IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2422 OF 2021

Ashalata w/o. Gokul @ Gokoolarao
Katke …. Applicant
v/s.
The State of Maharashtra …. Respondent

Mr. A.M. Saraogi a/w. Mr. Sangram Suryavanshi and
Mr. Vaibhav Ugle for the Applicant.
Mr. Surel Shah for the Intervenor in IA/2346/2022.
Ms. G.P. Mulekar, APP for the State.
Mr. R.R. Ghote, PS, Haveli Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 24th AUGUST, 2022.

P. C. :-

. This is an Application under section 438 of Cr.P.C. for pre-arrest bail in C.R.No.21/2021 registered with Haveli Police Station, Dist. Pune for offences punishable under sections 406, 420, 422 r/w. 34 of the Indian Penal Code.

2. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the Intervenor. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the First

Information Report (FIR) lodged by Mahesh Bagade, Assistant Manager and Recovery Officer in Rameshwar Co-operative Credit Society. It is the case of the prosecution that in the year 2017, the Applicant and her husband took loan of Rs.18,00,000/- from the said Credit Co-operative Society for repair work of house and to repay the loan availed from the SBI. The Applicant and her husband executed a Mortgage Deed and mortgaged flat no.2 and property under Gat No.721 of Village Ambale in favour of the bank as a security for the debt. The Applicant and her husband failed to repay the monthly loan installments since 2018. The complainant learnt that the Applicant and her husband had sold the mortgaged property to one Ashok Mankar and his wife. Similarly, the husband of the Applicant also sold his share in the mortgaged property in favour of Swapnil, Tushar and Jagtap and that the Applicant herein is a consenting party to the said sale deed. The complainant alleged that sale of the property is with an intention to cheat and defraud the bank.

4. Mr. Saraogi, learned counsel for the Applicant submits that by agreement dated 30/04/2004 registered on 05/05/2004 under Registration No.1706/2014 and agreement dated 06/07/2004 registered on 07/07/2004 under Registration No.2727/2004, the

Applicant and her husband had purchased two separate flats viz. flat no.1 and flat no.2 in Trimurti Apartment, Baner, Pune. He submits that due to typographical error in agreement dated 30/04/2004, the flat purchased under the said agreement is described as flat no.2 instead of flat no.1. He submits that the Applicant and her husband had taken loan from SBI to purchase flat no.1 which is the subject matter of agreement dated 30/04/2004 by creating equitable mortgage in favour of the bank.

5. Learned counsel for the Applicant submits that the Applicant that the Applicant and her husband had availed loan from Canara Bank to purchase flat no.2 purchased by agreement dated 07/07/2004. He submits that the Applicant had sold flat no.2 which is the subject matter of agreement dated 07/07/2004. He submits that the SBI had filed a suit against the Applicant and her husband for recovery of money due. Pursuant to the decree dated 26/09/2016 in the said suit, the Applicant availed loan from the Co-operative Credit Society (the Complainant Bank), to pay the dues of SBI under the decree dated 26/09/2016. He submits that the Applicant is still in possession of flat no.1. He further submits that the Applicant and her husband were only the co-owners of the property and that they have not sold their share in

favour of Jagtap.

6. Per contra, Mr. Surel Shah, learned counsel for the Intervenor and learned APP states that the Applicant and her husband had purchased flat no.2 which was mortgaged in favour of the Complainant – Bank. It is further stated that the agreement dated 30/04/2004 registered under Registration No.1706/2004 relating to flat no.2 was cancelled on 16/06/2004 and thereafter, the Applicant and her husband purchased flat no.2 by a separate agreement dated 07/07/2004. It is stated that the Applicant was not the owner of flat no.1. The flat mortgaged to the SBI and the Complainant – Bank is flat no.2 which has been sold on 06/07/2015. It is further submitted that the husband of the Applicant has sold his share in the mortgaged property in favour of Jagtap and that the Applicant herein is a consenting party. Learned APP submits that the Applicant and her husband were well aware that the property was mortgaged despite which they have sold the property. She submits that the intention was to cheat since inception.

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

8. The records reveal that by agreement dated 30/04/2004

registered under Registration No.1706/2004, the Applicant and her husband had agreed to purchase flat no.2 with Car Parking No.2 admeasuring 100 sq. ft for total consideration of Rs.8,00,000/-. Learned APP has placed on record copy of the Index-2 of the cancellation deed, a perusal of which reveals that the agreement dated 30/04/2004 was cancelled on 15/06/2004. Subsequently, the Applicant and her husband entered into 2nd Agreement for Sale dated 07/07/2004 registered under Registration No.2727/2004, which was also in respect of flat no.2.

9. The records thus reveal that the Applicant and her husband had purchased only one flat i.e., flat no.2 under Agreement dated 07/07/2004 registered under Registration No.2727/2004. It is not in dispute that the Applicant and her husband have already sold the said flat.

10. The Applicant and her husband availed loan from SBI by mortgaging flat no.2 allegedly purchased under agreement dated 30/04/2004 even though the said agreement was already cancelled. The records reveal that the Applicant and her husband failed to clear the dues to SBI and as such, the SBI had instituted a suit for recovery of money. The said suit was decreed by judgment and decree dated

26/09/2016 and the Applicant and her husband were directed to repay the amount of Rs.5,91,000/- with interest. The Applicant and her husband again availed loan from the Complainant – Credit Society to clear the dues under the decree dated 26/09/2016 by mortgaging flat no.2 which was allegedly purchased under agreement dated 30/04/2004 and registered under Registration No.1706/2004. As noted above, agreement dated 30/04/2004 was already cancelled and flat no.2 purchased by agreement dated 07/07/2004 was already sold. Hence, as on the date of the availing the loan and executing the deed of mortgage in favour of the Co-operative Credit Society, the Applicant was not the owner of the flat no.2 which was agreed to be purchased under agreement dated 30/04/2004 or the flat purchased under agreement dated 07/07/2004, despite which, the Applicant and her husband have availed loan first from the SBI and later from the Complainant – Credit Society by mortgaging the flat, agreement in respect of which was already cancelled.

11. Learned counsel for the Applicant was at pains to explain that the flat purchased under agreement dated 30/04/2004, was in fact flat no.1 and that the cancellation deed has not been acted upon. It is pertinent to note that the Applicant and her husband had filed a suit being RCS No.1432/2014 for declaration that they are the owners of

flat no.1 and to restrain one Chandrakant Gite from interfering with his possession in respect of the said flat. Perusal of the plaint reveals that said Gite was claiming right to flat no.1 under registered sale deed dated 25/07/2014. In his written statement, he had averred that the Applicant herein was claiming right to flat no.1 after the same was purchased by him in auction in the year 2011. The Applicant and her husband subsequently filed an Application to withdraw the suit, which Application was allowed by order dated 17/04/2017. The Applicant and her husband suppressed all these facts while availing loan from the Complainant – Credit Society. The records prima facie indicate that it was a well hatched conspiracy to cheat the Complainant – Credit Society and the intention to cheat was there since inception. This is further fortified by the fact that the husband of the Applicant had also sold his share in the mortgaged property under Gat No.721 under sale deed dated 06/07/2015 wherein the Applicant herein is the consenting party.

12. Considering the above facts and circumstances, this is not a case which would justify grant of pre-arrest bail. Under the circumstances and in view of discussion supra, the Application is dismissed.

PREETI H JAYANI Digitally signed by PREETI H JAYANI Date: 2022.09.06 18:39:05 +0530

(SMT. ANUJA PRABHUDESSAI, J.)