IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 181 OF 2015
WITH
CRIMINAL APPLICATION NO. 633 OF 2017
IN
CRIMINAL APPLICATION NO. 181 OF 2015

Mr. Chunilal Dayalal Fariya ..Applicant
Versus
The State of Maharashtra and Anr. ..Respondents

Shri Sujit B. Shelar, Advocate for the Applicant.
Shri H. J. Dedhia, AAP for the State.
Shri Harshad M. Inamdar, Advocate for the Respondent No.2.

CORAM : PRAKASH D. NAIK, J.
DATE : 24th MARCH, 2022.

P.C.

1. This is an application under Section 439(2) of the code of Criminal Procedure, challenging the order dated 25th February, 2015 passed by Additional Sessions Judge, Thane in Anticipatory Bail Application No. 2352 of 2014 granting anticipatory bail to respondent No.2 in C.R. No. I-339 of 2014 registered with Rabodi Police Station, district Thane on 15.11.2014 for offences under Sections 420, 467, 468, 471, 406 r/w Section 34 of Indian Penal Code (for short “IPC”).

2. The applicant is the first informant who lodged the aforesaid First Information Report (for short "FIR"). It is alleged in the FIR that the complainant / applicant was consulting Advocate Rajkumar Unhale for legal advice. Advocate Unhale was looking after the legal matters of the complainant since 2006 and had gained his trust. In June-2010 Advocate Unhale informed the complainant that property bearing survey No. 69, 70, 71 and 74 admeasuring about 23 Acres situated at Waholi, Tq. Kalyan is available for sale. In the event the amount of Rs.1,00,00,000/- (One crore only) to Rs.1,50,00,000/- (One crore fifty lakhs only) is given to the owner of property, he would execute the agreement instantly. Advocate Unhale also advised that the landed property can be converted as N.A. and developed. They would also get sufficient time to make the balance payment to the owner. The proposal put-forth by Advocate Unhale was liked by the complainant. He gave the said information to his brother-in-law Hansraj Ugamasi Nisar and informed him that they can execute the deal in partnership. It was decided to inspect the property on 11th July, 2010. The complainant, his son and brother-in-law Nisar had visited the residence of Advocate Unhale.

Broker Jitesh More was introduced to the complainant by Advocate Unhale. All of them proceeded in the vehicle and reached Waholi, Tq. Kalyan. Jitesh More and Advocate Unhale showed them the property. It was liked by applicant / complainant and others and they showed their inclination to purchase the property. Somewhere in 3rd week of July, 2010 meeting was fixed in the office of Advocate Unhale for discussion about the transaction. The meeting was attended by complainant, his younger brother, Advocate Unhale, broker Jitesh More and another unknown person. The unknown person was introduced by Advocate Unhale as Police Inspector Ashok Sakpal and stated that he was attached to Kopri Police Station. Police Inspector Sakpal then informed the complainant that the original owner of the property is Ramakant Mhatre and the entire land is in his name and occupation. There is no dispute about the property. On being asked as to why the owner is not present, broker Jitesh More and Police Inspector Sakpal informed the complainant that they are looking after the transactions of the said property. It was agreed that the property would be purchased for a consideration of Rs. 28,00,000/- (Twenty eight lakhs only) per Acre with total consideration of Rs.6,44,00,000/- (Six crore forty four lakhs only) Advocate Unhale and Police Inspector Sakpal agreed to take responsibility of completing the entire transaction. On 27th July, 2010, the complainant and his brother visited office of Advocate Unhale. Police Inspector Sakpal, Jitesh More and Advocate Unhale were present. As agreed the first installment towards purchase of property was handed over to Advocate Unhale. The complainant gave the cheque dated 27th July, 2010 for an amount of Rs.15,00,000/- (Fifteen lakhs only) and another cheque dated 1st August, 2010 for amount of Rs.15,00,000/- (Fifteen lakhs only) as well as cash of Rs.20,00,000/- (Twenty lakhs only). The two cheques of Rs.15,00,000/- (Fifteen lakhs only) were handed over to Jitesh More and the cash of Rs.20,00,000/- (Twenty lakhs only) was handed over to Police Inspector Sakpal. The complainant requested for issuance of the receipt for payment of the amount. Advocate Unhale prepared the receipt by affixing the revenue stamp. Police Inspector Sakpal refused to sign the receipt. However, broker Jitesh More signed receipt on behalf of Ramakant Mhatre (owner). The complainant enquired with Advocate Unhale about it and he stated that the Ramakant Mhatre has given power of attorney to Jitesh More. The receipt was handed over to complainant. On 29.08.2010 it was agreed to pay the second installment towards the purchase of property. The complainant was informed that the original owner Ramakant Mhatre would be present in his office. The complainant, his son and brother-in-law visited office of Advocate Unhale. Broker Jitesh More was present in the office. The complainant was informed by Advocate Unhale that Ramakant Mhatre could not attend office. Advocate Unhale had informed that the original owner would publish a notice in the newspaper stating that he has received the amount of Rs.1,00,00,000/- (One core only) towards the sale of property and invite objections if any, for this said transaction. The complainant believed him. He parted amount of Rs.10,00,000/- (Ten lakhs only) by cheque dated 26.08.2010, Rs.10,00,000/- (Ten lakhs only) by cheque dated 28.08.2010, Rs.5,00,000/- (Five lakhs only) by cheque dated 29.08.2010 and Rs.25,00,000/- (Twenty five lakhs only) in cash. Advocate Unhale prepared receipt on the computer about the cash payment received by him and kept it with him. On enquiry, he informed that, after obtaining the undertaking of

