IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 771 OF 2023

Deepak Rajendra Singh ..Applicant

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Tushar Chavan for the Applicant.

Mr. Dilip Sathle a/w. Nikita Mardaniyan i/b. Mr. Harshad Bhadbade for the Respondent No.2.

Mr. S.V.Gavand, APP for the State.

PSI Harshad Hinge from Khed Police Stn., Ratnagiri.

CORAM : ANUJA PRABHUDESSAI ,J.
DATED : 18th JULY, 2023.

P.C.

1. This is an application under Section 438 Cr.P.C. filed by the aforesaid Applicant apprehending his arrest in C.R.No. 43 of 2023 registered at Khed Police Station for offences punishable under Section 406, 409, 420 r/w. 34 of the Indian Penal Code.

2. Heard learned Counsel for the Applicant, learned APP for the State. 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 dated 20.02.2023 lodged by Sudhir Sharad Butala, a practicing Advocate. The facts narrate in the FIR prima facie indicate that the complainant was interested in purchasing land admeasuring about 25 to 30 Acres. He got acquainted with the Applicant herein and the Applicant assured him that he could identify the land. The complainant claims that since he was busy and in view of his close association with the Applicant, he trusted the Applicant and on 1.7.2019 he executed a Power of Attorney in favour of the Applicant authorizing him to purchase the property. The complainant also transferred an amount of Rs.20 lakhs in the account of the Applicant. It is stated that sometime in July, 2019, the Applicant refunded the amount of Rs.20 lakhs stating that the land was not available.

4. In September, 2019, the Applicant, once again contacted the complainant and informed him that the land admeasuring 25 to 30 Acres was available at the rate of 2.5 lakhs to 3 lakhs per acre, and that he could arrange the same. It is stated that the Applicant also informed Advocate Sameer Seth that he could arrange land for him. Accordingly, said Sameer Seth executed a Power of Attorney dated 23.09.2019 in favour of the Applicant authorizing him to purchase land on his behalf. The complainant transferred total amount of Rs.51.50 lakhs, whereas,

said Sameer Seth and his wife transferred an amount of Rs.12.50 lakhs in the account of the Applicant. The Applicant thus received total amount of Rs.64 lakhs from the complainant, Sameer Seth and his wife.

5. The complainant has alleged that the Applicant purchased total 4 acres of land for Rs.12 Lakhs and spent an amount of Rs.1 lakh on stamp papers. The Applicant informed the Complainant that he was unable to identify additional land, in view of the outbreak of COVID 19 pandemic. On 1.4.2021, the complainant sent a letter to the Applicant informing him that despite receipt of Rs.64 lakhs, he had purchased land for sale consideration of Rs.12 lakhs. The complainant called upon the Applicant to return the balance amount and further not to act on the Power of Attorney executed in his favour. About 8 to 10 days later, the Applicant approached him and assured to pay the balance amount. On 20.09.2021 and 17.11.2021 the Applicant transferred total amount of Rs.6 lakhs into the account of the complainant. Similarly, on 20.09.2021, the Applicant transferred the amount of Rs.1 lakh into the account of Beena Seth.

6. The complainant alleged that out of Rs.64 lakhs, the Applicant has spent total amount of Rs.13 lakhs for purchase of land and he has refunded the amount of Rs. 7 lakhs. The complainant has alleged that thereafter the Applicant issued two cheques for Rs.20 lakhs and Rs.9.90

lakhs each. The cheque dated 4.4.2022 for Rs.20 lakhs was dishonoured for insufficient funds. The complainant has stated that he had issued a notice to the Applicant notifying that the cheque was dishonoured, despite which the Applicant did not respond to the said notice. The cheque dated 4.5.2022 for Rs.9.90 lakhs was also dishonoured for want of sufficient funds.

