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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1686 OF 2022

Yusuf Musa Shaikh & Anr.	]	..	Applicants
vs.			
State of Maharashtra	]	..	Respondents

Mr.Anjesh Kumar i/b A.N. Juris & Partners for Applicants.
Smt.Anamika Malhotra, APP for the State.
PI Sachin Shinde, MIDC Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 3RD AUGUST, 2022.

P.C.

1] The present applicants are accused in CR No. 598/2022 registered at MIDC Police Station, which invoke offence under Section 420 read with 34 of the Indian Penal Code and they seek protection from arrest.

2] On the last date of hearing the applicants came to be protected in the wake of statement made by them that they are ready to repay the amount provided some installments are granted.

The notice was issued to complainant and he is present in the Court.

3] From the complaint lodged by the complainant, it can be seen that he was looking for a room on rent and the room belonging to

applicant No.1 was shown to him which was situated at Marol Pipe Line, Andheri. He agreed to hire the said room which was agreed to be rented out with heavy deposit of Rs.5 Lacs. The complainant borrowed the sum of Rs.8 Lacs from Axix Bank. He passed on a cheque of Rs.2 Lacs from the said Bank in favour of applicant No.2 on 15.09.2019 and further passed on a post dated cheque of Rs.2,50,000/- on 23.09.2019 and cash of Rs.50,000/- to applicant No.1.

4] On the amount being received, the applicant No.1 did not deliver the possession of the room, but an agreement was executed with him. The said agreement is placed on record in the form of "Leave and License Agreement" dated 17.9.2019 in respect of a room admeasuring 10' x 20' sq. ft. situated at Saibaba Nagar, Marol Pipelne which was rented on leave and license basis for 24 months from 17.09.2019 to 16.09.2021, at an agreed rent of RS.7000/- per month. The said agreement acknowledges receipt of Rs.2,50,000/- at the instance of applicant No.1 who has passed on receipt to that effect. Applicant No.1 is the signatory to the said Agreement alongwith Smt.Shantabai Bansode who had introduced the complainant to the Applicants.

5] The complainant also make reference to another transaction with one Farooq Khilji by stating that at the instance of applicants, he delivered cheque of Rs.1,78,000/- and cash of Rs.22,000/-. The learned APP has placed on record Agreement executed with Farooq Khilji on 09.10.2019 and it is informed that the original is in possession of Applicant No.1. It is not clear as to what is the purpose of executing the said Agreement which refer to one room in Saibaba Nagar, Andheri admeasuring 10 x 20 sq. ft. which is taken on leave and license basis

by the complainant from 09.10.2019 to 08.08.2021 with license fee of Rs.12,000/- per month. Since the description of the room is not clear from both the Agreements, it is not understood whether it is in respect of the same room. However, statement of the complainant cannot be disputed since his bank statement reflect entry of cheque for Rs.2 Lac and for Rs.2,50,00/- being credited to the account of Applicant No.2 and another cheque of Rs.1,78,000/- credited in the account of Farooq Khilji. However, since the possession of the room was not delivered, the complainant lodged report, where he alleged that he was cheated.

6] The learned counsel for the Applicants submits that the applicants are not responsible for the amount other than Rs.5 Lac which is attributed to them. But he submits that the applicants repay the complainant only by way of Rs.15,000/- per month. The complainant is present in the Court and refused to accept the said offer since he states that he has availed loan from bank and he is required to repay the monthly installments.

7] The learned counsel for the Applicants would further submit that this was loan transaction under the cover of leave and license agreement, but when any document to that effect is asked for, he states that it was an understanding between the parties. However, the leave and license agreement being notarized there is no reason to doubt its veracity and underlying intention of the parties can be ascertained only during the course of investigation.

8] The offence of cheating necessarily involve dishonest intention on the part of a party making the other party deliver any property which he would have omitted to deliver and since the ingredients of the

offence of cheating being the inducement of a person to deliver the property for a security on a promise of adhering to the same and in the present case since intention of the applicants from the very inception was not to fulfil the promise which is apparent from the concerned accusations placed by him in the complaint, custodial interrogation of the applicants is very much warranted when it is not in dispute and clear from the bank entries that the amount has gone into the account of applicant No.2.

9] The learned counsel for the Applicants has heavily relied upon the case of Apex Court in the case of ***Siddharth vs. the State of Uttar Pradesh and Others, in Criminal Appeal No. 838 of 2021 arising out of SLP (Cri) No.5442/2021***, but ratio of this case is not of any assistance to the applicants, when prima facie non-cognizable offence is made out .

10] In the peculiar facts of the case and when the applicants deny execution of Agreement, on receipt of the amount, custodial interrogation is very much warranted. Hence, application is rejected.

[BHARATI DANGRE, J]