Ramakant Mhatre about the publishing of notice in the newspaper, he would hand over receipt to the complainant. On the same day Advocate Unhale informed the complainant on phone that he has received the undertaking from original owner and that the notice will be published in the newspaper on 29.08.2010. He was also informed that the owner has handed over the photo copy of no objection to him, mentioning that he had received amount of Rs.1,00,00,000/- (One crore only). The complainant then inquired with Advocate Unhale about the schedule for balance payment. Thereafter, the complainant had handed over the cheque of Rs.30,00,000/- (Thirty lakhs only) dated 17.09.2010 and cash of Rs.20,00,000/- (Twenty lakhs only) to Advocate Unhale on 19.09.2010. Thereafter, Advocate Unhale had informed the complainant that the original owner has demanded the entire consideration in cash. Hence, the complainant took back the cheque of Rs.30,00,000/- (Thirty lakhs only) and parted the amount of Rs.30,00,000/- (Thirty lakhs only) in cash. Advocate Unhale then gave a call to complainant and informed him that Jitesh More is in need of Rs.20,00,000/- (Twenty lakhs only). The complainant parted amount of Rs.20,00,000/- (Twenty lakhs only) to Advocate Unhale on the same day. Thus on that day the complainant had parted an amount of Rs.70,00,000/- (Seventy lakhs only) in cash. On 29.09.2010 Advocate Unhale has provided the information to be published in the notice to the complainant. The complainant told him that he had so far parted amount of Rs.1,70,00,000/- (One crore seventy lakhs only) towards the transaction and hence, the owner be requested to execute the agreement and issue receipt about the payment. Advocate Unhale informed the complainant that the work is in progress and search report of the property has been obtained. He assured about of completion of transaction. Since the complainant was acquainted with Advocate Unhale for several years, he trusted him. On 30.09.2014 the complainant handed over two cheques of Rs.50,00,000/- (Fifty lakhs only) dated 30.09.2010 to Advocate Unhale. At that time Advocate Unhale informed him that owner is in need of cash. The complainant informed Advocate Unhale that the cheques may be kept with him by way of security and the documents may be prepared. He would part the cash amount and take back cheques. Thereafter, the complainant handed over the cash of Rs.50,00,000/- (Fifty lakhs only) to Advocate Unhale and took back one cheque from Advocate Unhale. The second cheque is still with Advocate Unhale. Subsequently the complainant made inquiry with Advocate Unhale about execution of documents. In November-2010, he received call from Advocate Unhale informing that the documents are complete and before registration the owner is required to be paid an amount of Rs. 50,00,000/- (Fifty lakhs only). On 17.11.2010, the complainant and his son Hardik visited the office of Advocate Unhale. Jitesh More was present in the office. The complainant parted an amount of Rs.50,00,000/- (Fifty lakhs only) in cash to Advocate Unhale and requested him to show him the documents relating to the transactions. Advocate Unhale then informed that some work is pending which will be completed within short time. The complainant demanded the receipt regarding the payment of Rs.2,70,00,000/- (Two crores seventy lakhs only). Advocate Unhale prepared a receipt on computer by affixing the revenue stamp. The receipt was signed by Jitesh More on behalf of owner Ramakant Mhatre. Advocate Unhale handed over the receipt purportedly signed by owner to the complainant. Inspite of repeated demand for handing over the documents relating to completion of transaction, Advocate Unhale kept on promising that the documents will be made available. However, no documents were handed over to him. Subsequently, the complainant learnt that the property was sold to one Kishan Gulchand Chawla and others. The documents relating to the said transaction were also received by the complainant. He immediately approached Advocate Unhale and informed him about the said information. Advocate Unhale informed him that broker Jitesh More is avoiding the transaction. The complainant suspected conduct of Advocate Unhale and others. On 19.12.2012 the complainant, Advocate Unhale and others proceeded to approach owner Ramakant Mhatre. They were informed that Ramakant Mhatre is working in revenue department at Bhiwandi. However, no such person was found working in the said department. Attempts were made to get information about the address of Ramakant Mhatre from Kishan Chawla. Advocate Unhale then took complainant to office of Bhiwandi Nagar Palika to conduct Ramakant Mhatre. However, the owner was not found at the said place. Subsequently, the complainant and others visited the house of