7. The complainant has stated that on 29.4.2022, the Applicant approached him and issued three separate cheques i.e. one cheque for Rs.5 lakhs and two cheques of Rs.4,00,000/- each. The said cheque dated 5.8.2022 for Rs.5 lakhs also was dishonoured for want of funds. By notice dated 8.8.2022, the complainant informed the Applicant about dishonour of the cheque. The complainant has stated that by notice dated 9.5.2022 he had informed the Applicant about dishonour of the cheque dated 4.5.2022 for an amount of Rs.9.90 lakhs. It is only on receipt of the said notice that the Applicant vide its reply dated 25.5.2022, for the first time, denied his liability to refund the amount. In the said reply, he claimed that the complainant had taken the said cheques forcibly and further contended that he had repaid the amount of Rs.10,90,000/- to Mahendra Kheratkar at the instance of the complainant. The complainant has alleged that the Applicant has mis-appropriated the amount of Rs.44 lakhs for his own use and has cheated him.

8. Learned Counsel for the Applicant contends that the total value of the land purchased was in fact Rs.34 lakhs and that only an amount of Rs.12 lakhs was paid by cheque and the balance amount was paid in cash. Learned Counsel for the Applicant further states that the cheque of Rs.20 lakhs was given towards security in respect of the first transaction which was canceled.

9. It is to be noted that the complainant vide notice dated 1.4.2021 had informed the Applicant that he had paid to him an amount of Rs.64 lakhs and that the value of the land purchased was only Rs.12 lakhs. By the said notice, the complainant had called upon the Applicant to refund the balance amount. The Applicant did not respond to the said notice. The Applicant also did not controvert the contention that he was liable to pay the balance amount of Rs.44 lakhs.

10. It is not in dispute that the amount of Rs.20 lakhs towards the first transaction was returned to the complainant sometime in the year 2019. Till the time, the cheque was dishonoured, the Applicant at no point of time informed the Complainant that the said cheque was given towards security and to return the said cheque in view of return of the said amount.

11. It is also to be noted that apart from the first notice dated 1.4.2023, the complainant had issued another notice dated 6.4.2022, wherein the Applicant was informed that the cheque of Rs.20 lakhs which was given by him towards repayment of balance amount was dishonoured for want of sufficient funds. Despite receipt of the said notice, the Applicant did not respond to the said notice and did not controvert to the contention that the said cheque was issued towards refund of the balance amount.

12. The Applicant claims that the amount of Rs.10,90,000/- has been transferred into the account of Mahendra Kheratkar at the instance of the complainant. In the reply dated 25.5.2022, the Applicant has stated that Mahendra Kheratkar is his friend. Apart from the bare statement of the applicant, there is no prima faice material to indicate that the complainant informant had given instructions to the Applicant to transfer the money into the account of Mahendra Kheratkar, friend of the Applicant herein. The record reveals that the Applicant had issued several cheques in favour of the complainant, which were dishonoured for insufficient funds. All these facts also prima facie substantiate the contention of the complainant that the said cheques were issued towards refund of the balance amount.

13. Learned APP submits that the statement of Mahendra Kheratkar was recorded on 3.9.2022, wherein he had stated that he had borrowed

loan of Rs.10,90,000/- from the first informant. Learned APP states that the Applicant was granted interim bail on 14.03.2023 and that after the said order, the witness Mahendra Kheratkar has filed an affidavit dt.20.06.2023 before this Court stating that the Applicant had transferred the money in his account at the instance of the complainant, and that he had repaid the money to the complainant in cash in several installments. Learned APP states that the fact that the said witness has resiled from the statement and taken contrary stand indicates that the Applicant has misused the liberty to influence the witness.

14. In my considered view, the records prima facie disclose the offence as alleged. The fact that the witness Mahendra Kheratkar who is admittedly a friend of the Applicant herein has come forward and filed a contradictory affidavit before this Court would also prima facie indicate that the Applicant has misused the liberty.

15. Considering the aforestated facts and circumstances, as well as the conduct of the Applicant, in my considered view, this is not a fit case to exercise discretion under Section 438 of Cr.P.C. in favour of the Applicant. Hence the application is dismissed.

16. The observations made herein above are only for the purpose for deciding the anticipatory bail application, and not expression on the

merits of the matter.

(ANUJA PRABHUDESSAI, J.)