IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1980 OF 2023

1. Mohmmad Anjum Bilal Khopekar
2. Bilal Abdul Majid Khopekar …. Applicants

v/s.

The State of Maharashtra …. Respondent

Mr. Rajendra B. Mokashi a/w. Mr. Aditya Mokashi for the Applicants.
Mr. S.V. Gavand, APP for the State.
Mr. Pathan, PSI, Kurla Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 17th JULY, 2023.

P. C. :-

. The Applicants apprehend their arrest in C.R.No.141/2022 registered with Kurla Police Station, Mumbai for offences punishable under sections 406, 420, 465, 467, 468, 471 r/w. 34 of the Indian Penal Code.

2. Heard learned counsel for the Applicants and 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 lodged by Madina Begum Shaikh. A perusal of the FIR prima facie reveals that

the first informant was desirous of purchasing a residential premises. The Applicant No.2 had informed her that his son – Anjum i.e., the Applicant No.1 was ready to sell the flat no.504 on the 5^{th} floor at Brahmanwadi, Kurla West, Mumbai for total sale consideration of Rs.80,00,000/-. Upon negotiation, the Applicant No.2 reduced the amount to Rs.72,00,000/-. The Applicant No.2 informed the first informant that the said flat is free from all encumbrances. Relying upon the assurance given by the Applicant No.2, she paid total amount of Rs.68,00,000/- and on 29/07/2019, the agreement of sale came to be executed and registered in respect of the said flat. The first informant has stated that when she went to take possession of the flat, she realized that the Applicants herein had taken loan by mortgaging the said flat and that they had not repaid the loan amount. The said flat was attached by the finance company. When questioned, both the Applicants told her not to worry and assured her that they had an arrangement with the finance company and that the finance company will not ask her to vacate the premises. The first informant told the Applicants to refund her money since the flat was already attached and sealed by the finance company but the Applicants failed to repay the money. She has stated that the Applicants have cheated several other persons under the pretext of sale of premises.

4. The agreement of sale executed between the parties prima facie reveals that the first informant had paid an amount of Rs.50,00,000/-. The Applicants had also issued receipt for having received the said amount. Clause 6 of the agreement of sale clearly states that the subject flat is free from all encumbrances and that it has not been charged for payment of any money to any person or financial institutions. This statement was prima facie a false statement to the knowledge of the Applicants.

5. The records reveal that the Applicants had induced the first informant in purchasing the flat on a false assurance that the flat was free from all encumbrances when in fact the flat was already mortgaged to the financial institution and loan was not repaid and flat was sealed.

6. Learned APP has brought to my notice that the Applicants had deceived 04 other persons in similar manner. The nature of the accusations and the conduct of the Applicants would not justify to exercise discretion under section 438 of Cr.P.C. Hence, the Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)