Ramakant Mhatre. When the entered into the house it was noticed that one person it had left the house. They were informed that, the person who left the house was Ramakant Mhatre. Although Ramakant Mhatre had left the house, Advocate Unhale did not inform complainant that per who left the premises is the owner of property. Subsequently, they were successful in approaching Ramakant Mhatre and told him about the transaction. They were informed by Ramakant Mhatre that, he has not conducted any such transactions with complainant. He did not receive any consideration. He had transaction with Jitesh More, Police Inspector Ashok Sakpal and his wife Vaishali Sakpal on executing the agreement. In that regard, he had received the amount of Rs.1,25,00,000/- (One crore twenty five lakhs only). However, the agreement was subsequently cancelled and he had returned the amount to them. Advocate Unhale informed Ramakant Mhatre that, he had transaction with complainant which is signed by him and the copy of the agreement is with him. Ramakant Mhatre refused to have signed any documents. The complainant then realized that he had been cheated by the accused. On 26.12.2012 the complainant, his son and broker Jitesh

More approached Police Inspector Sakpal. He informed them that money is safe. However, the amount was not returned to the complainant. The complainant realized that Advocate Unhale, Police Inspector Ashok Sakpal, his wife Vaishali Sakpal, broker Jitesh More and Ramakant Mhatre had cheated him. Hence, the FIR was lodged on 15.11.2014.

3. The respondent No.2 preferred an application for Anticipatory Bail. Interim order was passed by the Sessions Court on 19.11.2014, directing that in the event of arrest, she may be released on bail on executing P.R. and S.B. of Rs.25,000/- with one solvent surety in the like amount. She was directed to attend Rabodi Police Station on every Sunday between 10:00 a.m. to 12:00 noon till further orders. She was restrained from leaving jurisdiction of the Court without prior permission of the investigating officer. She was directed not to tamper with the prosecution witnesses and co-operate with the investigation. By order dated 25th February, 2015 the interim order passed by the Sessions Court was confirmed and the application for anticipatory bail was disposed of.

4. The applicant has challenged the aforesaid order granting anticipatory bail to the respondent No.2.

5. Learned Advocate for the applicant submitted that the impugned order was passed without assigning any reasons. Custodial interrogation of the respondent No.2 was necessary. She has acted in connivance with the co-accused. Huge amount was parted to the accused. The amount was required to be recovered. The husband of the respondent No.2 was also granted anticipatory bail by the Sessions Court. The said order was challenged before this court vide Criminal Application No. 180 of 2015 and the anticipatory bail granted to him was cancelled by this Court vide order dated 13th February, 2018. The respondent's husband had approached the Apex Court. His petition was rejected by the Apex Court vide order dated 30th January, 2019. However, he has not been arrested by the investigating agency. The involvement of respondent is apparent from the investigation conducted by the Police. There are cash transactions into the account of respondent no.2. She was conspirator in committing the offence along with the other accused. The order granting anticipatory bail to respondent No.2 deserves to

