IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 465 OF 2023

Govind Parekh & Another ..Applicant

v/s.

The Senior Inspector of Police
& Ors. ..Respondents

WITH
INTERIM APPLICATION NO. 843 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 465 OF 2023

Suryanarayan R. Sharma ..Applicant

In the matter between

Govind Parekh & Another ..Applicant

v/s.

The Senior Inspector of Police
& Ors. ..Respondents

WITH
INTERIM APPLICATION NO. 730 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 465 OF 2023

Mukesh Hariram Agarwal ..Applicant

In the matter between

Govind Parekh & Another ..Applicant

v/s.

The Senior Inspector of Police
& Ors. ..Respondents

Mr. Niteen Pradhan a/w. Archana Khan i/b. Swapnil Wagh for the Applicant.

pps

Mr. Susmit Phatale for the Applicant in IA/843/2023.
Mr. Surel Shah & Karansingh Rajput a/w. Naresh Chedda and Rishab Murali i/b. Dhruve Liladhar & Co. for the Intervenor in IA/730/2023.
Mr. S.V.Gavand, APP for the State.
Smt. Siddhawa Jaybhage , P.I. Unit I, Economic Offences Wing, present

CORAM : ANUJA PRABHUDESSAI ,J.
DATED : 23rd MARCH, 2023.

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid Applicants apprehending their arrest in Crime No.01 of 2023 registered with Economic Offence Wing, Unit I, for the offences under Section 406, 409, 420, 422, 424, 120-B r/w. 34 of the Indian Penal Code.

2. Heard Mr. Nitin Pradhan, learned Counsel for the Applicant, Mr. Gavand, learned APP for the State, and Mr. Surel Shah learned Counsel for the Complainant Intervenor and Mr. Phatale, learned Counsel for the victim Suryanarayan Sharma. 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 Mukesh H. Agarwal. A perusal of the FIR reveals that the first informant had invested an amount of Rs. 8.31 crores in the project which was being developed by the partnership firm M/s. Prasam Developers, of which the Applicants are the partners. The first informant has stated

that since he was in need of money, he had sought refund of the amount. However, the Applicants expressed their inability to refund the amount due to disruption caused by COVID -19 pandemic, and signed a letter of acknowledgment of Debt, with an unequivocal promise to pay to the Applicant an amount of Rs.8,31,84,000/- within a period of one year. The Applicants further agreed that in the event of failure to refund the money, they would be liable to pay interest at the rate of 24% per anum. The Applicants also gave promissory notes, as well as post dated cheques for an amount of Rs.8,31,84,000/- in favour of the first informant. The Applicants also issued allotment letters in respect of five flats towards security of payment of the said amount.

4. The cheques issued by the Applicants were dishonoured in view of the ‘stop payment’ instructions. The first informant also learnt that the flats which were given as security were already sold to third person. The first informant therefore lodged the FIR against the Applicants for cheating and misappropriating their money, pursuant to which the aforesaid crime has been registered.

5. It is true that mere breach of contract does not constitute offence of cheating or misappropriation, unless dishonest intention was in existence since inception. ‘Dishonesty’ as defined in Section 24 of the IPC, means doing anything with the intention of causing wrongful gain

to one person, or wrongful loss to another person. Hence the question for consideration is whether the facts narrated in the FIR prima facie disclose the offence of cheating and misappropriation.

6. The records reveal that there were business dealings between the Applicants and the Complainant since long. The dispute arose only in 2021, when the Complainant requested for refund of Rs.8,31,84,000/- which was invested in the project. The Applicants initially avoided repaying the money citing difficulties faced due to COVID-19 pandemic and assured repayment with interest.

7. The Applicants executed a letter of acknowledgment; issued post dated cheques and offered flats towards security to show their bona fide and thus gained confidence and trust of the Complainant. A perusal of Clause 8 of the allotment letter reveals that the first informant was made to surrender 4 allotment letters which were issued earlier in respect of the flats in Ganesh Siddhi buildings, which were given as security towards payment of Rs.8,31,84,000/-. The Applicants had assured the First Informant that the flats would not be sold or mortgaged and that no encumbrance would be created in respect of the said flats. The said letter was signed by both the Applicants herein. The records reveal that the said flats were already sold to a third person. Furthermore, the Applicants stopped payment of the cheque amount, despite

acknowledging the debt. This conduct prima facie indicates that the intention to cheat was right from the inception, and executing letter of acknowledgment, issuance of post dated cheques and offering flats towards security was only an eye wash.

8. Shri Pradhan, learned Counsel for the Applicants states that the Applicant and co-accused were compelled to sign the letter of acknowledgment, acknowledging debt of Rs.8,31,84,000/-. He contends that the averments in the complaint under Section 138 of the Negotiable Instruments Act the first informant had claimed that the outstanding dues were of Rs.3,04,32,000/-. These submissions are devoid of any merits as the complaint as well as Demand notice, states that the amount due from the Applicants was 8,32,08,000/-. The amount of Rs.3,04,32,000/- mentioned in the said notice as well as in the compliant is the cheque amount which was the subject matter of 138 proceedings, and not the outstanding dues.

9. It is also pertinent to note that at no point of time the Applicants had lodged any complaint against the first informant or any other person for coercing them to issue such letters or post dated cheques. The records reveal that the Applicants had used the same modus operandi to cheat not only the Complainant, but also the other investors. The records prima facie reveal that, one Suryanarayan Sharma had also

invested Rs.83 lakhs in the said project. The Applicants had issued an allotment letter in respect of one shop towards security of the payment. The Applicants had also issued cheques towards repayment of the money. The said cheques bounced with an endorsement that the account was closed. The records reveal that the Applicants had canceled the allotment in respect of the said shop and had failed to repay the money as per the schedule despite assurance.

10. The records further reveal that four members from Doshi family had also invested total 55 lakhs in the project of the Applicants. The Applicants had assured to repay the money with 15% interest. The said money has not been refunded. The Applicants had executed a promissory note and had issued post dated cheques in favour of the members of Doshi family. It is stated that the Applicants have not repaid the said amount.

11. The facts and circumstances of the case reveal that the intention to cheat was right from the inception. The investigation is still at preliminary stage. The question whether the Applicants have entered into such similar transactions with other investors needs to be investigated and this can be done only through custodial interrogation.

12. Considering the above facts and circumstances, in my considered

view, this is not a fit case to exercise discretion under Section 438 of Cr.P.C. Hence, the application is dismissed.

12. Intervention Application stands disposed of in view of dismissal of the application.

13. Request to continue interim relief by four weeks is rejected in view of the reasons stated in the order.

(ANUJA PRABHUDESSAI, J.)