IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 181 OF 2022

Shivaji Maruti Mundkar & Anr. .... Applicants
Versus
The State of Maharashtra .... Respondent

Mr. Prablin Singh Abrol for Applicant.
Mrs. J. S. Lohokare, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 24th JANUARY, 2022
(through Video Conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.339 of 2021 registered at Koparkhairane Police Station, Navi Mumbai, on 11/11/2021, under sections 405, 409, 415, 416, 420, 423, 425, 443, 445, 463, 464, 465, 467, 468, 470, 471, 474 and 503 of the Indian Penal Code (for short 'IPC').

2. Heard Shri. Prablin Singh, Abrol, learned counsel for the applicant and Smt. Lohokare, learned APP for the State.

3. The First Information Report (for short 'F.I.R.) is lodged by one Ganesh Bhandare. He has stated that, he is working

in Dubai. He regularly visits Navi Mumbai in a month or two. In the year 2012, he had purchased a flat bearing Flat No.116, Sector No.11, Kopar Khairane, for Rs.80 lakhs in the joint name of himself and his wife Ashwini. Between the year 2012 to 2014 the informant's mother and two brothers named Pravin and Trishul were residing in that flat. The informant found out some fraudulent transactions of Trishul and, therefore, he asked Trishul to vacate the flat. Along with Trishul, his mother and brother Pravin also left the flat.

4. According to the first informant, between the year 2014 to 2020 he had not given his flat to anybody. Whenever he used to come to Koparkhairane from Dubai, he used to stay there. He had bought that flat from the builder Rajesh Bansal. He wanted loan of Rs.50 lakh from the HDFC Bank, Vashi. For that purpose he had to visit the bank frequently, but it was not possible for him because he was working in Dubai. Therefore, the informant had given a power of attorney dated 04/08/2012 in the name of his brother Trishul. It was a notarized document. However, since the flat was pertaining to CIDCO scheme of 12.5%, the HDFC bank

had not sanctioned home loan on the flat. It is his specific case that the power of attorney was executed by the informant only for the purpose of obtaining loan from the HDFC bank. Subsequently, the informant obtained loan from GIC Housing Finance Company.

5. In January 2020, he had given his flat on rent to one Kishor Pouthula for three years. But during the lock-down the tenant went to his native place and the flat was vacant. The informant had told the broker Manoj Singh to find another tenant. When Manoj Singh went there, he saw that some unknown person was residing in the flat. He immediately called the informant and told him about it.

6. On 07/11/2021, the informant came to that flat. He saw that two unknown persons were inside. He made inquiries with them. They did not answer immediately, but they told the informant that they would discuss the matter outside the building. Therefore, he went outside. One of the persons was the applicant No.2. He told the informant that, informant's brother Trishul had given that flat by accepting heavy deposit. The informant was given a copy of agreement. It was mentioned in the agreement that

the flat was given to the applicant No.2 between the period 08/01/2020 to 07/12/2022 for refundable deposit of Rs.13 lakhs and monthly compensation was fixed at Rs.1/-. The agreement shows that, it was executed in the presence of the applicant No.1 and the informant's mother Meena. The informant saw that the agreement contained a forged power of attorney in the name of his brother Trishul. The signatures of the informant on that power of attorney were forged. He realized that all the accused in collusion with each other have taken illegal possession of the informant's flat. On this basis the F.I.R. was lodged.

7. Learned counsel for the applicants submitted that the applicant No.2 had no role to play in the transaction. He has no nexus with either the informant or his brothers. The applicant No.2 is merely an investor who has paid heavy deposit of Rs.13 lakhs to the brother of the informant. Thus, the applicant No.2 has lost his money and he is also a victim of the fraud. According to learned counsel, the applicant No.2 himself is the aggrieved party. On specific query made by the court, learned counsel stated that the applicant No.2 is still occupying that flat.

8. Learned APP opposed this application. She submitted that, very nature of the leave and license agreement was fraudulent. The flat was practically given to the applicant No.2 free of cost because the deposit was refundable. She submitted that the power of attorney used for the purpose of executing that document was a forged document and, therefore, offences are made out. She submitted that, it is a 3 BHK flat and no landlord would give that flat for free to the strangers.

9. I have considered these submissions. I have carefully seen the leave and license agreement. Rs.13 lakhs deposit for the period of leave and license agreement was refundable at the end of the period and the monthly compensation was fixed at Rs.1/-. Thus, practically the landlord was to get hardly anything. The flat was 3BHK flat. The very nature of this agreement was fraudulent. To make the matter worse, the agreement was executed based on the power of attorney purportedly executed by the informant himself. The signatures of the informant on that power of attorney were forged. The offence, therefore, assumes even more seriousness. It cannot be said that the applicant No.2 had no

concern with the offence and he is merely a victim. The applicant No.2 was enjoying the possession of a big flat in a good locality, practically for nothing. Obviously, he must be aware of the entire transaction. So far as, applicant No.1 is concerned, according to the learned counsel, he had merely acted as a broker and, therefore, he had not played any role. This submission has no substance because the applicant No.1 has put his signature on the leave and license agreement which was executed in his presence and applicant No.2. His role is significant in the transaction. Therefore, collusion of all the accused is very clear from the record. In this view of the matter, custodial interrogation of both the applicants is necessary. No case for grant of anticipatory bail is made out.

10. The application is rejected.

(SARANG V. KOTWAL, J.)