be set aside. The Sessions Court had committed an error in observing that only amount of Rs. 1,25,000/- (One lakh twenty thousand only) has been paid to the original owners. The Court failed to take note of the fact that more than Rs.2,70,00,000/- (Two crore seventy lakhs only) is involved in the case. All the accused have acted in connivance with each other. Learned counsel for the applicant has relied upon the documents annexed to the application and submitted that the complicity of respondent No.2 is evident from the documents and investigation conducted by the Police. The charge-sheet is not been filed in view of the order passed this Court. For the purpose of investigation the custodial interrogation of respondent No.2 is necessary.

6. Learned APP submitted that the investigation reveals involvement of the applicant. During the investigation it was revealed that cheques were issued by Ramakant Mhatre in favour of respondent No.2. The bank statement of Ramakant Mhatre shows payment of the amount to respondent No.2. The bank statement of the respondent No.2 indicate cash transaction in her account. Amount of Rs.70,54,000/- was deposited mostly by cash in her

account during the period from 29.11.2011 to 26.08.2014.

7. Learned Advocate for respondent No.2 submitted that there is no involvement of the applicant in the offence. She is being falsely implicated in this case. The FIR is indicate that, she is not party to any of the transaction. She has not made any promises to complainant. No amount was handed over to respondent No.2. She is not signatory to any document. It is not established that, she was acting in connivance with the co-accused. The amount was parted to the co-accused. They were arrested and granted bail. The custodial interrogation of respondent No.2 is not necessary. Investigation is over

8. On perusal of FIR dated 15.11.2014, it can be seen that the representations about the sale of property were made by Advocate Unhale, broker Jitesh More and the co-accused Police Inspector Sakpal to the complainant. From the tenor of FIR, it can be seen that the complainant had allegedly parted huge amount in cash and cheque to Advocate Unhale and others. It is not the case of the complainant that the respondent No.2 was present at any point of time in the meetings relating to the transaction of the property. He

has not stated that at any point of time the amount was handed over to respondent No.2. The alleged transactions were to be executed with the owner of the property Ramakant Mhatre. The amount in cash and cheque was parted to the other accused. The only allegation which is reflected in the FIR is that the owner Ramakant Mhatre had informed the complainant that, he had transaction with Jitesh More, Police Inspector Ashok Sakpal and Smt. Vaishali Sakpal by executing sale deed and received amount from them which was returned by him to them on cancellation of transaction. Thus in the transaction the respondent No.2 has not made any representations to the complainant. The interim relief was granted to respondent No.2 vide order dated 19.11.2014 with directions to co-operate with the investigation. The interim relief thereafter, confirmed vide order dated 25th February, 2015. Advocate Unhale was apparently arrested and granted regular bail. It also appears Jitesh More had played a vital role in this transactions. The amount was also allegedly handed over to him. He was arrested and granted bail. The applicant has annexed the writing executed between the parties to this application. The writing was executed on stamp paper in the name of respondent

No.2 and Jitesh More. The said writing was purportedly sale deed with Ramakant Mhatre. The said document does not relate to the transaction with the complainant. The applicant has annexed another writing executed between Ramakant Mhatre and respondent No.2. The said document indicate that sale deed was executed on 13th July, 2011. The document also indicate that Jitesh More had accepted the amount by two cheques of Rs.2,50,000/- (Two lakhs fifty thousand only) each with purported consent of respondent No.2 She has not the signed said document. The amount was received by Jitesh More. Considering these circumstances no case is made out for custodial interrogation of respondent No.2. On the ground that there were cash transactions into the account of respondent No.2 the applicant need not be subjected to custodial interrogation. The investigation is going on since more than five years. Hence this application deserves to be rejected.

9. Hence, I pass the following order:-

ORDER

i. Criminal Application No. 181 of 2015 is rejected;

ii. In view of rejection of Criminal Application No. 181 of 2015, Criminal Application No. 633 of 2017, seeking transfer of Cri. Application No. 181 of 2015, stands disposed of.

(PRAKASH D. NAIK, J.)