IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

21 ANTICIPATORY BAIL APPLICATION NO.49 OF 2022
WITH
CRIMINAL APPLICATION NO.405 OF 2022

REHANA NAWAB BAGWAN AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.B. Narwade, Advocate for applicants

Mr. N.T. Bhagat, APP for the respondent

Mr. J.I. Shaikh, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14th FEBRUARY, 2022

<u>ORDER</u> :

1 Criminal Application No.405 of 2022 moved for assist to PP stands allowed and disposed of.

2 Both the applicants are apprehending their arrest in connection with Crime No.791/2021 dated 22.10.2021 registered with Kotwali Police Station, Dist. Ahmednagar, for the offence punishable under Section 406, 420, 465, 468, 506 read with Section 34 of the Indian Penal Code, 1860.

3 Heard learned Advocate Mr. N.B. Narwade for applicants and learned APP Mr. N.T. Bhagat, well assisted by learned Advocate Mr. J.I. Shaikh, for the respondent/State. In order to cut short, it can be said that they have argued in support of their respective contentions.

4 Informant Matin Babumiyan Jahagirdar had come with a case that his mother Fatema is the owner of a row-house. He was doing business of selling Tea-Dust, however, due to lock-down he has suffered financial crisis and, therefore, he wanted to raise loan for his business. He got acquaintance with the applicant No.2 in September, 2020,, when both of them used to visit Hasan Shaha Kadri Kabrastan. Applicant No.2 realized that the informant is in need of finance and then according to the informant, applicant No.2 started making inquiry about him. It was then pretended that the applicant No.1 is Chartered Accountant and they have business by name 'R.N. Constructions'. He promised that his sister would help him in raising loan. Thereafter, he introduced his sister i.e. applicant No.1 to the informant. It was then asked to him, as to whether there is any immovable property in his name. Informant told that it is in the name of his mother. By representing that the said row-house is in Mukund Nagar, which does not considered as a good locality and also that of Muslim area nobody readily gives loan of house, she offered an idea and in that it was told that the informant should

give that house in her name and she would give her house at Alamgir, Ahmednagar in the name of informant. Even as regards the licence for the business she would help and she would prepare a document of Leave and Licence Agreement in respect of a shop premises, which is in the name of her sister. Due to reposing of faith, informant agreed to enter into such transaction. They showed one row-house to the informant in the first week of September, 2020 and promised that, that would be transferred in the name of informant. Applicant No.1 thereafter collected documents from the informant in respect of the plot which was standing in the name of his mother. Informant and his mother were taken to Sub-Registrar's office on 29.09.2020. Under the pretext that there is huge rush, they got that document registered without showing that document to the informant. His mother was only taken inside the office in front of Sub-Registrar. Two cheques were given amounting to Rs.1,50,000/- each. One was bearer and another was account payee. She deposited the amount, which informant's mother had withdrawn by bearer cheque and then that amount was taken by applicant No.1 and deposited in her own account and thereafter she had given the another cheque. Thereafter, the informant had requested the applicants to give the house in the name of applicant No.1 transferred in the name of informant. However, it was then told that the value of that house is 18 lacs, whereas the value of the house at Mukund Nagar was only 15 lacs.

There is difference of Rs.3,00,000/-. Unless that amount is given, further transaction will not take place and, therefore, the informant collected the amount and gave two cheques; one for Rs.1,00,000/- and another for Rs.2,00,000/- on 07.10.2020. Informant thereafter found that the applicants were avoiding to execute further documents and then the informant had seen the sale deed which was got executed from his mother. It was found that the value of that property was shown as Rs.5,00,000/- only. It was falsely written in the document that amount of Rs.2,00,000/- has been given in cash. When he contacted the applicants, they told him that they have got the said house by hatching up a plan and now, he will not get the loan nor the house. The informant then realized that he has been cheated and, therefore, he lodged the report.

5 It is to be noted that the report has been lodged on 22.10.2021. The sale deed, which was got executed between the mother of the informant and applicant No.1, is dated 29.09.2020. It is a public document and though it might have been stated to him that due to rush the applicants will not be able to give copy of the said sale deed to him, he could have fetched copy of the same from the Sub-Registrar’s office. There appears to be delay in lodging the report. Further, it can also be seen that the mother has executed the sale deed. Though she might be illiterate, the informant could have

taken legal help. As regards the entries on 30.09.2020 is concerned, no doubt, there appears to be two withdrawals and two cash deposits. Now, when it was bearer cheque, the mother of the informant would have gone to the Bank. Informant has stated that he had gone to Bank, but keeping him aside all those transactions were got done by applicant No.1. This is somewhat not believable. If no amount would have been received by the mother of the informant at that time itself i.e. on 30.09.2020, the informant should have raised hue and cry. Why he kept quiet on the same day, is undigestible. Another fact to be noted is that whether the another house which was shown to him from Alamgir, Ahmednagar was really standing in the name of applicant No.1 was not at all ensured by him. When it is expected that the buyer should also make inquiry and then purchase that property which could be legally purchased and all the way the informant states that he only believed in the statements of the applicants cannot be said to be a compliance of the law. Therefore, taking into consideration those facts, physical custody of the applicant appears to be not required for the purpose of investigation. The investigation would revolve on the documents which can be recovered/seized by police, without taking the applicants in custody.

6 It will not be out of place to mention here that on 03.02.2020

when the matter was on board, after making submissions, the learned Advocate for the applicants submitted that his clients are ready to deposit amount of Rs.3,00,000/- in this Court to show their bona fides and accordingly they have deposited that amount on 09.02.2022. The applicants are ready to abide by the terms of bail. They have fixed place of abode and, therefore, with all these facts the applicants deserve to be released on anticipatory bail. Hence, following order.

ORDER

1 Application stands allowed.

2 In the event of arrest of the applicant viz. **1) Rehana Nawab Bagwan** and **2) Aftab Nawab Bagwan**, in connection with Crime No.791/2021 dated 22.10.2021 registered with Kotwali Police Station, Dist. Ahmednagar, for the offence punishable under Section 406, 420, 465, 468, 506 read with Section 34 of the Indian Penal Code, 1860, they be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicants shall not indulge in any criminal activity nor they should tamper with the prosecution evidence, in any manner.

4 They should cooperate with the investigation and shall attend the concerned Police Station, on every Monday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

5 Registrar (Judicial) to transfer the amount deposited in this Court to Chief Judicial Magistrate, Ahmednagar, who, in turn, would take a note of the deposit of the said amount, after the filing of the charge sheet, so that either the Chief Judicial Magistrate himself or any other Court to whom the case would be transferred for Trial, should take note of the said amount and the disposal of that amount would be subject to the final outcome of the trial (as contemplated under Section 452 of the Code of Criminal Procedure, 1973).

6 Criminal Application No.405 of 2022 stands disposed of.

(Smt. Vibha Kankanwadi, J.)

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