**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.205 OF 2023

1. Navneet s/o Shivratan Sharma
2. Priya w/o Navneet Sharma

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Police Station Sadar Bazar, Jalan

2. Sangita Digambar Lokhande

Mr. M. N. Sayyad, Advocate for the appellants
Mrs. G. L. Deshpande, APP for the respondent/State
Mr. N. R. Thorat, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.
DATE : 25th JULY, 2023

P.C. :-

1. This Court is called upon to determine a question as to whether a person along with his wife cheats the various persons by entering into multiple transactions in respect of the same property with different purchasers, would be entitled to get protection of anticipatory bail.

2. The informant Sangita Lokhande gave report to the police by stating that appellant No.1 is owner of the property which she agreed to sale to her. An agreement to sale / earnest note was executed and the

possession of the flat No. 102 was given to the informant. It is further case of the informant that appellant No.1 has received a sum of Rs. 8 lakhs against the said transaction. In the year 2019 a notice was received by the informant from Union Bank of India which indicated that a loan to the tune of Rs. 20 lakhs was obtained by the appellants herein against the property which was sold to the respondent No.2/informant. On these allegations crime bearing C.R. No. 24/2023 was registered with Sadar Bazar Police Station, Dist. Jalna for the offences punishable under Sections 420, 468. 471, 120-B of Indian Penal Code (for short 'IPC') and under Section 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Act'). Present appellants apprehend arrest in connection thereto.

3. At the outset learned counsel for the appellants states that appellant No. 2 is not a owner of the property in question. According to him neither her name is mentioned in any of the document executed between with informant nor she has signed the said document in any capacity. Thus according to him there is no nexus of the appellant No.2 with this Crime and hence she is entitled for pre-arrest bail. As far as appellant No.1 is concerned with contention of the counsel for this appellant that there is in ordinate delay in lodging first information report as the transaction in question is of year 2018 and also information about

the loan was received by her on 14/01/2019 itself. It is further contended that civil suit is pending in respect of said transaction and that the informant is trying to give colour of criminality to a civil transaction. It is submitted that since the possession of the property in question is given to the informant, there is no question of any cheating caused by the appellants.

4. Learned counsel for the informant/respondent No.2 opposed the said contention by submitting that the appellants have relied upon the property card which does not show any encumbrances against the property in question. According to him on 29/05/2018 an agreement to sale came to be executed between the parties. However, even prior thereto i.e. on 10/02/2018 the appellant No.2 had agreed to sale the very same property to another purchaser namely Anant Joshi. It is a contention of the learned counsel for the informant that the false property card is used by the present appellant No.1 for the purpose of entered into a said transaction. It is also contended that the previous transaction indicates that since inception the appellants had intention to cheat the informant.

5. Learned APP relied upon the investigation papers has submitted that there 5 other offences registered against present

appellant No.1. Attention of the Court is drawn to the statement of one of the witnesses who has stated about the manner in which the offence in question is committed by appellants. According to her custodial interrogation of appellants is necessary to ascertain the manner in which the property card without lien over property is procured by them.

6. Perusal of the record indicates that the appellant No.1 is original owner of Flat No. 102. The copy of the suit filed by Anant Joshi indicates that appellant No.1 has executed a transaction (agreement to sale) in respect of the said flat with him on 10/02/2018. Thereafter on 29/05/2018 the present transaction in question i.e. earnest note came to be executed with informant. Perusal of the earnest note dated 29/05/2018 clearly shows that the appellant No.1 herein has made a categorical statement therein that the property in question was neither sold with any legal document or even orally to any other person. It is further stated that there is no loan obtained over the said property. These statements on the face of it are false as the appellant No.1 in respect of the same property entered into the transaction on 10/02/2018 with another purchaser. Similarly, the loan is also obtained on the said flat in the year 2017. It is thus clear that by making false statement the informant was induced to part with the money i.e. a sum of Rs. 8 lakhs. It is thus clear that the appellant No.1 had intention to cheat the

informant since beginning and hence the offence punishable under Section 420 of IPC is made out.

7. As far as the appellant No. 2 is concerned though she is not owner of the flat No. 102 however she is co-borrower of the loan over said flat. Appellant No.2 is wife of the appellant No.1. Appellant No.2 has not claimed in the application that she had no knowledge about the transaction entered in to by the appellant No.1 with present informant or any other purchaser. Thus, it can be at least prima face said that she is also party to the act of cheating. Thus, it is not the case even for her to seek anticipatory bail.

8. There is substance in the contention of learned counsel for the informant and learned APP that in order to ascertain the manner in which the false PR card was prepared as well as to find out any other transaction pertaining to the said property, custodial interrogation of the both appellants would be necessary. Hence appellants are not entitled for pre-arrest bail. Hence appeal stands dismissed.

9. Learned counsel for the appellants states that the protection granted to the appellants be continued.

10. Learned APP and learned counsel for the informant opposed the application.

11. It seems that at the time of the passing of the interim order the material now placed on record was not brought to the notice of the Court. This is a case wherein informant who belongs to shceduled caste community is being cheated in this manner. Considering the nature of offence and the conduct of the appellants this is not a fit case to continue the interim relief. Hence request stands rejected.

(R. M. JOSHI, J.)

ssp