IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.596 OF 2022
WITH
INTERIM APPLICATION NO.913 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.596 OF 2022

1. Salman Mohammad Hanif Sawdi
2. Obeidullah Mohammad Hanif Sawdi ...Applicants

Versus

The State of Maharashtra ...Respondent

….

Mr. Subhash Jha with Mr. Manoj Chavan i/b. Mr. Vishal Krishna for the Applicants.
Ms Sharmila S. Kaushik, APP for Respondent -State.
Mr. Hiten Patel with Mr. Kunal Dhoole and Mr. Lalit Dumesh for the Intervenor.
Mr. Nitin Gile, IO, Kurar police station, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 16th MARCH, 2022.

P.C.:-

1. By this application filed under Section 438 of the Cr.P.C. the Applicants have sought pre-arrest bail in Crime No.41 of 2022 registered with Kurar Police Station, Mumbai for offences punishable under Sections 465, 468, 420,471, 473 and 506 r/w. 34 of the IPC.

2. Mr. Subhash Jha, learned counsel for the Applicants states that a purely civil dispute has been given a colour of criminal dispute. He submits that the Complainant and the brother of the Applicants, who is a handicapped had entered into money lending transaction and that the Applicants are not in any manner involved in the said transaction. He states that the Applicants are ill-literate and were not aware of the contents of the agreement for sale. He further contends that the fact that the Complainant had not asked for the original documents itself indicates that the agreement for sale is fabricated.

3. Per contra, Ms Sharmila Kaushik, learned APP and Mr. Hiten Patel, learned counsel for the Intervenor state that the brother of the Applicants had availed loan from NKGS Bank wherein they had mortgaged the flat to secure the loan. They submit that the Applicants, who are the guarantors were well aware that the subject flat was mortgaged. Despite which, in collusion with the elder brother, the Applicants entered into the sale transaction. It is stated that the sale agreement was between the Complainant and the brother of the Applicant No.1 and the Applicant No.1 is a witness to the said agreement. Moreover, the records indicate that the Applicant No.1 has received part

sale consideration. It is further stated that the Applicant No.2 has forged NOC of the Society. She therefore claims that all the three brothers had with common intention cheated the Complainant.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The crime against the Applicants was registered pursuant to the FIR lodged by Mohammad Hanif Ismail Patel. The Complainant has alleged that while he was looking for a suitable residential premises in February-2019, he came in contact with Applicant No.1. The Applicants represented to him that his elder brother Masiulla Mohammad Hanif Saudi is the owner of flat No.303 on the 3rd floor, Noor Castle Co-op. Housing Society, Rani Sati Marg, Pathanwadi, Malad (West), Mumbai. The Complainant saw the flat and agreed to purchase the same for total sale consideration of Rs.50,00,000/-. The Complainant has stated that the Applicant No.2 had told him that the original documents in respect of the said flat were at their native place at Gujarath. On 21/02/2019 the Applicant No.1 furnished to him NOC on the letterhead of Castle Co-operative Housing Society stating that the Society has not raised any loan from any financial institution and that there is no encumbrance on the

said flat and that the society had no objection for mortgage of the said flat for raising the loan. On 22/02/2019 the deal was finalised and an agreement for sale was executed between the Complainant and Mashiullah Hanif. The Complainant paid total sum of Rs.50,00,000/- to Mashiullah and Applicant No.2. Agreement was registered at Sub-Registrar's office at Goregaon. The Complainant has stated that Mashiullah and the Applicants had told him that there was no encumbrance on the said flat.

6. It is true that the agreement for sale is between the Complainant and Mashiullah, brother of the Applicants. It is however to be noted that the Applicants herein had introduced the Complainant to said Mashiullah. They were instrumental in pursuading the Complainant in purchasing the said flat. The Applicants had also signed the said agreement as witnesses. Moreover the Applicant No.1 had also received sum of Rs.4,00,000/- towards part sale consideration. The records indicate that much prior to the execution of the sale agreement, the Applicants and Mashiullah had availed loan from NKGS Bank and that the flat was mortgaged to secure the loan.

7. The material on record prima facie indicates that the Applicant

No.2 had submitted NOC before the Bank on a letterhead of Noor Castle Co-operative Housing Society. The Applicant No.2 has signed the said certificate as a Secretary of the Society. It is on record that he was never the secretary of Noor Castle Co-operative Society. Further more the Applicants were guarantors to the said loan transaction and were well aware that the flat was mortgaged. Despite which they had persuaded the Complainant to purchase the said flat and had received sale consideration of Rs.50,00,000/- After having executed a registered agreement for sale in favour of the Complainant, the Applicants also persuaded the Complainant to allow them to reside them in the subject flat on leave and license basis. After the expiry of the term they did not vacate the premises but allowed some other person to reside in the said flat. The Applicants and their brother have also not repaid the loan amount and as a consequence thereof the loan account has been classified as NPA as a result of which recourse to provisions under Section 13 and 14 of the SARFAESI Act was taken. All this was well within the knowledge of the Applicants while they had entered into the sale transaction with the Complainant. The aforesaid facts and circumstances prima facie prove the involvement of the Applicants in the said crime. The contention of Mr. Jha, learned counsel for the Applicants that the Complainant is a money lender and that the entire transaction is a money lending transaction is prima facie devoid of any merits.

8. Under the circumstances and in view of discussion supra, the application is dismissed.

9 In view of dismissal of the Anticipatory Bail Application, the Interim Application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

MEGHA S PARAB Digitally signed by MEGHA S PARAB Date: 2022.03.28 18:09:16 +0530