IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 298 OF 2023
WITH
INTERIM APPLICATION NO. 764 OF 2023

Dilip Amrutlal Dhruv & Ors. ..Applicants

v/s.

The State of Maharashtra . ..Respondents

Mr. R.T. Yadav a/w. Mr. Santosh Kumar Mishra for the Applicant.
Mr. Hardik Vyas i/b. Rohan Hogale for the Intervenor
Mr. S.V.Gavand, APP for the State.

CORAM : ANUJA PRABHUDESSAI ,J.
DATED : 13th MARCH, 2023.

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid Applicants apprehending their arrest in C.R.No. 48 of 2021 registered at Versova Police Station for offences under Section 406, 420 r/w. 34 of IPC.

2. Heard Mr. Yadav, learned Counsel for the Applicant, Mr. Gavand, learned APP for the State and Mr. Vyas 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 FIR lodged by Bhojraj Hiranand Mangtani. The FIR prima facie reveals that the Complainant was interested in selling his plot situated at Pimpri

Chinchwad, Pune, value of which was around Rs.8 Crores. He wanted to invest the said money in a flat. He was referred to the Applicant No.1 Dilip Dhruv. He has stated that the Applicant No.1 had agreed to sell to him a flat on the first floor in Shubhangan Building for a sale consideration of Rs.6,31,00,000/-. The Complainant was informed that the said flat was mortgaged to IDBI Bank and that the amount would be cleared and the mortgage would be redeemed on receipt of the sale consideration. The Complainant paid to the Applicant total sum of Rs.33,00,000/-. The Complainant thereafter learnt that the flat was already mortgaged in favour of one Hiten Shah. This fact was suppressed by the Applicant at the time of entering into the said transaction. The Complainant therefore canceled the transaction, pursuant to which the Applicants refunded an amount of Rs.5,00,000/- in the year 2020. It is stated that the Applicant had agreed to repay the balance amount, but till date they have not repaid the amount of Rs.28,00,000/-.

4. The material on record prima facie reveals that the Applicant No.1 Dilip Dhruv had received total amount of Rs.13,00,000/-, Applicant No.2 has received Rs.11,00,000/- and the Applicant No.3 has received Rs.9,00,000/-. The Applicant Nos.1 to 3 were therefore the beneficiaries of the said transaction. The records reveal that the Complainant was induced for entering into the said transaction on the pretext that the flat was mortaged only in favour of IDBI, and received an amount of

Rs.33,00,000/- from the Complainant. They had suppressed the fact that the flat was already mortgaged in favour of Hiten Shah. This fact indicates that the Applicants had intention of cheating from the inception. The records reveal that the Applicant Nos.1 to 3 had not repaid the money.

5. The records also reveal that by Order dated 08.02.2023 this Court had granted interim protection to the Applicant Nos.1 to 3 with further direction to report to the Investigating Officer on 11th and 12th February, 2023 and co-operate with the investigation. On 27.02.2023 the Investigating Officer had brought to the notice of the Court that despite specific directions of this Court, the Applicant Nos.1 to 3 had not reported to the Investigating Officer. This Court (Coram: M.S.Karnik, J.) had directed the Applicant Nos.1 to 3 to file an affidavit giving explanation for non compliance of the order. The Applicant Nos.1 to 3 were put to notice that the matter would be heard on merits only if the explanation was found to be satisfactory. Despite the Order dated 27.02.2023 the Applicant Nos.1 to 3 did not file affidavit giving explanation for non compliance of the previous order. However, affidavit was filed by the Applicant No.2. Order dated 06.03.2023 records that the learned Counsel for the Applicant was unable to give any explanation for non compliance of the order dated 27.02.2023. Yet, by way of indulgence an opportunity was given to the Applicants. Despite which the Applicant Nos.1 to 3 have not filed their affidavit for

non compliance of orders dated 08.02.2023 and 27.02.2023. No explanation, much less satisfactory explanation has been given by the Applicants for non compliance of the order. Considering the conduct of the Applicants as well as considering the fact that there is prima facie material to show their involvement in the commission of crime, in my considered view, this is not a fit case to exercise discretion under Section 438 of Cr.P.C. against the Applicant nos.1, 2 and 3.

6. Under the circumstances, the Application is dismissed, as against Applicant Nos.1, 2 and 3.

7. The records reveal that no amount has gone into the account of Applicant No.4. Prima facie, there is no material on record to show that the Applicant No.4 is the beneficiary of the said transaction or that she was involved in the said crime. Under the circumstances, application is allowed in favour of Applicant No.4 on the following terms and conditions:-

(i) In the event of arrest of the Applicant No.4 Mrs. Shweta Shubhang Dhruv, in Crime No.48 of 2021 registered at Versova Police Station, she be released on bail on furnishing bail bond of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount, to the satisfaction of the Investigation Officer.

(ii) The Applicant No.4 shall report to the Investigating Officer for four days from 15.03.2023, and further as and when required by the

Investigating Officer for the purpose of investigation and interrogation.

(iii) The Applicant No.4 shall keep the Investigating Officer informed of her current address and mobile/contact details, and/or change of residence or mobile/contact details from time to time.

(iv) The Applicant No.4 shall not interfere with the Complainant and the other witnesses in any manner.

. Application stands disposed of.

. Interim Application stands disposed of in view of disposal of Anticipatory Bail Application.

(ANUJA PRABHUDESSAI, J.)