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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.609 OF 2022
WITH
INTERIM APPLICATION NO.3480 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.609 OF 2022**

Iqulakh Karim KhanApplicant.
V/s
State of Maharashtra Respondent.

**WITH
ANTICIPATORY BAIL APPLICATION NO.569 OF 2022
WITH
INTERIM APPLICATION NO.3479 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 569 OF 2022**

Inayat Ayub Bagwan Applicant.
V/s
State of Maharashtra Respondent.

Dr. Uday P Warunjikar a/w Siddhesh Pilankar for the Applicant.
Ms. P.N. Dabholkar APP for the Respondent/State.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 11, 2023

P.C.:-

1] Heard Dr. Warunjikar, learned Counsel for the
Applicants/Accused and learned APP.

2] Both the Applicants are seeking pre-arrest bail in Crime No.1164/2021 registered on 29/12/2021 at Kondwa Police Station, Pune for the offences punishable under Sections 420, 448, 452, 509, 323, 504 and 5406 read with Section 34 of the Indian Penal Code.

3] The case of the prosecution is, complainant parted consideration of Rs 14 lakhs which is acknowledged by co-accused Shafiq Shaikh Rafiq Shaikh who was working as a Manager with the Applicant for the Development Project in which the flat occupied by the complainant was agreed to be sold for consideration of Rs 17 lakhs. Inayat, another Applicant, is alleged to have received an amount of Rs 3 lakhs towards remaining consideration in addition to Rs 14 lakhs received by Shafiq Shaikh Rafiq Shaikh.

4] Dr. Warunjikar, learned Counsel for the Applicants would urge that co-accused Shafiq Shaikh Rafiq Shaikh has practiced fraud on the Applicants in having received an amount of Rs 14 lakhs without any authorisation but not parting the same with the Applicants. According to him, co-accused Shafiq Shaikh Rafiq Shaikh was never authorized

to sell the flat to any of the parties including the complainant and as such transaction by the complainant with co-accused Shafiq Shaikh Rafiq Shaikh is at her own risk. He would urge that complainant is still occupying the flat allegedly agreed to be sold in the capacity of licensee and is not paying license fees. So as to show bonafides, it is claimed that title deeds of the suit flat can be deposited with the Investigating Officer and issue can be resolved by either of the parties by approaching the Civil Court as the offence is arising out of contractual obligation.

5] Learned APP would oppose the prayer based on investigation papers. This Court is sensitive to the fact that both these Applications were heard on 19/09/2022, when the Applicants made statement that amount of Rs 14 lakhs would be deposited before this Court. Both the Applicants are not willing to deposit the said amount before this Court. Apart from above, fact remains that relationship of co-accused Shafiq Shaikh Rafiq Shaikh with the Applicants is not in dispute and the Applicants have not initiated any action against the co-accused Shafiq Shaikh Rafiq Shaikh after having got the knowledge of receipt

of the amount of Rs 14 lakhs by Shafiq Shaikh Rafiq Shaikh till this date. This conduct of the Applicants prima facie demonstrates that Applicants by their acquiescence are parties to the alleged transaction between the complainant and Shafiq Shaikh Rafiq Shaikh who has acknowledged vide receipt dated 20/11/2017 receipt of Rs 14 lakhs towards sale transaction of flat in question. Apart from above, in continuation to the above receipt Applicant co-accused Inayat has received amount of Rs 3 lakhs. As such, the Accused have already received total and full consideration of Rs 17 lakhs. In these circumstances, by dragging the complainant to a civil litigation cannot absolve the Applicants/Accused of their criminal liability. Rather, the above conduct of Applicants demonstrate their perpetration in the act of commission of offence.

6] In that view of the matter, prima facie involvement of both the Applicants in the offence of cheating, house trespass can be inferred. As such, no case for grant of pre-arrest bail is made out. Both the Applications stand rejected. As a consequence, both the Interim Applications do not survive and are accordingly disposed of.

7] Ad-interim protection which is in operation for last one year is ordered to be continued for a period of two weeks from today.

[NITIN W. SAMBRE, J.]