindoshi, Goregaon, Mumbai. While allowing the said application, the Court had observed that the accusation appears to be civil nature. Irrevocable General Power of Attorney is placed on record by the accused. Agreement for sale duly notarized was also placed on record. Thus, prima facie the accused have not committed the offence to attribute the charge of cheating and criminal breach of trust. There are no grounds for custodial interrogation. The

respondent No.2 was directed to attend the Samata Nagar Police Station, Mumbai on every Sunday in between 11.00 to 2.00 p.m. till filing of charge-sheet. It is pertinent to note that subsequently investigation was completed and the charge-sheet has been filed against respondent No.2.

7. In the light of the factual aspects of this matter, the reasons assigned by the Sessions Court while allowing the said application and the fact that the investigation is completed and the charge-sheet is filed, no interference is warranted in the impugned order dated 12th September, 2017 granting anticipatory bail to the respondent No.1. Hence, the application is required to be rejected.

ORDER

Criminal Application No. 423 of 2018 is rejected and stands disposed of accordingly;

(PRAKASH D. NAIK, J.)